

- 3 Herald, a newspaper published at Dubuque, Iowa, and in The Daily
4 Times, a newspaper published at Davenport, Iowa.

Approved May 20, 1965.

I hereby certify as an amendment to the foregoing certification that the correct names of the newspapers designated to publish Senate File 132, are the Times-Democrat, Davenport, Iowa, and The Telegraph-Herald, Dubuque, Iowa.

GARY L. CAMERON, *Secretary of State.*

I hereby certify that the foregoing Act, Senate File 132, was published in the Times-Democrat, Davenport, Iowa, May 25, 1965, and in The Telegraph-Herald, Dubuque, Iowa, May 27, 1965.

GARY L. CAMERON, *Secretary of State.*

CHAPTER 413

UNIFORM COMMERCIAL CODE

S. F. 227

AN ACT to be known as the Uniform Commercial Code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, and secured transactions, including certain sales of accounts, chattel paper, and contract rights; providing for public notice to third parties in certain circumstances; regulating procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; and repealing inconsistent legislation.

Be It Enacted by the General Assembly of the State of Iowa:

ARTICLE 1

GENERAL PROVISIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

- 1 SEC. 1101. **Short title.** This Act shall be known and may be cited
2 as Uniform Commercial Code.
- 1 SEC. 1102. **Purposes—rules of construction—variation by agree-**
2 **ment.**
- 3 1. This Act shall be liberally construed and applied to promote its
4 underlying purposes and policies.
- 5 2. Underlying purposes and policies of this Act are
- 6 a. to simplify, clarify and modernize the law governing commercial
7 transactions;
- 8 b. to permit the continued expansion of commercial practices
9 through custom, usage and agreement of the parties;
- 10 c. to make uniform the law among the various jurisdictions.
- 11 3. The effect of provisions of this Act may be varied by agreement,

12 except as otherwise provided in this Act and except that the obliga-
 13 tions of good faith, diligence, reasonableness and care prescribed by
 14 this Act may not be disclaimed by agreement but the parties may by
 15 agreement determine the standards by which the performance of
 16 such obligations is to be measured if such standards are not mani-
 17 festly unreasonable.

18 4. The presence in certain provisions of this Act of the words
 19 "unless otherwise agreed" or words of similar import does not imply
 20 that the effect of other provisions may not be varied by agreement
 21 under subsection 3.

22 5. In this Act unless the context otherwise requires

23 a. words in the singular number include the plural, and in the
 24 plural include the singular;

25 b. words of the masculine gender include the feminine and the
 26 neuter, and when the sense so indicates words of the neuter gender
 27 may refer to any gender.

1 **SEC. 1103. Supplementary general principles of law applicable.**

2 Unless displaced by the particular provisions of this Act, the prin-
 3 ciples of law and equity, including the law merchant and the law
 4 relative to capacity to contract, principal and agent, estoppel, fraud,
 5 misrepresentation, duress, coercion, mistake, bankruptcy, or other
 6 validating or invalidating cause shall supplement its provisions.

1 **SEC. 1104. Construction against implicit repeal.** This Act being

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

1 **SEC. 1105. Territorial application of the Act—parties' power to**
 2 **choose applicable law.**

3 1. Except as provided hereafter in this section, when a transaction
 4 bears a reasonable relation to this state and also to another state or
 5 nation the parties may agree that the law either of this state or of
 6 such other state or nation shall govern their rights and duties. Fail-
 7 ing such agreement this Act applies to transactions bearing an ap-
 8 propriate relation to this state.

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

13 Rights of creditors against sold goods. Section 2402.

14 Applicability of the Article on Bank Deposits and Collections. Sec-
 15 tion 4102.

16 Bulk transfers subject to the Article on Bulk Transfers. Section
 17 6102.

18 Applicability of the Article on Investment Securities. Section 8106.

19 Policy and scope of the Article on Secured Transactions. Sections
 20 9102 and 9103.

1 **SEC. 1106. Remedies to be liberally administered.**

2 1. The remedies provided by this Act shall be liberally adminis-
 3 tered to the end that the aggrieved party may be put in as good a
 4 position as if the other party had fully performed but neither con-

5 sequential or special nor penal damages may be had except as specifi-
6 cally provided in this Act or by other rule of law.

7 2. Any right or obligation declared by this Act is enforceable by
8 action unless the provision declaring it specifies a different and lim-
9 ited effect.

1 **SEC. 1107. Waiver or renunciation of claim or right after breach.**
2 Any claim or right arising out of an alleged breach can be discharged
3 in whole or in part without consideration by a written waiver or
4 renunciation signed and delivered by the aggrieved party.

1 **SEC. 1108. Severability.** If any provision or clause of this Act
2 or application thereof to any person or circumstances is held invalid,
3 such invalidity shall not affect other provisions or applications of the
4 Act which can be given effect without the invalid provision or appli-
5 cation, and to this end the provisions of this Act are declared to be
6 severable.

1 **SEC. 1109. Section captions.** Section captions are parts of this
2 Act.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1 **SEC. 1201. General definitions.** Subject to additional definitions
2 contained in the subsequent Articles of this Act which are applicable
3 to specific Articles or Parts thereof, and unless the context otherwise
4 requires, in this Act:

5 1. "Action" in the sense of a judicial proceeding includes recoup-
6 ment, counterclaim, set-off, suit in equity and any other proceedings
7 in which rights are determined.

8 2. "Aggrieved party" means a party entitled to resort to a remedy.

9 3. "Agreement" means the bargain of the parties in fact as found
10 in their language or by implication from other circumstances includ-
11 ing course of dealing or usage of trade or course of performance as
12 provided in this Act (Sections 1205 and 2208). Whether an agree-
13 ment has legal consequences is determined by the provisions of this
14 Act, if applicable; otherwise by the law of contracts (Section 1103).
15 (Compare "Contract".)

16 4. "Bank" means any person engaged in the business of banking.

17 5. "Bearer" means the person in possession of an instrument, docu-
18 ment of title, or security payable to bearer or indorsed in blank.

19 6. "Bill of lading" means a document evidencing the receipt of
20 goods for shipment issued by a person engaged in the business of
21 transporting or forwarding goods, and includes an airbill. "Airbill"
22 means a document serving for air transportation as a bill of lading
23 does for marine or rail transportation, and includes an air consign-
24 ment note or air waybill.

25 7. "Branch" includes a separately incorporated foreign branch of
26 of a bank.

27 8. "Burden of establishing" a fact means the burden of persuad-
28 ing the triers of fact that the existence of the fact is more probable
29 than its nonexistence.

30 9. "Buyer in ordinary course of business" means a person who in

31 good faith and without knowledge that the sale to him is in violation
32 of the ownership rights or security interest of a third party in the
33 goods buys in ordinary course from a person in the business of sell-
34 ing goods of that kind but does not include a pawnbroker. "Buying"
35 may be for cash or by exchange of other property or on secured or
36 unsecured credit and includes receiving goods or documents of title
37 under a pre-existing contract for sale but does not include a transfer
38 in bulk or as security for or in total or partial satisfaction of a money
39 debt.

40 10. "Conspicuous": A term or clause is conspicuous when it is so
41 written that a reasonable person against whom it is to operate ought
42 to have noticed it. A printed heading in capitals (as: Nonnegotiable
43 Bill of Lading) is conspicuous. Language in the body of a form is
44 "conspicuous" if it is in larger or other contrasting type or color.
45 But in a telegram any stated term is "conspicuous". Whether a term
46 or clause is "conspicuous" or not is for decision by the court.

47 11. "Contract" means the total legal obligation which results from
48 the parties' agreement as affected by this Act and any other appli-
49 cable rules of law. (Compare "Agreement".)

50 12. "Creditor" includes a general creditor, a secured creditor, a
51 lien creditor and any representative of creditors, including an as-
52 signee for the benefit of creditors, a trustee in bankruptcy, a receiver
53 in equity and a legal representative of a decedent's or incompetent's
54 estate.

55 13. "Defendant" includes a person in the position of defendant in
56 a cross-action or counterclaim.

57 14. "Delivery" with respect to instruments, documents of title,
58 chattel paper or securities means voluntary transfer of possession.

59 15. "Document of title" includes bill of lading, dock warrant, dock
60 receipt, warehouse receipt or order for the delivery of goods, and also
61 any other document which in the regular course of business or financ-
62 ing is treated as adequately evidencing that the person in possession
63 of it is entitled to receive, hold and dispose of the document and the
64 goods it covers. To be a document of title a document must purport to
65 be issued by or addressed to a bailee and purport to cover goods in
66 the bailee's possession which are either identified or are fungible por-
67 tions of an identified mass.

68 16. "Fault" means wrongful act, omission or breach.

69 17. "Fungible" with respect to goods or securities means goods or
70 securities of which any unit is, by nature or usage of trade, the
71 equivalent of any other like unit. Goods which are not fungible shall
72 be deemed fungible for the purposes of this Act to the extent that
73 under a particular agreement or document unlike units are treated as
74 equivalents.

75 18. "Genuine" means free of forgery or counterfeiting.

76 19. "Good faith" means honesty in fact in the conduct or transac-
77 tion concerned.

78 20. "Holder" means a person who is in possession of a document
79 of title or an instrument or an investment security drawn, issued or
80 indorsed to him or to his order or to bearer or in blank.

81 21. To "honor" is to pay or to accept and pay, or where a credit

- 82 so engages to purchase or discount a draft complying with the terms
83 of the credit.
- 84 22. "Insolvency proceedings" includes any assignment for the
85 benefit of creditors or other proceedings intended to liquidate or re-
86 habilitate the estate of the person involved.
- 87 23. A person is "insolvent" who either has ceased to pay his debts
88 in the ordinary course of business or cannot pay his debts as they
89 become due or is insolvent within the meaning of the federal bank-
90 ruptcy law.
- 91 24. "Money" means a medium of exchange authorized or adopted
92 by a domestic or foreign government as a part of its currency.
- 93 25. A person has "notice" of a fact when
94 a. he has actual knowledge of it; or
95 b. he has received a notice or notification of it; or
96 c. from all the facts and circumstances known to him at the time
97 in question he has reason to know that it exists. A person "knows"
98 or has "knowledge" of a fact when he has actual knowledge of it.
99 "Discover" or "learn" or a word or phrase of similar import refers to
100 knowledge rather than to reason to know. The time and circum-
101 stances under which a notice or notification may cease to be effective
102 are not determined by this Act.
- 103 26. A person "notifies" or "gives" a notice or notification to an-
104 other by taking such steps as may be reasonably required to inform
105 the other in ordinary course whether or not such other actually comes
106 to know of it. A person "receives" a notice or notification when
107 a. it comes to his attention; or
108 b. it is duly delivered at the place of business through which the
109 contract was made or at any other place held out by him as the place
110 for receipt of such communications.
- 111 27. Notice, knowledge or a notice or notification received by an
112 organization is effective for a particular transaction from the time
113 when it is brought to the attention of the individual conducting that
114 transaction, and in any event from the time when it would have been
115 brought to his attention if the organization had exercised due dili-
116 gence. An organization exercises due diligence if it maintains rea-
117 sonable routines for communicating significant information to the
118 person conducting the transaction and there is reasonable compliance
119 with the routines. Due diligence does not require an individual acting
120 for the organization to communicate information unless such com-
121 munication is part of his regular duties or unless he has reason to
122 know of the transaction and that the transaction would be materially
123 affected by the information.
- 124 28. "Organization" includes a corporation, government or govern-
125 mental subdivision or agency, business trust, estate, trust, partner-
126 ship or association, two or more persons having a joint or common
127 interest, or any other legal or commercial entity.
- 128 29. "Party", as distinct from "third party", means a person who
129 has engaged in a transaction or made an agreement within this Act.
- 130 30. "Person" includes an individual or an organization (See Sec-
131 tion 1102).
- 132 31. "Presumption" or "presumed" means that the trier of fact
133 must find the existence of the fact presumed unless and until evi-

134 dence is introduced which would support a finding of its nonexist-
135 ence.

136 32. "Purchase" includes taking by sale, discount, negotiation, mort-
137 gage, pledge, lien, issue or reissue, gift or any other voluntary trans-
138 action creating an interest in property.

139 33. "Purchaser" means a person who takes by purchase.

140 34. "Remedy" means any remedial right to which an aggrieved
141 party is entitled with or without resort to a tribunal.

142 35. "Representative" includes an agent, an officer of a corporation
143 or association, and a trustee, executor or administrator of an estate,
144 or any other person empowered to act for another.

145 36. "Rights" includes remedies.

146 37. "Security interest" means an interest in personal property or
147 fixtures which secures payment or performance of an obligation. The
148 retention or reservation of title by a seller of goods notwithstanding
149 shipment or delivery to the buyer (Section 2401) is limited in effect
150 to a reservation of a "security interest". The term also includes any
151 interest of a buyer of accounts, chattel paper, or contract rights
152 which is subject to Article 9. The special property interest of a buyer
153 of goods on identification of such goods to a contract for sale under
154 Section 2401 is not a "security interest", but a buyer may also ac-
155 quire a "security interest" by complying with Article 9. Unless a
156 lease or consignment is intended as security, reservation of title
157 thereunder is not a "security interest" but a consignment is in any
158 event subject to the provisions on consignment sales (Section 2326).
159 Whether a lease is intended as security is to be determined by the
160 facts of each case; however, (a) the inclusion of an option to pur-
161 chase does not of itself make the lease one intended for security, and
162 (b) an agreement that upon compliance with the terms of the lease
163 the lessee shall become or has the option to become the owner of the
164 property for no additional consideration or for a nominal considera-
165 tion does makes the lease one intended for security. The term also
166 includes any interest of an owner of farm products whose possession
167 is entrusted to a person engaged in farming operations.

168 38. "Send" in connection with any writing or notice means to de-
169 posit in the mail or deliver for transmission by any other usual means
170 of communication with postage or cost of transmission provided for
171 and properly addressed and in the case of an instrument to an ad-
172 dress specified thereon or otherwise agreed, or if there be none to any
173 address reasonable under the circumstances. The receipt of any writ-
174 ing or notice within the time at which it would have arrived if prop-
175 erly sent has the effect of a proper sending.

176 39. "Signed" includes any symbol executed or adopted by a party
177 with present intention to authenticate a writing.

178 40. "Surety" includes guarantor.

179 41. "Telegram" includes a message transmitted by radio, teletype,
180 cable, any mechanical method of transmission, or the like.

181 42. "Term" means that portion of an agreement which relates to a
182 particular matter.

183 43. "Unauthorized" signature or indorsement means one made
184 without actual, implied or apparent authority and includes a forgery.

185 44. "Value". Except as otherwise provided with respect to nego-

186 tiable instruments and bank collections (Sections 3303, 4208 and
 187 4209) a person gives "value" for rights if he acquires them
 188 a. in return for a binding commitment to extend credit or for the
 189 extension of immediately available credit whether or not drawn upon
 190 and whether or not a charge-back is provided for in the event of
 191 difficulties in collection; or
 192 b. as security for or in total or partial satisfaction of a pre-existing
 193 claim; or
 194 c. by accepting delivery pursuant to a pre-existing contract for
 195 purchase; or
 196 d. generally, in return for any consideration sufficient to support a
 197 simple contract.
 198 45. "Warehouse receipt" means a receipt issued by a person en-
 199 gaged in the business of storing goods for hire.
 200 46. "Written" or "writing" includes printing, typewriting or any
 201 other intentional reduction to tangible form.

1 **SEC. 1202. Prima facie evidence by third party documents.** A
 2 document in due form purporting to be a bill of lading, policy or cer-
 3 tificate of insurance, official weigher's or inspector's certificate, con-
 4 sular invoice, or any other document authorized or required by the
 5 contract to be issued by a third party shall be prima facie evidence
 6 of its own authenticity and genuineness and of the facts stated in
 7 the document by the third party.

1 **SEC. 1203. Obligation of good faith.** Every contract or duty
 2 within this Act imposes an obligation of good faith in its perform-
 3 ance or enforcement.

1 **SEC. 1204. Time—reasonable time—"seasonably".**
 2 1. Whenever this Act requires any action to be taken within a
 3 reasonable time, any time which is not manifestly unreasonable may
 4 be fixed by agreement.
 5 2. What is a reasonable time for taking any action depends on the
 6 nature, purpose and circumstances of such action.
 7 3. An action is taken "seasonably" when it is taken at or within
 8 the time agreed or if no time is agreed at or within a reasonable time.

1 **SEC. 1205. Course of dealing and usage of trade.**
 2 1. A course of dealing is a sequence of previous conduct between
 3 the parties to a particular transaction which is fairly to be regarded
 4 as establishing a common basis of understanding for interpreting
 5 their expressions and other conduct.
 6 2. A usage of trade is any practice or method of dealing having
 7 such regularity of observance in a place, vocation or trade as to jus-
 8 tify an expectation that it will be observed with respect to the trans-
 9 action in question. The existence and scope of such a usage are to be
 10 proved as facts. If it is established that such a usage is embodied in
 11 a written trade code or similar writing the interpretation of the writ-
 12 ing is for the court.
 13 3. A course of dealing between parties and any usage of trade in
 14 the vocation or trade in which they are engaged or of which they are
 15 or should be aware give particular meaning to and supplement or
 16 qualify terms of an agreement.

17 4. The express terms of an agreement and an applicable course of
18 dealing or usage of trade shall be construed wherever reasonable as
19 consistent with each other; but when such construction is unreason-
20 able express terms control both course of dealing and usage of trade
21 and course of dealing controls usage of trade.

22 5. An applicable usage of trade in the place where any part of per-
23 formance is to occur shall be used in interpreting the agreement as
24 to that part of the performance.

25 6. Evidence of a relevant usage of trade offered by one party is not
26 admissible unless and until he has given the other party such notice
27 as the court finds sufficient to prevent unfair surprise to the latter.

1 **SEC. 1206. Statute of frauds for kinds of personal property not**
2 **otherwise covered.**

3 1. Except in the cases described in subsection 2 of this section a
4 contract for the sale of personal property is not enforceable by way
5 of action or defense beyond five thousand dollars in amount or value
6 of remedy unless there is some writing which indicates that a con-
7 tract for sale has been made between the parties at a defined or
8 stated price, reasonably identifies the subject matter, and is signed
9 by the party against whom enforcement is sought or by his author-
10 ized agent.

11 2. Subsection 1 of this section does not apply to contracts for the
12 sale of goods (Section 2201) nor of securities (Section 8319) nor to
13 security agreements (Section 9203).

1 **SEC. 1207. Performance or acceptance under reservation of rights.**

2 A party who with explicit reservation of rights performs or prom-
3 ises performance or assents to performance in a manner demanded or
4 offered by the other party does not thereby prejudice the rights re-
5 served. Such words as "without prejudice", "under protest" or the
6 like are sufficient.

1 **SEC. 1208. Option to accelerate at will.**

2 A term providing that
3 one party or his successor in interest may accelerate payment or per-
4 formance or require collateral or additional collateral "at will" or
5 "when he deems himself insecure" or in words of similar import shall
6 be construed to mean that he shall have power to do so only if he in
7 good faith believes that the prospect of payment or performance is
8 impaired. The burden of establishing lack of good faith is on the
9 party against whom the power has been exercised.

ARTICLE 2

SALES

PART 1

SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

1 **SEC. 2101. Short title.** This Article shall be known and may be
2 cited as Uniform Commercial Code—Sales.

1 **SEC. 2102. Scope—certain security and other transactions ex-**
2 **cluded from this Article.** Unless the context otherwise requires,
3 this Article applies to transactions in goods; it does not apply to any

4 transaction which although in the form of an unconditional contract
 5 to sell or present sale is intended to operate only as a security trans-
 6 action nor does this Article impair or repeal any statute regulating
 7 sales to consumers, farmers or other specified classes of buyers.

1 **SEC. 2103. Definitions and index of definitions.**

2 1. In this Article unless the context otherwise requires

3 a. "Buyer" means a person who buys or contracts to buy goods.

4 b. "Good faith" in the case of a merchant means honesty in fact
 5 and the observance of reasonable commercial standards of fair deal-
 6 ing in the trade.

7 c. "Receipt" of goods means taking physical possession of them.

8 d. "Seller" means a person who sells or contracts to sell goods.

9 2. Other definitions applying to this Article or to specified Parts
 10 thereof, and the sections in which they appear are:

11 "Acceptance". Section 2606.

12 "Banker's credit". Section 2325.

13 "Between merchants". Section 2104.

14 "Cancellation". Section 2106, Sub. 4.

15 "Commercial unit". Section 2105.

16 "Confirmed credit". Section 2325.

17 "Conforming to contract". Section 2106.

18 "Contract for sale". Section 2106.

19 "Cover". Section 2712.

20 "Entrusting". Section 2403.

21 "Financing agency". Section 2104.

22 "Future goods". Section 2105.

23 "Goods". Section 2105.

24 "Identification". Section 2501.

25 "Installment contract". Section 2612.

26 "Letter of Credit". Section 2325.

27 "Lot". Section 2105.

28 "Merchant". Section 2104.

29 "Overseas". Section 2323.

30 "Person in position of seller". Section 2707.

31 "Present sale". Section 2106.

32 "Sale". Section 2106.

33 "Sale on approval". Section 2326.

34 "Sale or return". Section 2326.

35 "Termination". Section 2106.

36 3. The following definitions in other Articles apply to this Article:

37 "Check". Section 3104.

38 "Consignee". Section 7102.

39 "Consignor". Section 7102.

40 "Consumer goods". Section 9109.

41 "Dishonor". Section 3507.

42 "Draft". Section 3104.

43 4. In addition Article 1 contains general definitions and principles
 44 of construction and interpretation applicable throughout this Article.

1 **SEC. 2104. Definitions: "merchant" — "between merchants" —**
 2 **"financing agency".**

3 1. "Merchant" means a person who deals in goods of the kind or

4 otherwise by his occupation holds himself out as having knowledge
5 or skill peculiar to the practices or goods involved in the transaction
6 or to whom such knowledge or skill may be attributed by his employ-
7 ment of an agent or broker or other intermediary who by his occu-
8 pation holds himself out as having such knowledge or skill.

9 2. "Financing agency" means a bank, finance company or other
10 person who in the ordinary course of business makes advances against
11 goods or documents of title or who by arrangement with either the
12 seller or the buyer intervenes in ordinary course to make or collect
13 payment due or claimed under the contract for sale, as by purchas-
14 ing or paying the seller's draft or making advances against it or by
15 merely taking it for collection whether or not documents of title
16 accompany the draft. "Financing agency" includes also a bank or
17 other person who similarly intervenes between persons who are in
18 the position of seller and buyer in respect to the goods (Section 2707).

19 3. "Between merchants" means in any transaction with respect to
20 which both parties are chargeable with the knowledge or skill of
21 merchants.

1 SEC. 2105. **Definitions: transferability — "goods" — "future"**
2 **goods—"lot"—"commercial unit"**.

3 1. "Goods" means all things (including specially manufactured
4 goods) which are movable at the time of identification to the contract
5 for sale other than the money in which the price is to be paid, invest-
6 ment securities (Article 8) and things in action. "Goods" also in-
7 cludes the unborn young of animals and growing crops and other
8 identified things attached to realty as described in the section on
9 goods to be severed from realty (Section 2107).

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

14 3. There may be a sale of a part interest in existing identified
15 goods.

16 4. An undivided share in an identified bulk of fungible goods is
17 sufficiently identified to be sold although the quantity of the bulk is
18 not determined. Any agreed proportion of such a bulk or any quan-
19 tity thereof agreed upon by number, weight or other measure may
20 to the extent of the seller's interest in the bulk be sold to the buyer
21 who then becomes an owner in common.

22 5. "Lot" means a parcel or a single article which is the subject
23 matter of a separate sale or delivery, whether or not it is sufficient
24 to perform the contract.

25 6. "Commercial unit" means such a unit of goods as by commer-
26 cial usage is a single whole for purposes of sale and division of which
27 materially impairs its character or value on the market or in use. A
28 commercial unit may be a single article (as a machine) or a set of
29 articles (as a suite of furniture or an assortment of sizes) or a quan-
30 tity (as a bale, gross, or carload) or any other unit treated in use or
31 in the relevant market as a single whole.

- 1 **SEC. 2106. Definitions: “contract”—“agreement”—“contract for**
 2 **sale”—“sale”—“present sale”—“conforming” to contract—“termina-**
 3 **tion”—“cancellation”.**
 4 1. In this Article unless the context otherwise requires “contract”
 5 and “agreement” are limited to those relating to the present or future
 6 sale of goods. “Contract for sale” includes both a present sale of
 7 goods and a contract to sell goods at a future time. A “sale” con-
 8 sists in the passing of title from the seller to the buyer for a price
 9 (Section 2401). A “present sale” means a sale which is accomplished
 10 by the making of the contract.
 11 2. Goods or conduct including any part of a performance are “con-
 12 forming” or conform to the contract when they are in accordance
 13 with the obligations under the contract.
 14 3. “Termination” occurs when either party pursuant to a power
 15 created by agreement or law puts an end to the contract otherwise
 16 than for its breach. On “termination” all obligations which are still
 17 executory on both sides are discharged but any right based on prior
 18 breach or performance survives.
 19 4. “Cancellation” occurs when either party puts an end to the con-
 20 tract for breach by the other and its effect is the same as that of
 21 “termination” except that the cancelling party also retains any reme-
 22 dy for breach of the whole contract or any unperformed balance.

- 1 **SEC. 2107. Goods to be severed from realty: recording.**
 2 1. A contract for the sale of timber, minerals or the like or a struc-
 3 ture or its materials to be removed from realty is a contract for the
 4 sale of goods within this Article if they are to be severed by the
 5 seller but until severance a purported present sale thereof which is
 6 not effective as a transfer of an interest in land is effective only as
 7 a contract to sell.
 8 2. A contract for the sale apart from the land of growing crops or
 9 other things attached to realty and capable of severance without
 10 material harm thereto but not described in subsection 1 is a contract
 11 for the sale of goods within this Article whether the subject matter
 12 is to be severed by the buyer or by the seller even though it forms
 13 part of the realty at the time of contracting, and the parties can by
 14 identification effect a present sale before severance.
 15 3. The provisions of this section are subject to any third party
 16 rights provided by the law relating to realty records, and the con-
 17 tract for sale may be executed and recorded as a document transfer-
 18 ring an interest in land and shall then constitute notice to third par-
 19 ties of the buyer’s rights under the contract for sale.

PART 2

FORM, FORMATION AND READJUSTMENT OF CONTRACT

- 1 **SEC. 2201. Formal requirements—statute of frauds.**
 2 1. Except as otherwise provided in this section a contract for the
 3 sale of goods for the price of \$500 or more is not enforceable by way
 4 of action or defense unless there is some writing sufficient to indicate
 5 that a contract for sale has been made between the parties and signed
 6 by the party against whom enforcement is sought or by his author-
 7 ized agent or broker. A writing is not insufficient because it omits or

8 incorrectly states a term agreed upon but the contract is not enforce-
 9 able under this paragraph beyond the quantity of goods shown in
 10 such writing.

11 2. Between merchants if within a reasonable time a writing in con-
 12 firmation of the contract and sufficient against the sender is received
 13 and the party receiving it has reason to know its contents, it satisfies
 14 the requirements of subsection 1 against such party unless written
 15 notice of objection to its contents is given within ten days after it is
 16 received.

17 3. A contract which does not satisfy the requirements of subsec-
 18 tion 1 but which is valid in other respects is enforceable

19 a. if the goods are to be specially manufactured for the buyer and
 20 are not suitable for sale to others in the ordinary course of the seller's
 21 business and the seller, before notice of repudiation is received and
 22 under circumstances which reasonably indicate that the goods are
 23 for the buyer, has made either a substantial beginning of their manu-
 24 facture or commitments for their procurement; or

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

29 c. with respect to goods for which payment has been made and
 30 accepted or which have been received and accepted (Section 2606).

1 **SEC. 2202. Final written expression: parol or extrinsic evidence.**
 2 Terms with respect to which the confirmatory memoranda of the
 3 parties agree or which are otherwise set forth in a writing intended
 4 by the parties as a final expression of their agreement with respect
 5 to such terms as are included therein may not be contradicted by
 6 evidence of any prior agreement or of a contemporaneous oral agree-
 7 ment but may be explained or supplemented

8 a. by course of dealing or usage of trade (Section 1205) or by
 9 course of performance (Section 2208); and

10 b. by evidence of consistent additional terms unless the court finds
 11 the writing to have been intended also as a complete and exclusive
 12 statement of the terms of the agreement.

1 **SEC. 2203. Seals inoperative.** The affixing of a seal to a writing
 2 evidencing a contract for sale or an offer to buy or sell goods does not
 3 constitute the writing a sealed instrument and the law with respect
 4 to sealed instruments does not apply to such a contract or offer.

1 **SEC. 2204. Formation in general.**

2 1. A contract for sale of goods may be made in any manner suffi-
 3 cient to show agreement, including conduct by both parties which
 4 recognizes the existence of such a contract.

5 2. An agreement sufficient to constitute a contract for sale may be
 6 found even though the moment of its making is undetermined.

7 3. Even though one or more terms are left open a contract for sale
 8 does not fail for indefiniteness if the parties have intended to make a
 9 contract and there is a reasonably certain basis for giving an appropri-
 10 ate remedy.

1 **SEC. 2205. Firm offers.** An offer by a merchant to buy or sell
2 goods in a signed writing which by its terms gives assurance that it
3 will be held open is not revocable, for lack of consideration, during
4 the time stated or if no time is stated for a reasonable time, but in
5 no event may such period of irrevocability exceed three months; but
6 any such term of assurance on a form supplied by the offeree must be
7 separately signed by the offeror.

1 **SEC. 2206. Offer and acceptance in formation of contract.**

2 1. Unless otherwise unambiguously indicated by the language or
3 circumstances

4 *a.* an offer to make a contract shall be construed as inviting ac-
5 ceptance in any manner and by any medium reasonable in the circum-
6 stances;

7 *b.* an order or other offer to buy goods for prompt or current ship-
8 ment shall be construed as inviting acceptance either by a prompt
9 promise to ship or by the prompt or current shipment of conforming
10 or nonconforming goods, but such a shipment of nonconforming goods
11 does not constitute an acceptance if the seller seasonably notifies the
12 buyer that the shipment is offered only as an accommodation to the
13 buyer.

14 2. Where the beginning of a requested performance is a reasonable
15 mode of acceptance an offeror who is not notified of acceptance within
16 a reasonable time may treat the offer as having lapsed before accept-
17 ance.

1 **SEC. 2207. Additional terms in acceptance or confirmation.**

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

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

10 *a.* the offer expressly limits acceptance to the terms of the offer;

11 *b.* they materially alter it; or

12 *c.* notification of objection to them has already been given or is
13 given within a reasonable time after notice of them is received.

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

1 **SEC. 2208. Course of performance or practical construction.**

2 1. Where the contract for sale involves repeated occasions for per-
3 formance by either party with knowledge of the nature of the per-
4 formance and opportunity for objection to it by the other, any course
5 of performance accepted or acquiesced in without objection shall be
6 relevant to determine the meaning of the agreement.

7 2. The express terms of the agreement and any such course of per-
 8 formance, as well as any course of dealing and usage of trade, shall
 9 be construed whenever reasonable as consistent with each other; but
 10 when such construction is unreasonable, express terms shall control
 11 course of performance and course of performance shall control both
 12 course of dealing and usage of trade (Section 1205).

13 3. Subject to the provisions of the next section on modification and
 14 waiver, such course of performance shall be relevant to show a waiver
 15 or modification of any term inconsistent with such course of perform-
 16 ance.

1 **SEC. 2209. Modification, rescission and waiver.**

2 1. An agreement modifying a contract within this Article needs no
 3 consideration to be binding.

4 2. A signed agreement which excludes modification or rescission
 5 except by a signed writing cannot be otherwise modified or rescinded,
 6 but except as between merchants such a requirement on a form sup-
 7 plied by the merchant must be separately signed by the other party.

8 3. The requirements of the statute of frauds section of this Article
 9 (Section 2201) must be satisfied if the contract as modified is within
 10 its provisions.

11 4. Although an attempt at modification or rescission does not sat-
 12 isfy the requirements of subsection 2 or 3 it can operate as a waiver.

13 5. A party who has made a waiver affecting an executory portion
 14 of the contract may retract the waiver by reasonable notification
 15 received by the other party that strict performance will be required
 16 of any term waived, unless the retraction would be unjust in view of
 17 a material change of position in reliance on the waiver.

1 **SEC. 2210. Delegation of performance—assignment of rights.**

2 1. A party may perform his duty through a delegate unless other-
 3 wise agreed or unless the other party has a substantial interest in
 4 having his original promisor perform or control the acts required by
 5 the contract. No delegation of performance relieves the party dele-
 6 gating of any duty to perform or any liability for breach.

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

15 3. Unless the circumstances indicate the contrary a prohibition of
 16 assignment of "the contract" is to be construed as barring only the
 17 delegation to the assignee of the assignor's performance.

18 4. An assignment of "the contract" or of "all my rights under the
 19 contract" or an assignment in similar general terms is an assignment
 20 of rights and unless the language or the circumstances (as in an
 21 assignment for security) indicate the contrary, it is a delegation of
 22 performance of the duties of the assignor and its acceptance by the
 23 assignee constitutes a promise by him to perform those duties. This

24 promise is enforceable by either the assignor or the other party to
25 the original contract.

26 5. The other party may treat any assignment which delegates per-
27 formance as creating reasonable grounds for insecurity and may
28 without prejudice to his rights against the assignor demand assur-
29 ances from the assignee (Section 2609).

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

1 **SEC. 2301. General obligations of parties.** The obligation of the
2 seller is to transfer and deliver and that of the buyer is to accept and
3 pay in accordance with the contract.

1 **SEC. 2302. Unconscionable contract or clause.**

2 1. If the court as a matter of law finds the contract or any clause
3 of the contract to have been unconscionable at the time it was made
4 the court may refuse to enforce the contract, or it may enforce the
5 remainder of the contract without the unconscionable clause, or it
6 may so limit the application of any unconscionable clause as to avoid
7 any unconscionable result.

8 2. When it is claimed or appears to the court that the contract or
9 any clause thereof may be unconscionable the parties shall be afforded
10 a reasonable opportunity to present evidence as to its commercial
11 setting, purpose and effect to aid the court in making the determina-
12 tion.

1 **SEC. 2303. Allocation or division of risks.** Where this Article
2 allocates a risk or a burden as between the parties "unless otherwise
3 agreed", the agreement may not only shift the allocation but may
4 also divide the risk or burden.

1 **SEC. 2304. Price payable in money, goods, realty, or otherwise.**

2 1. The price can be made payable in money or otherwise. If it is
3 payable in whole or in part in goods each party is a seller of the goods
4 which he is to transfer.

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

1 **SEC. 2305. Open price term.**

2 1. The parties if they so intend can conclude a contract for sale
3 even though the price is not settled. In such a case the price is a
4 reasonable price at the time for delivery if

5 a. nothing is said as to price; or

6 b. the price is left to be agreed by the parties and they fail to
7 agree; or

8 c. the price is to be fixed in terms of some agreed market or other
9 standard as set or recorded by a third person or agency and it is not
10 so set or recorded.

11 2. A price to be fixed by the seller or by the buyer means a price
12 for him to fix in good faith.

13 3. When a price left to be fixed otherwise than by agreement of
 14 the parties fails to be fixed through fault of one party the other may
 15 at his option treat the contract as cancelled or himself fix a reason-
 16 able price.

17 4. Where, however, the parties intend not to be bound unless the
 18 price be fixed or agreed and it is not fixed or agreed there is no con-
 19 tract. In such a case the buyer must return any goods already re-
 20 ceived or if unable so to do must pay their reasonable value at the
 21 time of delivery and the seller must return any portion of the price
 22 paid on account.

1 **SEC. 2306. Output, requirements and exclusive dealings.**

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

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

1 **SEC. 2307. Delivery in single lot or several lots.** Unless other-
 2 wise agreed all goods called for by a contract for sale must be ten-
 3 dered in a single delivery and payment is due only on such tender but
 4 where the circumstances give either party the right to make or
 5 demand delivery in lots the price if it can be apportioned may be
 6 demanded for each lot.

1 **SEC. 2308. Absence of specified place for delivery.** Unless other-
 2 wise agreed

3 *a.* the place for delivery of goods is the seller's place of business or
 4 if he has none his residence; but

5 *b.* in a contract for sale of identified goods which to the knowledge
 6 of the parties at the time of contracting are in some other place, that
 7 place is the place for their delivery; and

8 *c.* documents of title may be delivered through customary banking
 9 channels.

1 **SEC. 2309. Absence of specific time provisions—notice of termina-**
 2 **tion.**

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

6 2. Where the contract provides for successive performances but is
 7 indefinite in duration it is valid for a reasonable time but unless
 8 otherwise agreed may be terminated at any time by either party.

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

1 **SEC. 2310. Open time for payment or running of credit—author-**
2 **ity to ship under reservation.** Unless otherwise agreed
3 *a.* payment is due at the time and place at which the buyer is to
4 receive the goods even though the place of shipment is the place of
5 delivery; and
6 *b.* if the seller is authorized to send the goods he may ship them
7 under reservation, and may tender the documents of title, but the
8 buyer may inspect the goods after their arrival before payment is
9 due unless such inspection is inconsistent with the terms of the con-
10 tract (Section 2513); and
11 *c.* if delivery is authorized and made by way of documents of title
12 otherwise than by subsection *b* then payment is due at the time and
13 place at which the buyer is to receive the documents regardless of
14 where the goods are to be received; and
15 *d.* where the seller is required or authorized to ship the goods on
16 credit the credit period runs from the time of shipment but post-
17 dating the invoice or delaying its dispatch will correspondingly delay
18 the starting of the credit period.

1 **SEC. 2311. Options and cooperation respecting performance.**
2 1. An agreement for sale which is otherwise sufficiently definite
3 (subsection 3 of Section 2204) to be a contract is not made invalid
4 by the fact that it leaves particulars of performance to be specified
5 by one of the parties. Any such specification must be made in good
6 faith and within limits set by commercial reasonableness.
7 2. Unless otherwise agreed specifications relating to assortment of
8 the goods are at the buyer's option and except as otherwise provided
9 in subsections 1 *c* and 3 of Section 2319 specifications or arrange-
10 ments relating to shipment are at the seller's option.
11 3. Where such specification would materially affect the other
12 party's performance but is not seasonably made or where one party's
13 cooperation is necessary to the agreed performance of the other but
14 is not seasonably forthcoming, the other party in addition to all other
15 remedies
16 *a.* is excused for any resulting delay in his own performance; and
17 *b.* may also either proceed to perform in any reasonable manner or
18 after the time for a material part of his own performance treat the
19 failure to specify or to cooperate as a breach by failure to deliver or
20 accept the goods.

1 **SEC. 2312. Warranty of title and against infringement—buyer's**
2 **obligation against infringement.**
3 1. Subject to subsection 2 there is in a contract for sale a warranty
4 by the seller that
5 *a.* the title conveyed shall be good, and its transfer rightful; and
6 *b.* the goods shall be delivered free from any security interest or
7 other lien or encumbrance of which the buyer at the time of contract-
8 ing has no knowledge.
9 2. A warranty under subsection 1 will be excluded or modified only
10 by specific language or by circumstances which give the buyer reason
11 to know that the person selling does not claim title in himself or that
12 he is purporting to sell only such right or title as he or a third person
13 may have.

14 3. Unless otherwise agreed a seller who is a merchant regularly
 15 dealing in goods of the kind warrants that the goods shall be deliv-
 16 ered free of the rightful claim of any third person by way of in-
 17 fringement or the like but a buyer who furnishes specifications to the
 18 seller must hold the seller harmless against any such claim which
 19 arises out of compliance with the specifications.

1 **SEC. 2313. Express warranties by affirmation, promise, descrip-**
 2 **tion, sample.**

3 1. Express warranties by the seller are created as follows:

4 a. Any affirmation of fact or promise made by the seller to the
 5 buyer which relates to the goods and becomes part of the basis of
 6 the bargain creates an express warranty that the goods shall con-
 7 form to the affirmation or promise.

8 b. Any description of the goods which is made part of the basis of
 9 the bargain creates an express warranty that the goods shall con-
 10 form to the description.

11 c. Any sample or model which is made part of the basis of the
 12 bargain creates an express warranty that the whole of the goods
 13 shall conform to the sample or model.

14 2. It is not necessary to the creation of an express warranty that
 15 the seller use formal words such as "warranty" or "guarantee" or that
 16 he have a specific intention to make a warranty, but an affirmation
 17 merely of the value of the goods or a statement purporting to be
 18 merely the seller's opinion or commendation of the goods does not
 19 create a warranty.

1 **SEC. 2314. Implied warranty: merchantability—usage of trade.**

2 1. Unless excluded or modified (Section 2316), a warranty that the
 3 goods shall be merchantable is implied in a contract for their sale if
 4 the seller is a merchant with respect to goods of that kind. Under
 5 this section the serving for value of food or drink to be consumed
 6 either on the premises or elsewhere is a sale.

7 2. Goods to be merchantable must be at least such as

8 a. pass without objection in the trade under the contract descrip-
 9 tion; and

10 b. in the case of fungible goods, are of fair average quality within
 11 the description; and

12 c. are fit for the ordinary purposes for which such goods are used;
 13 and

14 d. run, within the variations permitted by the agreement, of even
 15 kind, quality and quantity within each unit and among all units in-
 16 volved; and

17 e. are adequately contained, packaged, and labeled as the agree-
 18 ment may require; and

19 f. conform to the promises or affirmations of fact made on the con-
 20 tainer or label if any.

21 3. Unless excluded or modified (Section 2316) other implied war-
 22 ranties may arise from course of dealing or usage of trade.

1 **SEC. 2315. Implied warranty: fitness for particular purpose.**

2 Where the seller at the time of contracting has reason to know any
 3 particular purpose for which the goods are required and that the
 4 buyer is relying on the seller's skill or judgment to select or furnish

5 suitable goods, there is unless excluded or modified under the next
6 section an implied warranty that the goods shall be fit for such pur-
7 pose.

1 **SEC. 2316. Exclusion or modification of warranties.**

2 1. Words or conduct relevant to the creation of an express war-
3 ranty and words or conduct tending to negate or limit warranty shall
4 be construed wherever reasonable as consistent with each other; but
5 subject to the provisions of this Article on parol or extrinsic evi-
6 dence (Section 2202) negation or limitation is inoperative to the
7 extent that such construction is unreasonable.

8 2. Subject to subsection 3, to exclude or modify the implied war-
9 ranty of merchantability or any part of it the language must mention
10 merchantability and in case of a writing must be conspicuous, and
11 to exclude or modify any implied warranty of fitness the exclusion
12 must be by a writing and conspicuous. Language to exclude all im-
13 plied warranties of fitness is sufficient if it states, for example, that
14 "There are no warranties which extend beyond the description on the
15 face hereof."

16 3. Notwithstanding subsection 2

17 a. unless the circumstances indicate otherwise, all implied warran-
18 ties are excluded by expressions like "as is", "with all faults" or other
19 language which in common understanding calls the buyer's attention
20 to the exclusion of warranties and makes plain that there is no implied
21 warranty; and

22 b. when the buyer before entering into the contract has examined
23 the goods or the sample or model as fully as he desired or has refused
24 to examine the goods there is no implied warranty with regard to
25 defects which an examination ought in the circumstances to have re-
26 vealed to him; and

27 c. an implied warranty can also be excluded or modified by course
28 of dealing or course of performance or usage of trade.

29 4. Remedies for breach of warranty can be limited in accordance
30 with the provisions of this Article on liquidation or limitation of dam-
31 ages and on contractual modification of remedy (Sections 2718 and
32 2719).

1 **SEC. 2317. Cumulation and conflict of warranties express or im-**
2 **plied.** Warranties whether express or implied shall be construed as
3 consistent with each other and as cumulative, but if such construc-
4 tion is unreasonable the intention of the parties shall determine which
5 warranty is dominant. In ascertaining that intention the following
6 rules apply:

7 a. Exact or technical specifications displace an inconsistent sample
8 or model or general language of description.

9 b. A sample from an existing bulk displaces inconsistent general
10 language of description.

11 c. Express warranties displace inconsistent implied warranties
12 other than an implied warranty of fitness for a particular purpose.

1 **SEC. 2318. Third party beneficiaries of warranties express or im-**
2 **plied.** A seller's warranty whether express or implied extends to any
3 natural person who is in the family or household of his buyer or who

4 is a guest in his home if it is reasonable to expect that such person
5 may use, consume or be affected by the goods and who is injured in
6 person by breach of the warranty. A seller may not exclude or limit
7 the operation of this section.

1 **SEC. 2319. F.O.B. and F.A.S. terms.**

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

5 *a.* when the term is F.O.B. the place of shipment, the seller must
6 at that place ship the goods in the manner provided in this Article
7 (Section 2504) and bear the expense and risk of putting them into
8 the possession of the carrier; or

9 *b.* when the term is F.O.B. the place of destination, the seller must
10 at his own expense and risk transport the goods to that place and
11 there tender delivery of them in the manner provided in this Article
12 (Section 2503);

13 *c.* when under either *a* or *b* the term is also F.O.B. vessel, car or
14 other vehicle, the seller must in addition at his own expense and risk
15 load the goods on board. If the term is F.O.B. vessel the buyer must
16 name the vessel and in an appropriate case the seller must comply
17 with the provisions of this Article on the form of bill of lading (Sec-
18 tion 2323).

19 2. Unless otherwise agreed the term F.A.S. vessel (which means
20 "free alongside") at a named port, even though used only in connec-
21 tion with the stated price, is a delivery term under which the seller
22 must

23 *a.* at his own expense and risk deliver the goods alongside the ves-
24 sel in the manner usual in that port or on a dock designated and pro-
25 vided by the buyer; and

26 *b.* obtain and tender a receipt for the goods in exchange for which
27 the carrier is under a duty to issue a bill of lading.

28 3. Unless otherwise agreed in any case falling within subsection 1
29 *a* or *c* or subsection 2 the buyer must seasonably give any needed
30 instructions for making delivery, including when the term is F.A.S.
31 or F.O.B. the loading berth of the vessel and in an appropriate case
32 its name and sailing date. The seller may treat the failure of needed
33 instructions as a failure of cooperation under this Article (Section
34 2311). He may also at his option move the goods in any reasonable
35 manner preparatory to delivery or shipment.

36 4. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed
37 the buyer must make payment against tender of the required docu-
38 ments and the seller may not tender nor the buyer demand delivery
39 of the goods in substitution for the documents.

1 **SEC. 2320. C.I.F. and C. & F. terms.**

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

6 2. Unless otherwise agreed and even though used only in connec-
7 tion with the stated price and destination, the term C.I.F. destina-

8 tion or its equivalent requires the seller at his own expense and risk
9 to

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

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

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

23 d. prepare an invoice of the goods and procure any other docu-
24 ments required to effect shipment or to comply with the contract;
25 and

26 e. forward and tender with commercial promptness all the docu-
27 ments in due form and with any indorsement necessary to perfect the
28 buyer's rights.

29 3. Unless otherwise agreed the term C. & F. or its equivalent has
30 the same effect and imposes upon the seller the same obligations and
31 risks as a C.I.F. term except the obligation as to insurance.

32 4. Under the term C.I.F. or C. & F. unless otherwise agreed the
33 buyer must make payment against tender of the required documents
34 and the seller may not tender nor the buyer demand delivery of the
35 goods in substitution for the documents.

1 SEC. 2321. C.I.F. or C. & F.—“net landed weights”—“payment on
2 arrival”—warranty of condition on arrival. Under a contract con-
3 taining a term C.I.F. or C. & F. ’

4 1. Where the price is based on or is to be adjusted according to
5 “net landed weights”, “delivered weights”, “out turn” quantity or
6 quality or the like, unless otherwise agreed the seller must reason-
7 ably estimate the price. The payment due on tender of the documents
8 called for by the contract is the amount so estimated, but after final
9 adjustment of the price a settlement must be made with commercial
10 promptness.

11 2. An agreement described in subsection 1 or any warranty of
12 quality or condition of the goods on arrival places upon the seller the
13 risk of ordinary deterioration, shrinkage and the like in transporta-
14 tion but has no effect on the place or time of identification to the
15 contract for sale or delivery or on the passing of the risk of loss.

16 3. Unless otherwise agreed where the contract provides for pay-
17 ment on or after arrival of the goods the seller must before payment
18 allow such preliminary inspection as is feasible; but if the goods are
19 lost delivery of the documents and payment are due when the goods
20 should have arrived.

1 SEC. 2322. Delivery “ex-ship”.

2 1. Unless otherwise agreed a term for delivery of goods “ex-ship”
3 (which means from the carrying vessel) or in equivalent language is

4 not restricted to a particular ship and requires delivery from a ship
5 which has reached a place at the named port of destination where
6 goods of the kind are usually discharged.

7 2. Under such a term unless otherwise agreed
8 a. the seller must discharge all liens arising out of the carriage and
9 furnish the buyer with a direction which puts the carrier under a
10 duty to deliver the goods; and
11 b. the risk of loss does not pass to the buyer until the goods leave
12 the ship's tackle or are otherwise properly unloaded.

1 SEC. 2323. **Form of bill of lading required in overseas shipment—**
2 **"overseas"**.

3 1. Where the contract contemplates overseas shipment and con-
4 tains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless other-
5 wise agreed must obtain a negotiable bill of lading stating that the
6 goods have been loaded on board or, in the case of a term C.I.F. or
7 C. & F., received for shipment.

8 2. Where in a case within subsection 1 a bill of lading has been
9 issued in a set of parts, unless otherwise agreed if the documents are
10 not to be sent from abroad the buyer may demand tender of the full
11 set; otherwise only one part of the bill of lading need be tendered.
12 Even if the agreement expressly requires a full set

13 a. due tender of a single part is acceptable within the provisions of
14 this Article on cure of improper delivery (subsection 1 of Section
15 2508); and

16 b. even though the full set is demanded, if the documents are sent
17 from abroad the person tendering an incomplete set may nevertheless
18 require payment upon furnishing an indemnity which the buyer in
19 good faith deems adequate.

20 3. A shipment by water or by air or a contract contemplating such
21 shipment is "overseas" insofar as by usage of trade or agreement it
22 is subject to the commercial, financing or shipping practices charac-
23 teristic of international deep water commerce.

1 SEC. 2324. **"No arrival, no sale" term.** Under a term "no arrival,
2 no sale" or terms of like meaning, unless otherwise agreed,

3 a. the seller must properly ship conforming goods and if they
4 arrive by any means he must tender them on arrival but he assumes
5 no obligation that the goods will arrive unless he has caused the non-
6 arrival; and

7 b. where without fault of the seller the goods are in part lost or
8 have so deteriorated as no longer to conform to the contract or arrive
9 after the contract time, the buyer may proceed as if there had been
10 casualty to identified goods (Section 2613).

1 SEC. 2325. **"Letter of credit" term—"confirmed credit"**.

2 1. Failure of the buyer seasonably to furnish an agreed letter of
3 credit is a breach of the contract for sale.

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

8 3. Unless otherwise agreed the term "letter of credit" or "banker's
9 credit" in a contract for sale means an irrevocable credit issued by a

10 financing agency of good repute and, where the shipment is overseas,
 11 of good international repute. The term "confirmed credit" means
 12 that the credit must also carry the direct obligation of such an agency
 13 which does business in the seller's financial market.

1 **SEC. 2326. Sale on approval and sale or return—consignment sales**
 2 **and rights of creditors.**

3 1. Unless otherwise agreed, if delivered goods may be returned by
 4 the buyer even though they conform to the contract, the transaction
 5 is

6 *a.* a "sale on approval" if the goods are delivered primarily for use,
 7 and

8 *b.* a "sale or return" if the goods are delivered primarily for resale.

9 2. Except as provided in subsection 3, goods held on approval are
 10 not subject to the claims of the buyer's creditors until acceptance;
 11 goods held on sale or return are subject to such claims while in the
 12 buyer's possession.

13 3. Where goods are delivered to a person for sale and such person
 14 maintains a place of business at which he deals in goods of the kind
 15 involved, under a name other than the name of the person making
 16 delivery, then with respect to claims of creditors of the person con-
 17 ducting the business the goods are deemed to be on sale or return.
 18 The provisions of this subsection are applicable even though an agree-
 19 ment purports to reserve title to the person making delivery until
 20 payment or resale or uses such words as "on consignment" or "on
 21 memorandum". However, this subsection is not applicable if the
 22 person making delivery

23 *a.* complies with an applicable law providing for a consignor's in-
 24 terest or the like to be evidenced by a sign, or

25 *b.* establishes that the person conducting the business is generally
 26 known by his creditors to be substantially engaged in selling the
 27 goods of others, or

28 *c.* complies with the filing provisions of the Article on Secured
 29 Transactions (Article 9).

30 4. Any "or return" term of a contract for sale is to be treated as
 31 a separate contract for sale within the statute of frauds section of
 32 this Article (Section 2201) and as contradicting the sale aspect of
 33 the contract within the provisions of this Article on parol or extrinsic
 34 evidence (Section 2202).

1 **SEC. 2327. Special incidents of sale on approval and sale or return.**

2 1. Under a sale on approval unless otherwise agreed

3 *a.* although the goods are identified to the contract the risk of loss
 4 and the title do not pass to the buyer until acceptance; and

5 *b.* use of the goods consistent with the purpose of trial is not ac-
 6 ceptance but failure seasonably to notify the seller of election to
 7 return the goods is acceptance, and if the goods conform to the con-
 8 tract acceptance of any part is acceptance of the whole; and

9 *c.* after due notification of election to return, the return is at the
 10 seller's risk and expense but a merchant buyer must follow any rea-
 11 sonable instructions.

12 2. Under a sale or return unless otherwise agreed

13 *a.* the option to return extends to the whole or any commercial unit

14 of the goods while in substantially their original condition, but must
 15 be exercised seasonably; and
 16 b. the return is at the buyer's risk and expense.

1 **SEC. 2328. Sale by auction.**

2 1. In a sale by auction if goods are put up in lots each lot is the
 3 subject of a separate sale.

4 2. A sale by auction is complete when the auctioneer so announces
 5 by the fall of the hammer or in other customary manner. Where a
 6 bid is made while the hammer is falling in acceptance of a prior bid
 7 the auctioneer may in his discretion reopen the bidding or declare
 8 the goods sold under the bid on which the hammer was falling.

9 3. Such a sale is with reserve unless the goods are in explicit terms
 10 put up without reserve. In an auction with reserve the auctioneer
 11 may withdraw the goods at any time until he announces completion
 12 of the sale. In an auction without reserve, after the auctioneer calls
 13 for bids on an article or lot, that article or lot cannot be withdrawn
 14 unless no bid is made within a reasonable time. In either case a bid-
 15 der may retract his bid until the auctioneer's announcement of com-
 16 pletion of the sale, but a bidder's retraction does not revive any
 17 previous bid.

18 4. If the auctioneer knowingly receives a bid on the seller's behalf
 19 or the seller makes or procures such a bid, and notice has not been
 20 given that liberty for such bidding is reserved, the buyer may at his
 21 option avoid the sale or take the goods at the price of the last good
 22 faith bid prior to the completion of the sale. This subsection shall not
 23 apply to any bid at a forced sale.

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

1 **SEC. 2401. Passing of title — reservation for security — limited**
 2 **application of this section.** Each provision of this Article with re-
 3 gard to the rights, obligations and remedies of the seller, the buyer,
 4 purchasers or other third parties applies irrespective of title to the
 5 goods except where the provision refers to such title. Insofar as situ-
 6 ations are not covered by the other provisions of this Article and
 7 matters concerning title become material the following rules apply:

8 1. Title to goods cannot pass under a contract for sale prior to
 9 their identification to the contract (Section 2501), and unless other-
 10 wise explicitly agreed the buyer acquires by their identification a
 11 special property as limited by this Act. Any retention or reservation
 12 by the seller of the title (property) in goods shipped or delivered to
 13 the buyer is limited in effect to a reservation of a security interest.
 14 Subject to these provisions and to the provisions of the Article on
 15 Secured Transactions (Article 9), title to goods passes from the seller
 16 to the buyer in any manner and on any conditions explicitly agreed
 17 on by the parties.

18 2. Unless otherwise explicitly agreed title passes to the buyer at
 19 the time and place at which the seller completes his performance with
 20 reference to the physical delivery of the goods, despite any reserva-
 21 tion of a security interest and even though a document of title is to
 22 be delivered at a different time or place; and in particular and despite

23 any reservation of a security interest by the bill of lading
 24 a. if the contract requires or authorizes the seller to send the goods
 25 to the buyer but does not require him to deliver them at destination,
 26 title passes to the buyer at the time and place of shipment; but
 27 b. if the contract requires delivery at destination, title passes on
 28 tender there.
 29 3. Unless otherwise explicitly agreed where delivery is to be made
 30 without moving the goods,
 31 a. if the seller is to deliver a document of title, title passes at the
 32 time when and the place where he delivers such documents; or
 33 b. if the goods are at the time of contracting already identified and
 34 no documents are to be delivered, title passes at the time and place
 35 of contracting.
 36 4. A rejection or other refusal by the buyer to receive or retain the
 37 goods, whether or not justified, or a justified revocation of acceptance
 38 revests title to the goods in the seller. Such revesting occurs by oper-
 39 ation of law and is not a "sale".

1 **SEC. 2402. Rights of seller's creditors against sold goods.**

2 1. Except as provided in subsections 2 and 3, rights of unsecured
 3 creditors of the seller with respect to goods which have been identi-
 4 fied to a contract for sale are subject to the buyer's rights to recover
 5 the goods under this Article (Sections 2502 and 2716).

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

13 3. Nothing in this Article shall be deemed to impair the rights of
 14 creditors of the seller

15 a. under the provisions of the Article on Secured Transactions
 16 (Article 9); or

17 b. where identification to the contract or delivery is made not in
 18 current course of trade but in satisfaction of or as security for a pre-
 19 existing claim for money, security or the like and is made under cir-
 20 cumstances which under any rule of law of the state where the goods
 21 are situated would apart from this Article constitute the transaction
 22 a fraudulent transfer voidable preference.

1 **SEC. 2403. Power to transfer — good faith purchase of goods —**
 2 **"entrusting".**

3 1. A purchaser of goods acquires all title which his transferor had
 4 or had power to transfer except that a purchaser of a limited interest
 5 acquires rights only to the extent of the interest purchased. A person
 6 with voidable title has power to transfer a good title to a good faith
 7 purchaser for value. When goods have been delivered under a trans-
 8 action of purchase the purchaser has such power even though

9 a. the transferor was deceived as to the identity of the purchaser,
 10 or

11 b. the delivery was in exchange for a check which is later dishon-
 12 ored, or

13 *c.* it was agreed that the transaction was to be a "cash sale", or
 14 *d.* the delivery was procured through fraud punishable as larcenous
 15 under the criminal law.

16 2. Any entrusting of possession of goods to a merchant who deals
 17 in goods of that kind gives him power to transfer all rights of the
 18 entruster to a buyer in ordinary course of business. However, any
 19 entrusting of farm products to a person engaged in farming opera-
 20 tions shall not give the farmer the power to transfer all rights of the
 21 entruster to a buyer in the ordinary course of business if the en-
 22 trustor perfects a security interest as provided in Article 9.

23 3. "Entrusting" includes any delivery and any acquiescence in re-
 24 tention of possession regardless of any condition expressed between
 25 the parties to the delivery or acquiescence and regardless of whether
 26 the procurement of the entrusting or the possessor's disposition of
 27 the goods have been such as to be larcenous under the criminal law.

28 4. The rights of other purchasers of goods and of lien creditors are
 29 governed by the Articles on Secured Transactions (Article 9), Bulk
 30 Transfers (Article 6) and Documents of Title (Article 7).

PART 5

PERFORMANCE

1 SEC. 2501. Insurable interest in goods—manner of identification 2 of goods.

3 1. The buyer obtains a special property and an insurable interest
 4 in goods by identification of existing goods as goods to which the
 5 contract refers even though the goods so identified are nonconform-
 6 ing and he has an option to return or reject them. Such identification
 7 can be made at any time and in any manner explicitly agreed to by
 8 the parties. In the absence of explicit agreement identification occurs

9 *a.* when the contract is made if it is for the sale of goods already
 10 existing and identified;

11 *b.* If the contract is for the sale of future goods other than those
 12 described in paragraph *c.*, when goods are shipped, marked or other-
 13 wise designated by the seller as goods to which the contract refers;

14 *c.* when the crops are planted or otherwise become growing crops
 15 or the young are conceived if the contract is for the sale of unborn
 16 young to be born within twelve months after contracting or for the
 17 sale of crops to be harvested within twelve months or the next nor-
 18 mal harvest season after contracting whichever is longer.

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

24 3. Nothing in this section impairs any insurable interest recognized
 25 under any other statute or rule of law.

1 SEC. 2502. Buyer's right to goods on seller's insolvency.

2 1. Subject to subsection 2 and even though the goods have not been
 3 shipped a buyer who has paid a part or all of the price of goods in
 4 which he has a special property under the provisions of the immedi-

5 ately preceding section may on making and keeping good a tender of
6 any unpaid portion of their price recover them from the seller if the
7 seller is insolvent at the time of receipt of the first installment on
8 their price or becomes insolvent within ten days thereafter.
9 2. If the identification creating his special property has been made
10 by the buyer he acquires the right to recover the goods only if they
11 conform to the contract for sale.

1 **SEC. 2503. Manner of seller's tender of delivery.**

2 1. Tender of delivery requires that the seller put and hold conform-
3 ing goods at the buyer's disposition and give the buyer any notifica-
4 tion reasonably necessary to enable him to take delivery. The man-
5 ner, time and place for tender are determined by the agreement and
6 this Article, and in particular

7 *a.* tender must be at a reasonable hour, and if it is of goods they
8 must be kept available for the period reasonably necessary to enable
9 the buyer to take possession; but

10 *b.* unless otherwise agreed the buyer must furnish facilities rea-
11 sonably suited to the receipt of the goods.

12 2. Where the case is within the next section respecting shipment
13 tender requires that the seller comply with its provisions.

14 3. Where the seller is required to deliver at a particular destination
15 tender requires that he comply with subsection 1 and also in any
16 appropriate case tender documents as described in subsections 4 and
17 5 of this section.

18 4. Where goods are in the possession of a bailee and are to be
19 delivered without being moved

20 *a.* tender requires that the seller either tender a negotiable docu-
21 ment of title covering such goods or procure acknowledgment by the
22 bailee of the buyer's right to possession of the goods; but

23 *b.* tender to the buyer of a nonnegotiable document of title or of a
24 written direction to the bailee to deliver is sufficient tender unless
25 the buyer seasonably objects, and receipt by the bailee of notification
26 of the buyer's rights fixes those rights as against the bailee and all
27 third persons; but risk of loss of the goods and of any failure by the
28 bailee to honor the nonnegotiable document of title or to obey the
29 direction remains on the seller until the buyer has had a reasonable
30 time to present the document or direction, and a refusal by the bailee
31 to honor the document or to obey the direction defeats the tender.

32 5. Where the contract requires the seller to deliver documents

33 *a.* he must tender all such documents in correct form except as
34 provided in this Article with respect to bills of lading in a set (sub-
35 section 2 of Section 2323); and

36 *b.* tender through customary banking channels is sufficient and
37 dishonor of a draft accompanying the documents constitutes non-
38 acceptance or rejection.

1 **SEC. 2504. Shipment by seller.** Where the seller is required or
2 authorized to send the goods to the buyer and the contract does not
3 require him to deliver them at a particular destination, then unless
4 otherwise agreed he must

5 *a.* put the goods in the possession of such a carrier and make such
6 a contract for their transportation as may be reasonable having re-

7 gard to the nature of the goods and other circumstances of the case;
8 and

9 *b.* obtain and promptly deliver or tender in due form any document
10 necessary to enable the buyer to obtain possession of the goods or
11 otherwise required by the agreement or by usage of trade; and

12 *c.* promptly notify the buyer of the shipment.

13 Failure to notify the buyer under paragraph *c* or to make a proper
14 contract under paragraph *a* is a ground for rejection only if material
15 delay or loss ensues.

1 **SEC. 2505. Seller's shipment under reservation.**

2 1. Where the seller has identified goods to the contract by or before
3 shipment:

4 *a.* his procurement of a negotiable bill of lading to his own order
5 or otherwise reserves in him a security interest in the goods. His pro-
6 curement of the bill to the order of a financing agency or of the buyer
7 indicates in addition only the seller's expectation of transferring that
8 interest to the person named.

9 *b.* a nonnegotiable bill of lading to himself or his nominee reserves
10 possession of the goods as security but except in a case of conditional
11 delivery (subsection 2 of Section 2507) a nonnegotiable bill of lading
12 naming the buyer as consignee reserves no security interest even
13 though the seller retains possession of the bill of lading.

14 2. When shipment by the seller with reservation of a security in-
15 terest is in violation of the contract for sale it constitutes an improper
16 contract for transportation within the preceding section but impairs
17 neither the rights given to the buyer by shipment and identification
18 of the goods to the contract nor the seller's powers as a holder of a
19 negotiable document.

1 **SEC. 2506. Rights of financing agency.**

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

8 2. The right to reimbursement of a financing agency which has in
9 good faith honored or purchased the draft under commitment to or
10 authority from the buyer is not impaired by subsequent discovery
11 of defects with reference to any relevant document which was ap-
12 parently regular on its face.

1 **SEC. 2507. Effect of seller's tender—delivery on condition.**

2 1. Tender of delivery is a condition to the buyer's duty to accept
3 the goods and, unless otherwise agreed, to his duty to pay for them.
4 Tender entitles the seller to acceptance of the goods and to payment
5 according to the contract.

6 2. Where payment is due and demanded on the delivery to the
7 buyer of goods or documents of title, his right as against the seller
8 to retain or dispose of them is conditional upon his making the pay-
9 ment due.

1 **SEC. 2508. Cure by seller of improper tender or delivery—replac-**
 2 **ment.**

- 3 1. Where any tender or delivery by the seller is rejected because
 4 nonconforming and the time for performance has not yet expired,
 5 the seller may seasonably notify the buyer of his intention to cure
 6 and may then within the contract time make a conforming delivery.
 7 2. Where the buyer rejects a nonconforming tender which the
 8 seller had reasonable grounds to believe would be acceptable with or
 9 without money allowance the seller may if he seasonably notifies the
 10 buyer have a further reasonable time to substitute a conforming
 11 tender.

1 **SEC. 2509. Risk of loss in the absence of breach.**

- 2 1. Where the contract requires or authorizes the seller to ship the
 3 goods by carrier
 4 *a.* If it does not require him to deliver them at a particular desti-
 5 nation, the risk of loss passes to the buyer when the goods are duly
 6 delivered to the carrier even though the shipment is under reserva-
 7 tion (Section 2505); but
 8 *b.* If it does require him to deliver them at a particular destination
 9 and the goods are there duly tendered while in the possession of the
 10 carrier, the risk of loss passes to the buyer when the goods are there
 11 duly so tendered as to enable the buyer to take delivery.
 12 2. Where the goods are held by a bailee to be delivered without
 13 being moved, the risk of loss passes to the buyer
 14 *a.* on his receipt of a negotiable document of title covering the
 15 goods; or
 16 *b.* on acknowledgment by the bailee of the buyer's right to posses-
 17 sion of the goods; or
 18 *c.* after his receipt of a nonnegotiable document of title or other
 19 written direction to deliver, as provided in subsection 4 *b* of Section
 20 2503.
 21 3. In any case not within subsection 1 or 2, the risk of loss passes
 22 to the buyer on his receipt of the goods if the seller is a merchant;
 23 otherwise the risk passes to the buyer on tender of delivery.
 24 4. The provisions of this section are subject to contrary agreement
 25 of the parties and to the provisions of this Article on sale on approval
 26 (Section 2327) and on effect of breach on risk of loss (Section 2510).

1 **SEC. 2510. Effect of breach on risk of loss.**

- 2 1. Where a tender or delivery of goods so fails to conform to the
 3 contract as to give a right of rejection the risk of their loss remains
 4 on the seller until cure or acceptance.
 5 2. Where the buyer rightfully revokes acceptance he may to the
 6 extent of any deficiency in his effective insurance coverage treat the
 7 risk of loss as having rested on the seller from the beginning.
 8 3. Where the buyer as to conforming goods already identified to
 9 the contract for sale repudiates or is otherwise in breach before risk
 10 of their loss has passed to him, the seller may to the extent of any
 11 deficiency in his effective insurance coverage treat the risk of loss as
 12 resting on the buyer for a commercially reasonable time.

1 **SEC. 2511. Tender of payment by buyer—payment by check.**

2 1. Unless otherwise agreed tender of payment is a condition to the
3 seller's duty to tender and complete any delivery.

4 2. Tender of payment is sufficient when made by any means or in
5 any manner current in the ordinary course of business unless the
6 seller demands payment in legal tender and gives any extension of
7 time reasonably necessary to procure it.

8 3. Subject to the provisions of this Act on the effect of an instru-
9 ment on an obligation (Section 3802), payment by check is condi-
10 tional and is defeated as between the parties by dishonor of the check
11 on due presentment.

1 **SEC. 2512. Payment by buyer before inspection.**

2 1. Where the contract requires payment before inspection noncon-
3 formity of the goods does not excuse the buyer from so making pay-
4 ment unless

5 *a.* the nonconformity appears without inspection; or
6 *b.* despite tender of the required documents the circumstances
7 would justify injunction against honor under the provisions of this
8 Act (Section 5114).

9 2. Payment pursuant to subsection 1 does not constitute an ac-
10 ceptance of goods or impair the buyer's right to inspect or any of his
11 remedies.

1 **SEC. 2513. Buyer's right to inspection of goods.**

2 1. Unless otherwise agreed and subject to subsection 3, where
3 goods are tendered or delivered or identified to the contract for sale,
4 the buyer has a right before payment or acceptance to inspect them
5 at any reasonable place and time and in any reasonable manner.
6 When the seller is required or authorized to send the goods to the
7 buyer, the inspection may be after their arrival.

8 2. Unless otherwise agreed expenses of inspection must be borne
9 by the buyer but may be recovered from the seller if the goods do not
10 conform and are rejected.

11 3. Unless otherwise agreed and subject to the provisions of this
12 Article on C.I.F. contracts (subsection 3 of Section 2321), the buyer
13 is not entitled to inspect the goods before payment of the price when
14 the contract provides

15 *a.* for delivery "C.O.D." or on other like terms; or

16 *b.* for payment against documents of title, except where such pay-
17 ment is due only after the goods are to become available for inspec-
18 tion.

19 4. A place or method of inspection fixed by the parties is presumed
20 to be exclusive but unless otherwise expressly agreed it does not post-
21 pone identification or shift the place for delivery or for passing the
22 risk of loss. If compliance becomes impossible, inspection shall be as
23 provided in this section unless the place or method fixed was clearly
24 intended as an indispensable condition failure of which avoids the
25 contract.

1 **SEC. 2514. When documents deliverable on acceptance—when on**
2 **payment.** Unless otherwise agreed documents against which a draft
3 is drawn are to be delivered to the drawee on acceptance of the draft

4 if it is payable more than three days after presentment; otherwise,
5 only on payment.

1 **SEC. 2515. Preserving evidence of goods in dispute.** In further-
2 ance of the adjustment of any claim or dispute

3 *a.* either party on reasonable notification to the other and for the
4 purpose of ascertaining the facts and preserving evidence has the
5 right to inspect, test and sample the goods including such of them as
6 may be in the possession or control of the other; and

7 *b.* the parties may agree to a third party inspection or survey to
8 determine the conformity or condition of the goods and may agree
9 that the findings shall be binding upon them in any subsequent liti-
10 gation or adjustment.

PART 6

BREACH, REPUDIATION AND EXCUSE

1 **SEC. 2601. Buyer's rights on improper delivery.** Subject to the
2 provisions of this Article on breach in installment contracts (Section
3 2612) and unless otherwise agreed under the sections on contractual
4 limitations of remedy (Sections 2718 and 2719), if the goods or the
5 tender of delivery fail in any respect to conform to the contract, the
6 buyer may

7 *a.* reject the whole; or

8 *b.* accept the whole; or

9 *c.* accept any commercial unit or units and reject the rest.

1 **SEC. 2602. Manner and effect of rightful rejection.**

2 1. Rejection of goods must be within a reasonable time after their
3 delivery or tender. It is ineffective unless the buyer seasonably noti-
4 fies the seller.

5 2. Subject to the provisions of the two following sections on re-
6 jected goods (Sections 2603 and 2604),

7 *a.* after rejection any exercise of ownership by the buyer with
8 respect to any commercial unit is wrongful as against the seller; and

9 *b.* if the buyer has before rejection taken physical possession of
10 goods in which he does not have a security interest under the provi-
11 sions of this Article (subsection 3 of Section 2711), he is under a
12 duty after rejection to hold them with reasonable care at the seller's
13 disposition for a time sufficient to permit the seller to remove them;
14 but

15 *c.* the buyer has no further obligations with regard to goods right-
16 fully rejected.

17 3. The seller's rights with respect to goods wrongfully rejected are
18 governed by the provisions of this Article on Seller's remedies in
19 general (Section 2703).

1 **SEC. 2603. Merchant buyer's duties as to rightfully rejected
2 goods.**

3 1. Subject to any security interest in the buyer (subsection 3 of
4 Section 2711), when the seller has no agent or place of business at
5 the market of rejection a merchant buyer is under a duty after re-
6 jection of goods in his possession or control to follow any reasonable
7 instructions received from the seller with respect to the goods and in

8 the absence of such instructions to make reasonable efforts to sell
 9 them for the seller's account if they are perishable or threaten to
 10 decline in value speedily. Instructions are not reasonable if on de-
 11 mand indemnity for expenses is not forthcoming.

12 2. When the buyer sells goods under subsection 1, he is entitled to
 13 reimbursement from the seller or out of the proceeds for reasonable
 14 expenses of caring for and selling them, and if the expenses include
 15 no selling commission then to such commission as is usual in the trade
 16 or if there is none to a reasonable sum not exceeding ten percent on
 17 the gross proceeds.

18 3. In complying with this section the buyer is held only to good
 19 faith and good faith conduct hereunder is neither acceptance nor con-
 20 version nor the basis of an action for damages.

1 **SEC. 2604. Buyer's options as to salvage of rightfully rejected**
 2 **goods.** Subject to the provisions of the immediately preceding sec-
 3 tion on perishables if the seller gives no instructions within a reason-
 4 able time after notification of rejection the buyer may store the
 5 rejected goods for the seller's account or reship them to him or resell
 6 them for the seller's account with reimbursement as provided in the
 7 preceding section. Such action is not acceptance or conversion.

1 **SEC. 2605. Waiver of buyer's objections by failure to particular-**
 2 **ize.**

3 1. The buyer's failure to state in connection with rejection a partic-
 4 lar defect which is ascertainable by reasonable inspection pre-
 5 cludes him from relying on the unstated defect to justify rejection or
 6 to establish breach

7 a. where the seller could have cured it if stated seasonably; or
 8 b. between merchants when the seller has after rejection made a
 9 request in writing for a full and final written statement of all defects
 10 on which the buyer proposes to rely.

11 2. Payment against documents made without reservation of rights
 12 precludes recovery of the payment for defects apparent on the face
 13 of the documents.

1 **SEC. 2606. What constitutes acceptance of goods.**

2 1. Acceptance of goods occurs when the buyer
 3 a. after a reasonable opportunity to inspect the goods signifies to
 4 the seller that the goods are conforming or that he will take or retain
 5 them in spite of their nonconformity; or

6 b. fails to make an effective rejection (subsection 1 of Section
 7 2602), but such acceptance does not occur until the buyer has had a
 8 reasonable opportunity to inspect them; or

9 c. does any act inconsistent with the seller's ownership; but if
 10 such act is wrongful as against the seller it is an acceptance only if
 11 ratified by him.

12 2. Acceptance of a part of any commercial unit is acceptance of
 13 that entire unit.

1 **SEC. 2607. Effect of acceptance—notice of breach—burden of es-**
 2 **tablishing breach after acceptance—notice of claim or litigation to**
 3 **person answerable over.**

4 1. The buyer must pay at the contract rate for any goods accepted.

5 2. Acceptance of goods by the buyer precludes rejection of the
6 goods accepted and if made with knowledge of a nonconformity can-
7 not be revoked because of it unless the acceptance was on the reason-
8 able assumption that the nonconformity would be seasonably cured
9 but acceptance does not of itself impair any other remedy provided
10 by this Article for nonconformity.

11 3. Where a tender has been accepted

12 a. the buyer must within a reasonable time after he discovers or
13 should have discovered any breach notify the seller of breach or be
14 barred from any remedy; and

15 b. if the claim is one for infringement or the like (subsection 3 of
16 Section 2312) and the buyer is sued as a result of such a breach he
17 must so notify the seller within a reasonable time after he receives
18 notice of the litigation or be barred from any remedy over for lia-
19 bility established by the litigation.

20 4. The burden is on the buyer to establish any breach with respect
21 to the goods accepted.

22 5. Where the buyer is sued for breach of a warranty or other obli-
23 gation for which his seller is answerable over

24 a. he may give his seller written notice of the litigation. If the
25 notice states that the seller may come in and defend and that if the
26 seller does not do so he will be bound in any action against him by his
27 buyer by any determination of fact common to the two litigations,
28 then unless the seller after reasonable receipt of the notice does come
29 in and defend he is so bound.

30 b. if the claim is one for infringement or the like (subsection 3 of
31 Section 2312) the original seller may demand in writing that his
32 buyer turn over to him control of the litigation including settlement
33 or else be barred from any remedy over and if he also agrees to bear
34 all expense and to satisfy any adverse judgment, then unless the
35 buyer after reasonable receipt of the demand does turn over control
36 the buyer is so barred.

37 6. The provisions of subsections 3, 4 and 5 apply to any obligation
38 of a buyer to hold the seller harmless against infringement or the like
39 (subsection 3 of Section 2312).

1 **SEC. 2608. Revocation of acceptance in whole or in part.**

2 1. The buyer may revoke his acceptance of a lot or commercial unit
3 whose nonconformity substantially impairs its value to him if he has
4 accepted it

5 a. on the reasonable assumption that its nonconformity would be
6 cured and it has not been seasonably cured; or

7 b. without discovery of such nonconformity if his acceptance was
8 reasonably induced either by the difficulty of discovery before ac-
9 ceptance or by the seller's assurances.

10 2. Revocation of acceptance must occur within a reasonable time
11 after the buyer discovers or should have discovered the ground for it
12 and before any substantial change in condition of the goods which is
13 not caused by their own defects. It is not effective until the buyer
14 notifies the seller of it.

15 3. A buyer who so revokes has the same rights and duties with
16 regard to the goods involved as if he had rejected them.

1 **SEC. 2609. Right to adequate assurance of performance.**

2 1. A contract for sale imposes an obligation on each party that the
3 other's expectation of receiving due performance will not be impaired.
4 When reasonable grounds for insecurity arise with respect to the per-
5 formance of either party the other may in writing demand adequate
6 assurance of due performance and until he receives such assurance
7 may if commercially reasonable suspend any performance for which
8 he has not already received the agreed return.

9 2. Between merchants the reasonableness of grounds for insecurity
10 and the adequacy of any assurance offered shall be determined ac-
11 cording to commercial standards.

12 3. Acceptance of any improper delivery or payment does not preju-
13 dice the aggrieved party's right to demand adequate assurance of
14 future performance.

15 4. After receipt of a justified demand failure to provide within a
16 reasonable time not exceeding thirty days such assurance of due per-
17 formance as is adequate under the circumstances of the particular
18 case is a repudiation of the contract.

1 **SEC. 2610. Anticipatory repudiation.** When either party repudi-
2 ates the contract with respect to a performance not yet due the loss
3 of which will substantially impair the value of the contract to the
4 other, the aggrieved party may

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

7 b. resort to any remedy for breach (Section 2703 or Section 2711),
8 even though he has notified the repudiating party that he would
9 await the latter's performance and has urged retraction; and

10 c. in either case suspend his own performance or proceed in ac-
11 cordance with the provisions of this Article on the seller's right to
12 identify goods to the contract notwithstanding breach or to salvage
13 unfinished goods (Section 2704).

1 **SEC. 2611. Retraction of anticipatory repudiation.**

2 Until the repudiating party's next performance is due he can
3 retract his repudiation unless the aggrieved party has since the re-
4 pudiation cancelled or materially changed his position or otherwise
5 indicated that he considers the repudiation final.

6 2. Retraction may be by any method which clearly indicates to the
7 aggrieved party that the repudiating party intends to perform, but
8 must include any assurance justifiably demanded under the provisions
9 of this Article (Section 2609).

10 3. Retraction reinstates the repudiating party's rights under the
11 contract with due excuse and allowance to the aggrieved party for any
12 delay occasioned by the repudiation.

1 **SEC. 2612. "Installment contract"—breach.**

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

6 2. The buyer may reject any installment which is nonconforming
7 if the nonconformity substantially impairs the value of that install-
8 ment and cannot be cured or if the nonconformity is a defect in the

9 required documents; but if the nonconformity does not fall within
10 subsection 3 and the seller gives adequate assurance of its cure the
11 buyer must accept that installment.

12 3. Whenever nonconformity or default with respect to one or more
13 installments substantially impairs the value of the whole contract
14 there is a breach of the whole. But the aggrieved party reinstates
15 the contract if he accepts a nonconforming installment without sea-
16 sonably notifying of cancellation or if he brings an action with re-
17 spect only to past installments or demands performance as to future
18 installments.

1 SEC. 2613. **Casualty to identified goods.** Where the contract re-
2 quires for its performance goods identified when the contract is made,
3 and the goods suffer casualty without fault of either party before the
4 risk of loss passes to the buyer, or in a proper case under a "no
5 arrival, no sale" term (Section 2324) then

6 a. if the loss is total the contract is avoided; and
7 b. if the loss is partial or the goods have so deteriorated as no
8 longer to conform to the contract the buyer may nevertheless demand
9 inspection and at his option either treat the contract as avoided or
10 accept the goods with due allowance from the contract price for the
11 deterioration or the deficiency in quantity but without further right
12 against the seller.

1 SEC. 2614. **Substituted performance.**

2 1. Where without fault of either party the agreed berthing, load-
3 ing, or unloading facilities fail or an agreed type of carrier becomes
4 unavailable or the agreed manner of delivery otherwise becomes com-
5 mercially impracticable but a commercially reasonable substitute is
6 available, such substitute performance must be tendered and ac-
7 cepted.

8 2. If the agreed means or manner of payment fails because of do-
9 mestic or foreign governmental regulation, the seller may withhold
10 or stop delivery unless the buyer provides a means or manner of pay-
11 ment which is commercially a substantial equivalent. If delivery has
12 already been taken, payment by the means or in the manner provided
13 by the regulation discharges the buyer's obligation unless the regula-
14 tion is discriminatory, oppressive or predatory.

1 SEC. 2615. **Excuse by failure of presupposed conditions.** Except
2 so far as a seller may have assumed a greater obligation and subject
3 to the preceding section on substituted performance:

4 a. Delay in delivery or nondelivery in whole or in part by a seller
5 who complies with paragraphs *b* and *c* is not a breach of his duty
6 under a contract for sale if performance as agreed has been made
7 impracticable by the occurrence of a contingency the nonoccurrence
8 of which was a basic assumption on which the contract was made or
9 by compliance in good faith with any applicable foreign or domestic
10 governmental regulation or order whether or not it later proves to be
11 invalid.

12 b. Where the causes mentioned in paragraph *a* affect only a part
13 of the seller's capacity to perform, he must allocate production and
14 deliveries among his customers but may at his option include regular

15 customers not then under contract as well as his own requirements
 16 for further manufacture. He may so allocate in any manner which
 17 is fair and reasonable.

18 *c.* The seller must notify the buyer seasonably that there will be
 19 delay or nondelivery and, when allocation is required under paragraph
 20 *b.*, of the estimated quota thus made available for the buyer.

1 **SEC. 2616. Procedure on notice claiming excuse.**

2 1. Where the buyer receives notification of a material or indefinite
 3 delay or an allocation justified under the preceding section he may by
 4 written notification to the seller as to any delivery concerned, and
 5 where the prospective deficiency substantially impairs the value of
 6 the whole contract under the provisions of this Article relating to
 7 breach of installment contracts (Section 2612), then also as to the
 8 whole,

9 *a.* terminate and thereby discharge any unexecuted portion of the
 10 contract; or

11 *b.* modify the contract by agreeing to take his available quota in
 12 substitution.

13 2. If after receipt of such notification from the seller the buyer
 14 fails so to modify the contract within a reasonable time not exceed-
 15 ing thirty days the contract lapses with respect to any deliveries
 16 affected.

PART 7

REMEDIES

1 **SEC. 2701. Remedies for breach of collateral contracts not im-**
 2 **paired.** Remedies for breach of any obligation or promise collateral
 3 or ancillary to a contract for sale are not impaired by the provisions
 4 of this Article.

1 **SEC. 2702. Seller's remedies on discovery of buyer's insolvency.**

2 1. Where the seller discovers the buyer to be insolvent he may
 3 refuse delivery except for cash including payment for all goods there-
 4 tofore delivered under the contract, and stop delivery under this
 5 Article (Section 2705).

6 2. Where the seller discovers that the buyer has received goods on
 7 credit while insolvent he may reclaim the goods upon demand made
 8 within ten days after the receipt, but if misrepresentation of solvency
 9 has been made to the particular seller in writing within three months
 10 before delivery the ten-day limitation does not apply. Except as pro-
 11 vided in this subsection the seller may not base a right to reclaim
 12 goods on the buyer's fraudulent or innocent misrepresentation of
 13 solvency or of intent to pay.

14 3. The seller's right to reclaim under subsection 2 is subject to the
 15 rights of a buyer in ordinary course or other good faith purchaser or
 16 lien creditor under this Article (Section 2403). Successful reclama-
 17 tion of goods excludes all other remedies with respect to them.

1 **SEC. 2703. Seller's remedies in general.** Where the buyer wrong-
 2 fully rejects or revokes acceptance of goods or fails to make a pay-
 3 ment due on or before delivery or repudiates with respect to a part or
 4 the whole, then with respect to any goods directly affected and, if the

5 breach is of the whole contract (Section 2612), then also with respect
6 to the whole undelivered balance, the aggrieved seller may
7 *a.* withhold delivery of such goods;
8 *b.* stop delivery by any bailee as hereafter provided (Section 2705);
9 *c.* proceed under the next section respecting goods still unidentified
10 to the contract;
11 *d.* resell and recover damages as hereafter provided (Section
12 2706);
13 *e.* recover damages for nonacceptance (Section 2708) or in a proper
14 case the price (Section 2709);
15 *f.* cancel.

1 **SEC. 2704. Seller's right to identify goods to the contract notwith-**
2 **standing breach or to salvage unfinished goods.**

3 1. An aggrieved seller under the preceding section may
4 *a.* identify to the contract conforming goods not already identified
5 if at the time he learned of the breach they are in his possession or
6 control;
7 *b.* treat as the subject of resale goods which have demonstrably
8 been intended for the particular contract even though those goods
9 are unfinished.
10 2. Where the goods are unfinished an aggrieved seller may in the
11 exercise of reasonable commercial judgment for the purposes of
12 avoiding loss and of effective realization either complete the manu-
13 facture and wholly identify the goods to the contract or cease manu-
14 facture and resell for scrap or salvage value or proceed in any other
15 reasonable manner.

1 **SEC. 2705. Seller's stoppage of delivery in transit or otherwise.**

2 1. The seller may stop delivery of goods in the possession of a car-
3 rier or other bailee when he discovers the buyer to be insolvent (Sec-
4 tion 2702) and may stop delivery of carload, truckload, planeload or
5 larger shipments of express or freight when the buyer repudiates or
6 fails to make a payment due before delivery or if for any other
7 reason the seller has a right to withhold or reclaim the goods.
8 2. As against such buyer the seller may stop delivery until
9 *a.* receipt of the goods by the buyer; or
10 *b.* acknowledgment to the buyer by any bailee of the goods except
11 a carrier that the bailee holds the goods for the buyer; or
12 *c.* such acknowledgment to the buyer by a carrier by reshipment or
13 as warehouseman; or
14 *d.* negotiation to the buyer of any negotiable document of title
15 covering the goods.
16 3. *a.* To stop delivery the seller must so notify as to enable the
17 bailee by reasonable diligence to prevent delivery of the goods.
18 *b.* After such notification the bailee must hold and deliver the
19 goods according to the directions of the seller but the seller is liable
20 to the bailee for any ensuing charges or damages.
21 *c.* If a negotiable document of title has been issued for goods the
22 bailee is not obliged to obey a notification to stop until surrender of
23 the document.
24 *d.* A carrier who has issued a nonnegotiable bill of lading is not

25 obliged to obey a notification to stop received from a person other
26 than the consignor.

1 **SEC. 2706. Seller's resale including contract for resale.**

2 1. Under the conditions stated in Section 2703 on seller's remedies,
3 the seller may resell the goods concerned or the undelivered balance
4 thereof. Where the resale is made in good faith and in a commer-
5 cially reasonable manner the seller may recover the difference be-
6 tween the resale price and the contract price together with any inci-
7 dental damages allowed under the provisions of this Article (Section
8 2710), but less expenses saved in consequence of the buyer's breach.

9 2. Except as otherwise provided in subsection 3 or unless other-
10 wise agreed resale may be at public or private sale including sale by
11 way of one or more contracts to sell or of identification to an existing
12 contract of the seller. Sale may be as a unit or in parcels and at any
13 time and place and on any terms but every aspect of the sale includ-
14 ing the method, manner, time, place and terms must be commercially
15 reasonable. The resale must be reasonably identified as referring to
16 the broken contract, but it is not necessary that the goods be in exist-
17 ence or that any or all of them have been identified to the contract
18 before the breach.

19 3. Where the resale is at private sale the seller must give the buyer
20 reasonable notification of his intention to resell.

21 4. Where the resale is at public sale

22 a. only identified goods can be sold except where there is a recog-
23 nized market for a public sale of futures in goods of the kind; and

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

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

33 d. the seller may buy.

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

37 6. The seller is not accountable to the buyer for any profit made on
38 any resale. A person in the position of a seller (Section 2707) or a
39 buyer who has rightfully rejected or justifiably revoked acceptance
40 must account for any excess over the amount of his security interest,
41 as hereinafter defined (subsection 3 of Section 2711).

1 **SEC. 2707. "Person in the position of a seller".**

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

6 2. A person in the position of a seller may as provided in this
7 Article withhold or stop delivery (Section 2705) and resell (Section
8 2706) and recover incidental damages (Section 2710).

1 **SEC. 2708. Seller's damages for nonacceptance or repudiation.**

2 1. Subject to subsection 2 and to the provisions of this Article with
3 respect to proof of market price (Section 2723), the measure of dam-
4 ages for nonacceptance or repudiation by the buyer is the difference
5 between the market price at the time and place for tender and the
6 unpaid contract price together with any incidental damages provided
7 in this Article (Section 2710), but less expenses saved in consequence
8 of the buyer's breach.

9 2. If the measure of damages provided in subsection 1 is inade-
10 quate to put the seller in as good a position as performance would
11 have done then the measure of damages is the profit (including
12 reasonable overhead) which the seller would have made from full
13 performance by the buyer, together with any incidental damages
14 provided in this Article (Section 2710), due allowance for costs rea-
15 sonably incurred and due credit for payments or proceeds of resale.

1 **SEC. 2709. Action for the price.**

2 1. When the buyer fails to pay the price as it becomes due the
3 seller may recover, together with any incidental damages under the
4 next section, the price

5 a. of goods accepted or of conforming goods lost or damaged within
6 a commercially reasonable time after risk of their loss has passed to
7 the buyer; and

8 b. of goods identified to the contract if the seller is unable after
9 reasonable effort to resell them at a reasonable price or the circum-
10 stances reasonably indicate that such effort will be unavailing.

11 2. Where the seller sues for the price he must hold for the buyer
12 any goods which have been identified to the contract and are still in
13 his control except that if resale becomes possible he may resell them
14 at any time prior to the collection of the judgment. The net proceeds
15 of any such resale must be credited to the buyer and payment of the
16 judgment entitles him to any goods not resold.

17 3. After the buyer has wrongfully rejected or revoked acceptance
18 of the goods or has failed to make a payment due or has repudiated
19 (Section 2610), a seller who is held not entitled to the price under this
20 section shall nevertheless be awarded damages for nonacceptance
21 under the preceding section.

1 **SEC. 2710. Seller's incidental damages.** Incidental damages to an
2 aggrieved seller include any commercially reasonable charges, ex-
3 penses or commissions incurred in stopping delivery, in the transpor-
4 tation, care and custody of goods after the buyer's breach, in connec-
5 tion with return or resale of the goods or otherwise resulting from
6 the breach.

1 **SEC. 2711. Buyer's remedies in general—buyer's security interest
2 in rejected goods.**

3 1. Where the seller fails to make delivery or repudiates or the
4 buyer rightfully rejects or justifiably revokes acceptance then with
5 respect to any goods involved, and with respect to the whole if the
6 breach goes to the whole contract (Section 2612), the buyer may can-
7 cel and whether or not he has done so may in addition to recovering
8 so much of the price as has been paid

9 a. "cover" and have damages under the next section as to all the
10 goods affected whether or not they have been identified to the con-
11 tract; or

12 b. recover damages for nondelivery as provided in this Article (Sec-
13 tion 2713).

14 2. Where the seller fails to deliver or repudiates the buyer may
15 also

16 a. if the goods have been identified recover them as provided in
17 this Article (Section 2502); or

18 b. in a proper case obtain specific performance or replevy the goods
19 as provided in this Article (Section 2716).

20 3. On rightful rejection or justifiable revocation of acceptance a
21 buyer has a security interest in goods in his possession or control for
22 any payments made on their price and any expenses reasonably in-
23 curred in their inspection, receipt, transportation, care and custody
24 and may hold such goods and resell them in like manner as an ag-
25 grievéd seller (Section 2706).

1 **SEC. 2712. "Cover"—buyer's procurement of substitute goods.**

2 1. After a breach within the preceding section the buyer may
3 "cover" by making in good faith and without unreasonable delay any
4 reasonable purchase of or contract to purchase goods in substitution
5 for those due from the seller.

6 2. The buyer may recover from the seller as damages the difference
7 between the cost of cover and the contract price together with any
8 incidental or consequential damages as hereinafter defined (Section
9 2715), but less expenses saved in consequence of the seller's breach.

10 3. Failure of the buyer to effect cover within this section does not
11 bar him from any other remedy.

1 **SEC. 2713. Buyer's damages for nondelivery or repudiation.**

2 1. Subject to the provisions of this Article with respect to proof of
3 market price (Section 2723), the measure of damages for nondeli-
4 very or repudiation by the seller is the difference between the market
5 price at the time when the buyer learned of the breach and the con-
6 tract price together with any incidental and consequential damages
7 provided in this Article (Section 2715), but less expenses saved in
8 consequence of the seller's breach.

9 2. Market price is to be determined as of the place for tender or,
10 in cases of rejection after arrival or revocation of acceptance, as of
11 the place of arrival.

1 **SEC. 2714. Buyer's damages for breach in regard to accepted
2 goods.**

3 1. Where the buyer has accepted goods and given notification (sub-
4 section 3 of Section 2607) he may recover as damages for any non-
5 conformity of tender the loss resulting in the ordinary course of
6 events from the seller's breach as determined in any manner which
7 is reasonable.

8 2. The measure of damages for breach of warranty is the difference
9 at the time and place of acceptance between the value of the goods
10 accepted and the value they would have had if they had been as war-
11 ranted, unless special circumstances show proximate damages of a
12 different amount.

13 3. In a proper case any incidental and consequential damages under
14 the next section may also be recovered.

1 **SEC. 2715. Buyer's incidental and consequential damages.**

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

8 2. Consequential damages resulting from the seller's breach in-
9 clude

10 a. any loss resulting from general or particular requirements and
11 needs of which the seller at the time of contracting had reason to
12 know and which could not reasonably be prevented by cover or other-
13 wise; and

14 b. injury to person or property proximately resulting from any
15 breach of warranty.

1 **SEC. 2716. Buyer's right to specific performance or replevin.**

2 1. Specific performance may be decreed where the goods are unique
3 or in other proper circumstances.

4 2. The decree for specific performance may include such terms and
5 conditions as to payment of the price, damages, or other relief as the
6 court may deem just.

7 3. The buyer has a right of replevin for goods identified to the con-
8 tract if after reasonable effort he is unable to effect cover for such
9 goods or the circumstances reasonably indicate that such effort will
10 be unavailing or if the goods have been shipped under reservation
11 and satisfaction of the security interest in them has been made or
12 tendered.

1 **SEC. 2717. Deduction of damages from the price.** The buyer on
2 notifying the seller of his intention to do so may deduct all or any
3 part of the damages resulting from any breach of the contract from
4 any part of the price still due under the same contract.

1 **SEC. 2718. Liquidation or limitation of damages—deposits.**

2 1. Damages for breach by either party may be liquidated in the
3 agreement but only at an amount which is reasonable in the light of
4 the anticipated or actual harm caused by the breach, the difficulties
5 of proof of loss, and the inconvenience or nonfeasibility of otherwise
6 obtaining an adequate remedy. A term fixing unreasonably large
7 liquidated damages is void as a penalty.

8 2. Where the seller justifiably withholds delivery of goods because
9 of the buyer's breach, the buyer is entitled to restitution of any
10 amount by which the sum of his payments exceeds

11 a. the amount to which the seller is entitled by virtue of terms
12 liquidating the seller's damages in accordance with subsection 1, or

13 b. in the absence of such terms, twenty percent of the value of the
14 total performance for which the buyer is obligated under the contract
15 or \$500, whichever is smaller.

16 3. The buyer's right to restitution under subsection 2 is subject to
17 offset to the extent that the seller establishes

18 a. a right to recover damages under the provisions of this Article
19 other than subsection 1, and

20 b. the amount or value of any benefits received by the buyer direct-
21 ly or indirectly by reason of the contract.

22 4. Where a seller has received payment in goods their reasonable
23 value or the proceeds of their resale shall be treated as payments for
24 the purposes of subsection 2; but if the seller has notice of the
25 buyer's breach before reselling goods received in part performance,
26 his resale is subject to the conditions laid down in this Article on
27 resale by an aggrieved seller (Section 2706).

1 **SEC. 2719. Contractual modification or limitation of remedy.**

2 1. Subject to the provisions of subsections 2 and 3 of this section
3 and of the preceding section on liquidation and limitation of damages,

4 a. the agreement may provide for remedies in addition to or in
5 substitution for those provided in this Article and may limit or alter
6 the measure of damages recoverable under this Article, as by limit-
7 ing the buyer's remedies to return of the goods and repayment of the
8 price or to repair and replacement of nonconforming goods or parts;
9 and

10 b. resort to a remedy as provided is optional unless the remedy is
11 expressly agreed to be exclusive, in which case it is the sole remedy.

12 2. Where circumstances cause an exclusive or limited remedy to
13 fail of its essential purpose, remedy may be had as provided in this
14 Act.

15 3. Consequential damages may be limited or excluded unless the
16 limitation or exclusion is unconscionable. Limitation of consequential
17 damages for injury to the person in the case of consumer goods is
18 prima facie unconscionable but limitation of damages where the loss
19 is commercial is not.

1 **SEC. 2720. Effect of "cancellation" or "rescission" on claims for**
2 **antecedent breach.** Unless the contrary intention clearly appears,
3 expressions of "cancellation" or "rescission" of the contract or the
4 like shall not be construed as a renunciation or discharge of any claim
5 in damages for an antecedent breach.

1 **SEC. 2721. Remedies for fraud.** Remedies for material misrep-
2 sentation or fraud include all remedies available under this Article
3 for nonfraudulent breach. Neither rescission or a claim for rescission
4 of the contract for sale nor rejection or return of the goods shall bar
5 or be deemed inconsistent with a claim for damages or other remedy.

1 **SEC. 2722. Who can sue third parties for injury to goods.** Where
2 a third party so deals with goods which have been identified to a con-
3 tract for sale as to cause actionable injury to a party to that contract

4 a. a right of action against the third party is in either party to the
5 contract for sale who has title to or a security interest or a special
6 property or an insurable interest in the goods; and if the goods have
7 been destroyed or converted a right of action is also in the party who
8 either bore the risk of loss under the contract for sale or has since
9 the injury assumed that risk as against the other;

10 b. if at the time of the injury the party plaintiff did not bear the
11 risk of loss as against the other party to the contract for sale and

12 there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary
 13 for the other party to the contract;
 14
 15 c. either party may with the consent of the other sue for the benefit of whom it may concern.
 16

1 **SEC. 2723. Proof of market price: time and place.**

2 1. If an action based on anticipatory repudiation comes to trial
 3 before the time for performance with respect to some or all of the
 4 goods, any damages based on market price (Section 2708 or Section
 5 2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.
 6
 7

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

15 3. Evidence of a relevant price prevailing at a time or place other
 16 than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as
 17 the court finds sufficient to prevent unfair surprise.
 18

1 **SEC. 2724. Admissibility of market quotations.** Whenever the
 2 prevailing price or value of any goods regularly bought and sold in
 3 any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general
 4 circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a
 5 report may be shown to affect its weight but not its admissibility.
 6
 7

1 **SEC. 2725. Statute of limitations in contracts for sale.**

2 1. By the original agreement the parties may reduce the period of
 3 limitation to not less than one year but may not extend it.

4 2. A cause of action accrues when the breach occurs, regardless of
 5 the aggrieved party's lack of knowledge of the breach. A breach of
 6 warranty occurs when tender of delivery is made, except that where
 7 a warranty explicitly extends to future performance of the goods and
 8 discovery of the breach must await the time of such performance the
 9 cause of action accrues when the breach is or should have been discovered.
 10

11 3. Where an action commenced within the time limited by law or
 12 by agreement as provided in subsection 1 is so terminated as to leave
 13 available a remedy by another action for the same breach such other
 14 action may be commenced after the expiration of the time limited
 15 and within six months after the termination of the first action unless
 16 the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.
 17

18 4. This section does not alter the law on tolling of the statute of
 19 limitations nor does it apply to causes of action which have accrued
 20 before this Act becomes effective.

ARTICLE 3
COMMERCIAL PAPER

PART 1

SHORT TITLE, FORM AND INTERPRETATION

- 1 **SEC. 3101. Short title.** This Article shall be known and may be
2 cited as Uniform Commercial Code—Commercial Paper.
- 1 **SEC. 3102. Definitions and index of definitions.**
2 1. In this Article unless the context otherwise requires
3 *a.* “Issue” means the first delivery of an instrument to a holder or
4 a remitter.
5 *b.* An “order” is a direction to pay and must be more than an
6 authorization or request. It must identify the person to pay with
7 reasonable certainty. It may be addressed to one or more such per-
8 sons jointly or in the alternative but not in succession.
9 *c.* A “promise” is an undertaking to pay and must be more than an
10 acknowledgment of an obligation.
11 *d.* “Secondary party” means a drawer or endorser.
12 *e.* “Instrument” means a negotiable instrument.
13 2. Other definitions applying to this Article and the sections in
14 which they appear are:
15 “Acceptance”. Section 3410.
16 “Accommodation party”. Section 3415.
17 “Alteration”. Section 3407.
18 “Certificate of deposit”. Section 3104.
19 “Certification”. Section 3411.
20 “Check”. Section 3104.
21 “Definite time”. Section 3109.
22 “Dishonor”. Section 3507.
23 “Draft”. Section 3104.
24 “Holder in due course”. Section 3302.
25 “Negotiation”. Section 3202.
26 “Note”. Section 3104.
27 “Notice of dishonor”. Section 3508.
28 “On demand”. Section 3108.
29 “Presentment”. Section 3504.
30 “Protest”. Section 3509.
31 “Restrictive Indorsement”. Section 3205.
32 “Signature”. Section 3401.
33 3. The following definitions in other Articles apply to this Article:
34 “Account”. Section 4104.
35 “Banking Day”. Section 4104.
36 “Clearing house”. Section 4104.
37 “Collecting bank”. Section 4105.
38 “Customer”. Section 4104.
39 “Depositary Bank”. Section 4105.
40 “Documentary Draft”. Section 4104.
41 “Intedmediary Bank”. Section 4105.
42 “Item”. Section 4104.
43 “Midnight deadline”. Section 4104.
44 “Payor bank”. Section 4105.

45 4. In addition Article 1 contains general definitions and principles
46 of construction and interpretation applicable throughout this Article.

1 **SEC. 3103. Limitations on scope of Article.**

2 1. This Article does not apply to money, documents of title or
3 securities as defined in Section 8102.

4 2. The provisions of this Article are subject to the provisions of
5 the Article on Bank Deposits and Collections (Article 4) and Secured
6 Transactions (Article 9).

1 **SEC. 3104. Form of negotiable instruments—"draft"—"check"—**
2 **"certificate of deposit"—"note".**

3 1. Any writing to be a negotiable instrument within this Article
4 must

5 a. be signed by the maker or drawer; and

6 b. contain an unconditional promise or order to pay a sum certain
7 in money and no other promise, order, obligation or power given by
8 the maker or drawer except as authorized by this Article; and

9 c. be payable on demand or at a definite time; and

10 d. be payable to order or to bearer.

11 2. A writing which complies with the requirements of this section
12 is

13 a. a "draft" ("bill of exchange") if it is an order;

14 b. a "check" if it is a draft drawn on a bank and payable on de-
15 mand;

16 c. a "certificate of deposit" if it is an acknowledgment by a bank
17 of receipt of money with an engagement to repay it;

18 d. a "note" if it is a promise other than a certificate of deposit.

19 3. As used in other Articles of this Act, and as the context may
20 require, the terms "draft", "check", "certificate of deposit" and
21 "note" may refer to instruments which are not negotiable within this
22 Article as well as to instruments which are so negotiable.

1 **SEC. 3105. When promise or order unconditional.**

2 1. A promise or order otherwise unconditional is not made condi-
3 tional by the fact that the instrument

4 a. is subject to implied or constructive conditions; or

5 b. states its consideration, whether performed or promised, or the
6 transaction which gave rise to the instrument, or that the promise or
7 order is made or the instrument matures in accordance with or "as
8 per" such transaction; or

9 c. refers to or states that it arises out of a separate agreement or
10 refers to a separate agreement for rights as to prepayment or ac-
11 celeration; or

12 d. states that it is drawn under a letter of credit; or

13 e. states that it is secured, whether by mortgage, reservation of
14 title or otherwise; or

15 f. indicates a particular account to be debited or any other fund or
16 source from which reimbursement is expected; or

17 g. is limited to payment out of a particular fund or the proceeds of
18 a particular source, if the instrument is issued by a government or
19 governmental agency or unit; or

20 h. is limited to payment out of the entire assets of a partnership,

21 unincorporated association, trust or estate by or on behalf of which
22 the instrument is issued.

23 2. A promise or order is not unconditional if the instrument

24 a. states that it is subject to or governed by any other agreement;

25 or

26 b. states that it is to be paid only out of a particular fund or source

27 except as provided in this section.

1 **SEC. 3106. Sum certain.**

2 1. The sum payable is a sum certain even though it is to be paid

3 a. with stated interest or by stated installments; or

4 b. with stated different rates of interest before and after default or

5 a specified date; or

6 c. with a stated discount or addition if paid before or after the date

7 fixed for payment; or

8 d. with exchange or less exchange, whether at a fixed rate or at the

9 current rate; or

10 e. with costs of collection or an attorney's fee or both upon default.

11 2. Nothing in this section shall validate any term which is other-

12 wise illegal.

1 **SEC. 3107. Money.**

2 1. An instrument is payable in money if the medium of exchange

3 in which it is payable is money at the time the instrument is made.

4 An instrument payable in "currency" or "current funds" is payable

5 in money.

6 2. A promise or order to pay a sum stated in a foreign currency is

7 for a sum certain in money and, unless a different medium of pay-

8 ment is specified in the instrument, may be satisfied by payment of

9 that number of dollars which the stated foreign currency will pur-

10 chase at the buying sight rate for that currency on the day on which

11 the instrument is payable or, if payable on demand, on the day of

12 demand. If such an instrument specifies a foreign currency as the

13 medium of payment the instrument is payable in that currency.

1 **SEC. 3108. Payable on demand.** Instruments payable on demand

2 include those payable at sight or on presentation and those in which

3 no time for payment is stated.

1 **SEC. 3109. Definite time.**

2 1. An instrument is payable at a definite time if by its terms it is

3 payable

4 a. on or before a stated date or at a fixed period after a stated date;

5 or

6 b. at a fixed period after sight; or

7 c. at a definite time subject to any acceleration; or

8 d. at a definite time subject to extension at the option of the holder,

9 or to extension to a further definite time at the option of the maker

10 or acceptor or automatically upon or after a specified act or event.

11 2. An instrument which by its terms is otherwise payable only

12 upon an act or event uncertain as to time of occurrence is not payable

13 at a definite time even though the act or event has occurred.

1 **SEC. 3110. Payable to order.**

2 1. An instrument is payable to order when by its terms it is pay-

- 3 able to the order or assigns of any person therein specified with rea-
 4 sonable certainty, or to him or his order, or when it is conspicuously
 5 designated on its face as "exchange" or the like and names a payee.
 6 It may be payable to the order of
 7 *a.* the maker or drawer; or
 8 *b.* the drawee; or
 9 *c.* a payee who is not maker, drawer or drawee; or
 10 *d.* two or more payees together or in the alternative; or
 11 *e.* an estate, trust or fund, in which case it is payable to the order
 12 of the representative of such estate, trust or fund or his successors;
 13 or
 14 *f.* an office, or an officer by his title as such in which case it is pay-
 15 able to the principal but the incumbent of the office or his successors
 16 may act as if he or they were the holder; or
 17 *g.* a partnership or unincorporated association, in which case it is
 18 payable to the partnership or association and may be indorsed or
 19 transferred by any person thereto authorized.
 20 2. An instrument not payable to order is not made so payable by
 21 such words as "payable upon return of this instrument properly in-
 22 dorsed."
 23 3. An instrument made payable both to order and to bearer is pay-
 24 able to order unless the bearer words are handwritten or typewritten.

1 **SEC. 3111. Payable to bearer.** An instrument is payable to bear-
 2 er when by its terms it is payable to
 3 *a.* bearer or the order of bearer; or
 4 *b.* a specified person or bearer; or
 5 *c.* "cash" or the order of "cash", or any other indication which does
 6 not purport to designate a specific payee.

1 **SEC. 3112. Terms and omissions not affecting negotiability.**
 2 1. The negotiability of an instrument is not affected by
 3 *a.* the omission of a statement of any consideration or of the place
 4 where the instrument is drawn or payable; or
 5 *b.* a statement that collateral has been given to secure obligations
 6 either on the instrument or otherwise of an obligor on the instrument
 7 or that in case of default on those obligations the holder may realize
 8 on or dispose of the collateral; or
 9 *c.* a promise or power to maintain or protect collateral or to give
 10 additional collateral; or
 11 *d.* a term authorizing a confession of judgment on the instrument
 12 if it is not paid when due; or
 13 *e.* a term purporting to waive the benefit of any law intended for
 14 the advantage or protection of any obligor; or
 15 *f.* a term in a draft providing that the payee by indorsing or cash-
 16 ing it acknowledges full satisfaction of an obligation of the drawer;
 17 or
 18 *g.* a statement in a draft drawn in a set of parts (Section 3801) to
 19 the effect that the order is effective only if no other part has been
 20 honored.
 21 2. Nothing in this section shall validate any term which is other-
 22 wise illegal.

1 **SEC. 3113. Seal.** An instrument otherwise negotiable is within
2 this Article even though it is under a seal.

1 **SEC. 3114. Date, antedating, postdating.**

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

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

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

1 **SEC. 3115. Incomplete instruments.**

2 1. When a paper whose contents at the time of signing show that
3 it is intended to become an instrument is signed while still incomplete
4 in any necessary respect it cannot be enforced until completed, but
5 when it is completed in accordance with authority given it is effec-
6 tive as completed.

7 2. If the completion is unauthorized the rules as to material alter-
8 ation apply (Section 3407), even though the paper was not delivered
9 by the maker or drawer; but the burden of establishing that any
10 completion is unauthorized is on the party so asserting.

1 **SEC. 3116. Instruments payable to two or more persons.** An in-
2 strument payable to the order of two or more persons

3 *a.* if in the alternative is payable to any one of them and may be
4 negotiated, discharged or enforced by any of them who has posses-
5 sion of it;

6 *b.* if not in the alternative is payable to all of them and may be
7 negotiated, discharged or enforced only by all of them.

1 **SEC. 3117. Instruments payable with words of description.** An
2 instrument made payable to a named person with the addition of
3 words describing him

4 *a.* as agent or officer of a specified person is payable to his principal
5 but the agent or officer may act as if he were the holder;

6 *b.* as any other fiduciary for a specified person or purpose is pay-
7 able to the payee and may be negotiated, discharged or enforced by
8 him;

9 *c.* in any other manner is payable to the payee unconditionally and
10 the additional words are without effect on subsequent parties.

1 **SEC. 3118. Ambiguous terms and rules of construction.** The fol-
2 lowing rules apply to every instrument:

3 *a.* Where there is doubt whether the instrument is a draft or a
4 note the holder may treat it as either. A draft drawn on the drawer
5 is effective as a note.

6 *b.* Handwritten terms control typewritten and printed terms, and
7 typewritten control printed.

8 *c.* Words control figures except that if the words are ambiguous
9 figures control.

10 *d.* Unless otherwise specified a provision for interest means inter-
11 est at the judgment rate at the place of payment from the date of the
12 instrument, or if it is undated from the date of issue.

13 *e.* Unless the instrument otherwise specifies two or more persons
14 who sign as maker, acceptor or drawer or indorser and as a part of
15 the same transaction are jointly and severally liable even though the
16 instrument contains such words as "I promise to pay."

17 *f.* Unless otherwise specified consent to extension authorizes a
18 single extension for not longer than the original period. A consent
19 to extension, expressed in the instrument, is binding on secondary
20 parties and accommodation makers. A holder may not exercise his
21 option to extend an instrument over the objection of a maker or
22 acceptor or other party who in accordance with Section 3604 tenders
23 full payment when the instrument is due.

1 **SEC. 3119. Other writings affecting instrument.**

2 1. As between the obligor and his immediate obligee or any trans-
3 feree the terms of an instrument may be modified or affected by any
4 other written agreement executed as a part of the same transaction,
5 except that a holder in due course is not affected by any limitation of
6 his rights arising out of the separate written agreement if he had no
7 notice of the limitation when he took the instrument.

8 2. A separate agreement does not affect the negotiability of an
9 instrument.

1 **SEC. 3120. Instruments "payable through" bank.** An instrument
2 which states that it is "payable through" a bank or the like desig-
3 nates that bank as a collecting bank to make presentment but does
4 not of itself authorize the bank to pay the instrument.

1 **SEC. 3121. Instruments payable at bank.** A note or acceptance
2 which states that it is payable at a bank is not of itself an order or
3 authorization to the bank to pay it.

1 **SEC. 3122. Accrual of cause of action.**

2 1. A cause of action against a maker or an acceptor accrues

3 *a.* in the case of a time instrument on the day after maturity;

4 *b.* in the case of a demand instrument upon its date or, if no date
5 is stated, on the date of issue.

6 2. A cause of action against the obligor of a demand or time cer-
7 tificate of deposit accrues upon demand, but demand on a time certi-
8 cate may not be made until on or after the date of maturity.

9 3. A cause of action against a drawer of a draft or an indorser of
10 any instrument accrues upon demand following dishonor of the in-
11 strument. Notice of dishonor is a demand.

12 4. Unless an instrument provides otherwise, interest runs at the
13 rate provided by law for a judgment

14 *a.* in the case of a maker, acceptor or other primary obligor of a
15 demand instrument, from the date of demand;

16 *b.* in all other cases from the date of accrual of the cause of action.

PART 2

TRANSFER AND NEGOTIATION

1 **SEC. 3201. Transfer—right to indorsement.**

2 1. Transfer of an instrument vests in the transferee such rights as
3 the transferor has therein, except that a transferee who has himself

4 been a party to any fraud or illegality affecting the instrument or
5 who as a prior holder had notice of a defense or claim against it can-
6 not improve his position by taking from a later holder in due course.

7 2. A transfer of a security interest in an instrument vests the fore-
8 going rights in the transferee to the extent of the interest trans-
9 ferred.

10 3. Unless otherwise agreed any transfer for value of an instrument
11 not then payable to bearer gives the transferee the specifically en-
12 forceable right to have the unqualified indorsement of the transferor.
13 Negotiation takes effect only when the indorsement is made and until
14 that time there is no presumption that the transferee is the owner.

1 **SEC. 3202. Negotiation.**

2 1. Negotiation is the transfer of an instrument in such form that
3 the transferee becomes a holder. If the instrument is payable to
4 order it is negotiated by delivery with any necessary indorsement;
5 if payable to bearer it is negotiated by delivery.

6 2. An indorsement must be written by or on behalf of the holder
7 and on the instrument or on a paper so firmly affixed thereto as to
8 become a part thereof.

9 3. An indorsement is effective for negotiation only when it conveys
10 the entire instrument or any unpaid residue. If it purports to be of
11 less it operates only as a partial assignment.

12 4. Words of assignment, condition, waiver, guaranty, limitation or
13 disclaimer of liability and the like accompanying an indorsement do
14 not affect its character as an indorsement.

1 **SEC. 3203. Wrong or misspelled name.** Where an instrument is
2 made payable to a person under a misspelled name or one other than
3 his own he may indorse in that name or his own or both; but signa-
4 ture in both names may be required by a person paying or giving
5 value for the instrument.

1 **SEC. 3204. Special indorsement—blank indorsement.**

2 1. A special indorsement specifies the person to whom or to whose
3 order it makes the instrument payable. Any instrument specially
4 indorsed becomes payable to the order of the special indorsee and
5 may be further negotiated only by his indorsement.

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

10 3. The holder may convert a blank indorsement into a special in-
11 dorsement by writing over the signature of the indorser in blank any
12 contract consistent with the character of the indorsement.

1 **SEC. 3205. Restrictive indorsements.** An indorsement is restric-
2 tive which either

- 3 a. is conditional; or
4 b. purports to prohibit further transfer of the instrument; or
5 c. includes the words "for collection", "for deposit", "pay any
6 bank", or like terms signifying a purpose of deposit or collection; or
7 d. otherwise states that it is for the benefit or use of the indorser
8 or of another person.

1 **SEC. 3206. Effect of restrictive indorsement.**

2 1. No restrictive indorsement prevents further transfer or negoti-
3 ation of the instrument.

4 2. An intermediary bank, or a payor bank which is not the deposi-
5 tary bank, is neither given notice nor otherwise affected by a restric-
6 tive indorsement of any person except the bank's immediate trans-
7 feror or the person presenting for payment.

8 3. Except for an intermediary bank, any transferee under an in-
9 dorsement which is conditional or includes the words "for collection",
10 "for deposit", "pay any bank", or like terms (subparagraphs *a* and *c*
11 of Section 3205) must pay or apply any value given by him for or on
12 the security of the instrument consistently with the indorsement and
13 to the extent that he does so he becomes a holder for value. In addi-
14 tion such transferee is a holder in due course if he otherwise complies
15 with the requirements of Section 3302 on what constitutes a holder
16 in due course.

17 4. The first taker under an indorsement for the benefit of the in-
18 dorser or another person (subparagraph *d* of Section 3205) must pay
19 or apply any value given by him for or on the security of the instru-
20 ment consistently with the indorsement and to the extent that he
21 does so he becomes a holder for value. In addition such taker is a
22 holder in due course if he otherwise complies with the requirements
23 of Section 3302 on what constitutes a holder in due course. A later
24 holder for value is neither given notice nor otherwise affected by such
25 restrictive indorsement unless he has knowledge that a fiduciary or
26 other person has negotiated the instrument in any transaction for his
27 own benefit or otherwise in breach of duty (subsection 2 of Section
28 3304).

1 **SEC. 3207. Negotiation effective although it may be rescinded.**

2 1. Negotiation is effective to transfer the instrument although the
3 negotiation is

4 *a.* made by an infant, a corporation exceeding its powers, or any
5 other person without capacity; or

6 *b.* obtained by fraud, duress or mistake of any kind; or

7 *c.* part of an illegal transaction; or

8 *d.* made in breach of duty.

9 2. Except as against a subsequent holder in due course such negoti-
10 ation is in an appropriate case subject to rescission, the declaration of
11 a constructive trust or any other remedy permitted by law.

1 **SEC. 3208. Reacquisition.** Where an instrument is returned to
2 or reacquired by a prior party he may cancel any indorsement which
3 is not necessary to his title and reissue or further negotiate the
4 instrument, but any intervening party is discharged as against the
5 reacquiring party and subsequent holders not in due course and if
6 his indorsement has been cancelled is discharged as against subse-
7 quent holders in due course as well.

PART 3

RIGHTS OF A HOLDER

1 **SEC. 3301. Rights of a holder.** The holder of an instrument
2 whether or not he is the owner may transfer or negotiate it and,

3 except as otherwise provided in Section 3603 on payment or satisfac-
4 tion, discharge it or enforce payment in his own name.

1 **SEC. 3302. Holder in due course.**

2 1. A holder in due course is a holder who takes the instrument

3 *a.* for value; and

4 *b.* in good faith; and

5 *c.* without notice that it is overdue or has been dishonored or of
6 any defense against or claim to it on the part of any person.

7 2. A payee may be a holder in due course.

8 3. A holder does not become a holder in due course of an instru-
9 ment:

10 *a.* by purchase of it at judicial sale or by taking it under legal
11 process; or

12 *b.* by acquiring it in taking over an estate; or

13 *c.* by purchasing it as part of a bulk transaction not in regular
14 course of business of the transferor.

15 4. A purchaser of a limited interest can be a holder in due course
16 only to the extent of the interest purchased.

1 **SEC. 3303. Taking for value.** A holder takes the instrument for
2 value

3 *a.* to the extent that the agreed consideration has been performed
4 or that he acquires a security interest in or a lien on the instrument
5 otherwise than by legal process; or

6 *b.* when he takes the instrument in payment of or as security for
7 an antecedent claim against any person whether or not the claim is
8 due; or

9 *c.* when he gives a negotiable instrument for it or makes an ir-
10 revocable commitment to a third person.

1 **SEC. 3304. Notice to purchaser.**

2 1. The purchaser has notice of a claim or defense if

3 *a.* the instrument is so incomplete, bears such visible evidence of
4 forgery or alteration, or is otherwise so irregular as to call into
5 question its validity, terms or ownership or to create an ambiguity
6 as to the party to pay; or

7 *b.* the purchaser has notice that the obligation of any party is void-
8 able in whole or in part, or that all parties have been discharged.

9 2. The purchaser has notice of a claim against the instrument
10 when he has knowledge that a fiduciary has negotiated the instru-
11 ment in payment of or as security for his own debt or in any transac-
12 tion for his own benefit or otherwise in breach of duty.

13 3. The purchaser has notice that an instrument is overdue if he has
14 reason to know

15 *a.* that any part of the principal amount is overdue or that there
16 is an uncured default in payment of another instrument of the same
17 series; or

18 *b.* that acceleration of the instrument has been made; or

19 *c.* that he is taking a demand instrument after demand has been
20 made or more than a reasonable length of time after its issue. A
21 reasonable time for a check drawn and payable within the states and
22 territories of the United States and the District of Columbia is pre-
23 sumed to be thirty days.

- 24 4. Knowledge of the following facts does not of itself give the pur-
 25 chaser notice of a defense or claim
 26 a. that the instrument is antedated or postdated;
 27 b. that it was issued or negotiated in return for an executory prom-
 28 ise or accompanied by a separate agreement, unless the purchaser has
 29 notice that a defense or claim has arisen from the terms thereof;
 30 c. that any party has signed for accommodation;
 31 d. that an incomplete instrument has been completed, unless the
 32 purchaser has notice of any improper completion;
 33 e. that any person negotiating the instrument is or was a fiduciary;
 34 f. that there has been default in payment of interest on the instru-
 35 ment or in payment of any other instrument, except one of the same
 36 series.
- 37 5. The filing or recording of a document does not of itself consti-
 38 tute notice within the provisions of this Article to a person who would
 39 otherwise be a holder in due course.
- 40 6. To be effective notice must be received at such time and in such
 41 manner as to give a reasonable opportunity to act on it.

1 **SEC. 3305. Rights of a holder in due course.** To the extent that
 2 a holder is a holder in due course he takes the instrument free from
 3 1. all claims to it on the part of any person; and
 4 2. all defenses of any party to the instrument with whom the hold-
 5 er has not dealt except
 6 a. infancy, to the extent that it is a defense to a simple contract;
 7 and
 8 b. such other incapacity, or duress, or illegality of the transaction,
 9 as renders the obligation of the party a nullity; and
 10 c. such misrepresentation as has induced the party to sign the in-
 11 strument with neither knowledge nor reasonable opportunity to obtain
 12 knowledge of its character or its essential terms; and
 13 d. discharge in insolvency proceedings; and
 14 e. any other discharge of which the holder has notice when he
 15 takes the instrument.

1 **SEC. 3306. Rights of one not holder in due course.** Unless he has
 2 the rights of a holder in due course any person takes the instrument
 3 subject to
 4 a. all valid claims to it on the part of any person; and
 5 b. all defenses of any party which would be available in an action
 6 on a simple contract; and
 7 c. the defenses of want or failure of consideration, nonperformance
 8 of any condition precedent, nondelivery, or delivery for a special pur-
 9 pose (Section 3408); and
 10 d. the defense that he or a person through whom he holds the in-
 11 strument acquired it by theft, or that payment or satisfaction to such
 12 holder would be inconsistent with the terms of a restrictive indorse-
 13 ment. The claim of any third person to the instrument is not other-
 14 wise available as a defense to any party liable thereon unless the third
 15 person himself defends the action for such party.

1 **SEC. 3307. Burden of establishing signatures, defenses and due**
 2 **course.**
 3 1. Unless specifically denied in the pleadings each signature on an

- 4 instrument is admitted. When the effectiveness of a signature is put
 5 in issue
 6 *a.* the burden of establishing it is on the party claiming under the
 7 signature; but
 8 *b.* the signature is presumed to be genuine or authorized except
 9 where the action is to enforce the obligation of a purported signer
 10 who has died or become incompetent before proof is required.
 11 2. When signatures are admitted or established, production of the
 12 instrument entitles a holder to recover on it unless the defendant
 13 establishes a defense.
 14 3. After it is shown that a defense exists a person claiming the
 15 rights of a holder in due course has the burden of establishing that
 16 he or some person under whom he claims is in all respects a holder in
 17 due course.

PART 4

LIABILITY OF PARTIES

- 1 **SEC. 3401. Signature.**
 2 1. No person is liable on an instrument unless his signature appears
 3 thereon.
 4 2. A signature is made by use of any name, including any trade or
 5 assumed name, upon an instrument, or by any word or mark used in
 6 lieu of a written signature.
- 1 **SEC. 3402. Signature in ambiguous capacity.** Unless the instru-
 2 ment clearly indicates that a signature is made in some other capacity
 3 it is an indorsement.
- 1 **SEC. 3403. Signature by authorized representative.**
 2 1. A signature may be made by an agent or other representative,
 3 and his authority to make it may be established as in other cases of
 4 representation. No particular form of appointment is necessary to
 5 establish such authority.
 6 2. An authorized representative who signs his own name to an in-
 7 strument
 8 *a.* is personally obligated if the instrument neither names the per-
 9 son represented nor shows that the representative signed in a repre-
 10 sentative capacity;
 11 *b.* except as otherwise established between the immediate parties,
 12 is personally obligated if the instrument names the person repre-
 13 sented but does not show that the representative signed in a repre-
 14 sentative capacity, or if the instrument does not name the person
 15 represented but does show that the representative signed in a repre-
 16 sentative capacity.
 17 3. Except as otherwise established the name of an organization
 18 preceded or followed by the name and office of an authorized individ-
 19 ual is a signature made in a representative capacity.
- 1 **SEC. 3404. Unauthorized signatures.**
 2 1. Any unauthorized signature is wholly inoperative as that of the
 3 person whose name is signed unless he ratifies it or is precluded from
 4 denying it; but it operates as the signature of the unauthorized

5 signer in favor of any person who in good faith pays the instrument
6 or takes it for value.

7 2. Any unauthorized signature may be ratified for all purposes of
8 this Article. Such ratification does not of itself affect any rights of
9 the person ratifying against the actual signer.

1 **SEC. 3405. Impostors—signature in name of payee.**

2 1. An indorsement by any person in the name of a named payee is
3 effective if

4 a. an impostor by use of the mails or otherwise has induced the
5 maker or drawer to issue the instrument to him or his confederate in
6 the name of the payee; or

7 b. a person signing as or on behalf of a maker or drawer intends
8 the payee to have no interest in the instrument; or

9 c. an agent or employee of the maker or drawer has supplied him
10 with the name of the payee intending the latter to have no such in-
11 terest.

12 2. Nothing in this section shall affect the criminal or civil liability
13 of the person so indorsing.

1 **SEC. 3406. Negligence contributing to alteration or unauthorized**

2 **signature.** Any person who by his negligence substantially con-
3 tributes to a material alteration of the instrument or to the making
4 of an unauthorized signature is precluded from asserting the altera-
5 tion or lack of authority against a holder in due course or against a
6 drawee or other payor who pays the instrument in good faith and in
7 accordance with the reasonable commercial standards of the drawee's
8 or payor's business.

1 **SEC. 3407. Alteration.**

2 1. Any alteration of an instrument is material which changes the
3 contract of any party thereto in any respect, including any such
4 change in

5 a. the number or relations of the parties; or

6 b. an incomplete instrument, by completing it otherwise than as
7 authorized; or

8 c. the writing as signed, by adding to it or by removing any part
9 of it.

10 2. As against any person other than a subsequent holder in due
11 course

12 a. alteration by the holder which is both fraudulent and material
13 discharges any party whose contract is thereby changed unless that
14 party assents or is precluded from asserting the defense;

15 b. no other alteration discharges any party and the instrument
16 may be enforced according to its original tenor, or as to incomplete
17 instruments according to the authority given.

18 3. A subsequent holder in due course may in all cases enforce the
19 instrument according to its original tenor, and when an incomplete
20 instrument has been completed, he may enforce it as completed.

1 **SEC. 3408. Consideration.** Want or failure of consideration is a
2 defense as against any person not having the rights of a holder in
3 due course (Section 3305), except that no consideration is necessary
4 for an instrument or obligation thereon given in payment of or as

5 security for an antecedent obligation of any kind. Nothing in this
6 section shall be taken to displace any statute outside this Act under
7 which a promise is enforceable notwithstanding lack or failure of con-
8 sideration. Partial failure of consideration is a defense pro tanto
9 whether or not the failure is in an ascertained or liquidated amount.

1 **SEC. 3409. Draft not an assignment.**

2 1. A check or other draft does not of itself operate as an assign-
3 ment of any funds in the hands of the drawee available for its pay-
4 ment, and the drawee is not liable on the instrument until he accepts
5 it.

6 2. Nothing in this section shall affect any liability in contract, tort
7 or otherwise arising from any letter of credit or other obligation or
8 representation which is not an acceptance.

1 **SEC. 3410. Definition and operation of acceptance.**

2 1. Acceptance is the drawee's signed engagement to honor the
3 draft as presented. It must be written on the draft, and may consist
4 of his signature alone. It becomes operative when completed by de-
5 livery or notification.

6 2. A draft may be accepted although it has not been signed by the
7 drawer or is otherwise incomplete or is overdue or has been dis-
8 honored.

9 3. Where the draft is payable at a fixed period after sight and the
10 acceptor fails to date his acceptance the holder may complete it by
11 supplying a date in good faith.

1 **SEC. 3411. Certification of a check.**

2 1. Certification of a check is acceptance. Where a holder procures
3 certification the drawer and all prior indorsers are discharged.

4 2. Unless otherwise agreed a bank has no obligation to certify a
5 check.

6 3. A bank may certify a check before returning it for lack of proper
7 indorsement. If it does so the drawer is discharged.

1 **SEC. 3412. Acceptance varying draft.**

2 1. Where the drawee's proffered acceptance in any manner varies
3 the draft as presented the holder may refuse the acceptance and
4 treat the draft as dishonored in which case the drawee is entitled to
5 have his acceptance cancelled.

6 2. The terms of the draft are not varied by an acceptance to pay
7 at any particular bank or place in the United States, unless the ac-
8 ceptance states that the draft is to be paid only at such bank or place.

9 3. Where the holder assents to an acceptance varying the terms of
10 the draft each drawer and indorser who does not affirmatively assent
11 is discharged.

1 **SEC. 3413. Contract of maker, drawer and acceptor.**

2 1. The maker or acceptor engages that he will pay the instrument
3 according to its tenor at the time of his engagement or as completed
4 pursuant to Section 3115 on incomplete instruments.

5 2. The drawer engages that upon dishonor of the draft and any
6 necessary notice of dishonor or protest he will pay the amount of the
7 draft to the holder or to any indorser who takes it up. The drawer
8 may disclaim this liability by drawing without recourse.

9 3. By making, drawing or accepting the party admits as against all
10 subsequent parties including the drawee the existence of the payee
11 and his then capacity to indorse.

1 **SEC. 3414. Contract of indorser—order of liability.**

2 1. Unless the indorsement otherwise specifies (as by such words as
3 “without recourse”) every indorser engages that upon dishonor and
4 any necessary notice of dishonor and protest he will pay the instru-
5 ment according to its tenor at the time of his indorsement to the
6 holder or to any subsequent indorser who takes it up, even though
7 the indorser who takes it up was not obligated to do so.

8 2. Unless they otherwise agree indorsers are liable to one another
9 in the order in which they indorse, which is presumed to be the order
10 in which their signatures appear on the instrument.

1 **SEC. 3415. Contract of accommodation party.**

2 1. An accommodation party is one who signs the instrument in any
3 capacity for the purpose of lending his name to another party to it.

4 2. When the instrument has been taken for value before it is due
5 the accommodation party is liable in the capacity in which he has
6 signed even though the taker knows of the accommodation.

7 3. As against a holder in due course and without notice of the ac-
8 commodation oral proof of the accommodation is not admissible to
9 give the accommodation party the benefit of discharges dependent on
10 his character as such. In other cases the accommodation character
11 may be shown by oral proof.

12 4. An indorsement which shows that it is not in the chain of title
13 is notice of its accommodation character.

14 5. An accommodation party is not liable to the party accommo-
15 dated, and if he pays the instrument has a right of recourse on the
16 instrument against such party.

1 **SEC. 3416. Contract of guarantor.**

2 1. “Payment guaranteed” or equivalent words added to a signature
3 mean that the signer engages that if the instrument is not paid when
4 due he will pay it according to its tenor without resort by the holder
5 to any other party.

6 2. “Collection guaranteed” or equivalent words added to a signa-
7 ture mean that the signer engages that if the instrument is not paid
8 when due he will pay it according to its tenor, but only after the
9 holder has reduced his claim against the maker or acceptor to judg-
10 ment and execution has been returned unsatisfied, or after the maker
11 or acceptor has become insolvent or it is otherwise apparent that it
12 is useless to proceed against him.

13 3. Words of guaranty which do not otherwise specify guarantee
14 payment.

15 4. No words of guaranty added to the signature of a sole maker or
16 acceptor affect his liability on the instrument. Such words added to
17 the signature of one of two or more makers or acceptors create a
18 presumption that the signature is for the accommodation of the
19 others.

20 5. When words of guaranty are used presentment, notice of dis-
21 honor and protest are not necessary to charge the user.

22 6. Any guaranty written on the instrument is enforceable notwith-
23 standing any statute of frauds.

1 **SEC. 3417. Warranties on presentment and transfer.**

2 1. Any person who obtains payment or acceptance and any prior
3 transferor warrants to a person who in good faith pays or accepts
4 that

5 *a.* he has a good title to the instrument or is authorized to obtain
6 payment or acceptance on behalf of one who has a good title; and

7 *b.* he has no knowledge that the signature of the maker or drawer
8 is unauthorized, except that this warranty is not given by a holder
9 in due course acting in good faith

10 *i.* to a maker with respect to the maker's own signature; or

11 *ii.* to a drawer with respect to the drawer's own signature, whether
12 or not the drawer is also the drawee; or

13 *iii.* to an acceptor of a draft if the holder in due course took the
14 draft after the acceptance or obtained the acceptance without knowl-
15 edge that the drawer's signature was unauthorized; and

16 *c.* the instrument has not been materially altered, except that this
17 warranty is not given by a holder in due course acting in good faith

18 *i.* to the maker of a note; or

19 *ii.* to the drawer of a draft whether or not the drawer is also the
20 drawee; or

21 *iii.* to the acceptor of a draft with respect to an alteration made
22 prior to the acceptance if the holder in due course took the draft after
23 the acceptance, even though the acceptance provided "payable as
24 originally drawn" or equivalent terms; or

25 *iv.* to the acceptor of a draft with respect to an alteration made
26 after the acceptance.

27 2. Any person who transfers an instrument and receives consider-
28 ation warrants to his transferee and if the transfer is by indorsement
29 to any subsequent holder who takes the instrument in good faith
30 that

31 *a.* he has a good title to the instrument or is authorized to obtain
32 payment or acceptance on behalf of one who has a good title and the
33 transfer is otherwise rightful; and

34 *b.* all signatures are genuine or authorized; and

35 *c.* the instrument has not been materially altered; and

36 *d.* no defense of any party is good against him; and

37 *e.* he has no knowledge of any insolvency proceeding instituted
38 with respect to the maker or acceptor or the drawer of an unaccepted
39 instrument.

40 3. By transferring "without recourse" the transferor limits the
41 obligation stated in subsection 2 *d* to a warranty that he has no
42 knowledge of such a defense.

43 4. A selling agent or broker who does not disclose the fact that he
44 is acting only as such gives the warranties provided in this section,
45 but if he makes such disclosure warrants only his good faith and
46 authority.

1 **SEC. 3418. Finality of payment or acceptance.** Except for recov-
2 ery of bank payments as provided in the Article on Bank Deposits
3 and Collections (Article 4) and except for liability for breach of

4 warranty on presentment under the preceding section, payment or
5 acceptance of any instrument is final in favor of a holder in due
6 course, or a person who has in good faith changed his position in
7 reliance on the payment.

1 **SEC. 3419. Conversion of instrument—innocent representative.**

2 1. An instrument is converted when

3 *a.* a drawee to whom it is delivered for acceptance refuses to return
4 it on demand; or

5 *b.* any person to whom it is delivered for payment refuses on de-
6 mand either to pay or to return it; or

7 *c.* it is paid on a forged indorsement.

8 2. In an action against a drawee under subsection 1 the measure of
9 the drawee's liability is the face amount of the instrument. In any
10 other action under subsection 1 the measure of liability is presumed to
11 be the face amount of the instrument.

12 3. Subject to the provisions of this Act concerning restrictive in-
13 dorsements a representative, including a depository or collecting
14 bank, who has in good faith and in accordance with the reasonable
15 commercial standards applicable to the business of such representa-
16 tive dealt with an instrument or its proceeds on behalf of one who
17 was not the true owner is not liable in conversion or otherwise to the
18 true owner beyond the amount of any proceeds remaining in his
19 hands.

20 4. An intermediary bank or payor bank which is not a depository
21 bank is not liable in conversion solely by reason of the fact that pro-
22 ceeds of an item indorsed restrictively (Sections 3205 and 3206) are
23 not paid or applied consistently with the restrictive indorsement of
24 an indorser other than its immediate transferor.

PART 5

PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

1 **SEC. 3501. When presentment, notice of dishonor, and protest**
2 **necessary or permissible.**

3 1. Unless excused (Section 3511) presentment is necessary to
4 charge secondary parties as follows:

5 *a.* presentment for acceptance is necessary to charge the drawer
6 and indorsers of a draft where the draft so provides, or is payable
7 elsewhere than at the residence or place of business of the drawee,
8 or its date of payment depends upon such presentment. The holder
9 may at his option present for acceptance any other draft payable at
10 a stated date;

11 *b.* presentment for payment is necessary to charge any indorser;

12 *c.* in the case of any drawer, the acceptor of a draft payable at a
13 bank or the maker of a note payable at a bank, presentment for pay-
14 ment is necessary, but failure to make presentment discharges such
15 drawer, acceptor or maker only as stated in Section 3502 subsection

16 *1 b.*

17 2. Unless excused (Section 3511)

18 *a.* notice of any dishonor is necessary to charge any indorser;

19 *b.* in the case of any drawer, the acceptor of a draft payable at a
20 bank or the maker of a note payable at a bank, notice of any dishonor

21 is necessary, but failure to give such notice discharges such drawer,
22 acceptor or maker only as stated in Section 3502 subsection 1 *b*.

23 3. Unless excused (Section 3511) protest of any dishonor is neces-
24 sary to charge the drawer and indorsers of any draft which on its
25 face appears to be drawn or payable outside of the states, territories,
26 dependencies and possessions of the United States, the District of
27 Columbia and the Commonwealth of Puerto Rico. The holder may at
28 his option make protest of any dishonor of any other instrument and
29 in the case of a foreign draft may on insolvency of the acceptor
30 before maturity make protest for better security.

31 4. Notwithstanding any provision of this section, neither present-
32 ment nor notice of dishonor nor protest is necessary to charge an
33 indorser who has indorsed an instrument after maturity.

1 **SEC. 3502. Unexcused delay—discharge.**

2 1. Where without excuse any necessary presentment or notice of
3 dishonor is delayed beyond the time when it is due

4 *a.* any indorser is discharged; and

5 *b.* any drawer or the acceptor of a draft payable at a bank or the
6 maker of a note payable at a bank who because the drawee or payor
7 bank becomes insolvent during the delay is deprived of funds main-
8 tained with the drawee or payor bank to cover the instrument may
9 discharge his liability by written assignment to the holder of his
10 rights against the drawee or payor bank in respect of such funds, but
11 such drawer, acceptor or maker is not otherwise discharged.

12 2. Where without excuse a necessary protest is delayed beyond the
13 time when it is due any drawer or indorser is discharged.

1 **SEC. 3503. Time of presentment.**

2 1. Unless a different time is expressed in the instrument the time
3 for any presentment is determined as follows:

4 *a.* Where an instrument is payable at or a fixed period after a
5 stated date any presentment for acceptance must be made on or
6 before the date it is payable;

7 *b.* where an instrument is payable after sight it must either be
8 presented for acceptance or negotiated within a reasonable time after
9 date or issue whichever is later;

10 *c.* where an instrument shows the date on which it is payable pre-
11 sentment for payment is due on that date;

12 *d.* where an instrument is accelerated presentment for payment is
13 due within a reasonable time after the acceleration;

14 *e.* with respect to the liability of any secondary party presentment
15 for acceptance or payment of any other instrument is due within a
16 reasonable time after such party becomes liable thereon.

17 2. A reasonable time for presentment is determined by the nature
18 of the instrument, any usage of banking or trade and the facts of the
19 particular case. In the case of an uncertified check which is drawn
20 and payable within the United States and which is not a draft drawn
21 by a bank the following are presumed to be reasonable periods within
22 which to present for payment or to initiate bank collection:

23 *a.* with respect to the liability of the drawer, thirty days after date
24 or issue whichever is later; and

25 *b.* with respect to the liability of an indorser, seven days after his
26 indorsement.

27 3. Where any presentment is due on a day which is not a full busi-
 28 ness day for either the person making presentment or the party to
 29 pay or accept, presentment is due on the next following day which is
 30 a full business day for both parties.

31 4. Presentment to be sufficient must be made at a reasonable hour,
 32 and if at a bank during its banking day.

1 **SEC. 3504. How presentment made.**

2 1. Presentment is a demand for acceptance or payment made upon
 3 the maker, acceptor, drawee or other payor by or on behalf of the
 4 holder.

5 2. Presentment may be made

6 a. by mail, in which event the time of presentment is determined
 7 by the time of receipt of the mail; or

8 b. through a clearing house; or

9 c. at the place of acceptance or payment specified in the instrument
 10 or if there be none at the place of business or residence of the party
 11 to accept or pay. If neither the party to accept or pay nor anyone
 12 authorized to act for him is present or accessible at such place pre-
 13 sentment is excused.

14 3. It may be made

15 a. to any one of two or more makers, acceptors, drawees or other
 16 payors; or

17 b. to any person who has authority to make or refuse the accept-
 18 ance or payment.

19 4. A draft accepted or a note made payable at a bank in the United
 20 States must be presented at such bank.

21 5. In the cases described in Section 4210 presentment may be made
 22 in the manner and with the result stated in that section.

1 **SEC. 3505. Rights of party to whom presentment is made.**

2 1. The party to whom presentment is made may without dishonor
 3 require

4 a. exhibition of the instrument; and

5 b. reasonable identification of the person making presentment and
 6 evidence of his authority to make it if made for another; and

7 c. that the instrument be produced for acceptance or payment at a
 8 place specified in it, or if there be none at any place reasonable in the
 9 circumstances; and

10 d. a signed receipt on the instrument for any partial or full pay-
 11 ment and its surrender upon full payment.

12 2. Failure to comply with any such requirement invalidates the
 13 presentment but the person presenting has a reasonable time in which
 14 to comply and the time for acceptance or payment runs from the time
 15 of compliance.

1 **SEC. 3506. Time allowed for acceptance or payment.**

2 1. Acceptance may be deferred without dishonor until the close of
 3 the next business day following presentment. The holder may also in
 4 a good faith effort to obtain acceptance and without either dishonor
 5 of the instrument or discharge of secondary parties allow postpone-
 6 ment of acceptance for an additional business day.

7 2. Except as a longer time is allowed in the case of documentary
 8 drafts drawn under a letter of credit, and unless an earlier time is

9 agreed to by the party to pay, payment of an instrument may be
10 deferred without dishonor pending reasonable examination to deter-
11 mine whether it is properly payable, but payment must be made in
12 any event before the close of business on the day of presentment.

1 **SEC. 3507. Dishonor—holder's right of recourse—term allowing**
2 **re-presentment.**

3 1. An instrument is dishonored when
4 a. a necessary or optional presentment is duly made and due accept-
5 ance or payment is refused or cannot be obtained within the pre-
6 scribed time or in case of bank collections the instrument is season-
7 ably returned by the midnight deadline (Section 4301); or

8 b. presentment is excused and the instrument is not duly accepted
9 or paid.

10 2. Subject to any necessary notice of dishonor and protest, the
11 holder has upon dishonor and immediate right of recourse against
12 the drawers and indorsers.

13 3. Return of an instrument for lack of proper indorsement is not
14 dishonor.

15 4. A term in a draft or an indorsement thereof allowing a stated
16 time for re-presentment in the event of any dishonor of the draft by
17 nonacceptance if a time draft or by nonpayment if a sight draft gives
18 the holder as against any secondary party bound by the term an
19 option to waive the dishonor without affecting the liability of the
20 secondary party and he may present again up to the end of the stated
21 time.

1 **SEC. 3508. Notice of dishonor.**

2 1. Notice of dishonor may be given to any person who may be liable
3 on the instrument by or on behalf of the holder or any party who has
4 himself received notice, or any other party who can be compelled to
5 pay the instrument. In addition an agent or bank in whose hands the
6 instrument is dishonored may give notice to his principal or customer
7 or to another agent or bank from which the instrument was received.

8 2. Any necessary notice must be given by a bank before its mid-
9 night deadline and by any other person before midnight of the third
10 business day after dishonor or receipt of notice of dishonor.

11 3. Notice may be given in any reasonable manner. It may be oral
12 or written and in any terms which identify the instrument and state
13 that it has been dishonored. A misdescription which does not mislead
14 the party notified does not vitiate the notice. Sending the instrument
15 bearing a stamp, ticket or writing stating that acceptance or payment
16 has been refused or sending a notice of debit with respect to the in-
17 strument is sufficient.

18 4. Written notice is given when sent although it is not received.

19 5. Notice to one partner is notice to each although the firm has
20 been dissolved.

21 6. When any party is in insolvency proceedings instituted after the
22 issue of the instrument notice may be given either to the party or to
23 the representative of his estate.

24 7. When any party is dead or incompetent notice may be sent to
25 his last known address or given to his personal representative.

26 8. Notice operates for the benefit of all parties who have rights on
27 the instrument against the party notified.

1 **SEC. 3509. Protest—noting for protest.**

2 1. A protest is a certificate of dishonor made under the hand and
3 seal of a United States consul or vice consul or a notary public or
4 other person authorized to certify dishonor by the law of the place
5 where dishonor occurs. It may be made upon information satisfac-
6 tory to such person.

7 2. The protest must identify the instrument and certify either that
8 due presentment has been made or the reason why it is excused and
9 that the instrument has been dishonored by nonacceptance or non-
10 payment.

11 3. The protest may also certify that notice of dishonor has been
12 given to all parties or to specified parties.

13 4. Subject to subsection 5 any necessary protest is due by the time
14 that notice of dishonor is due.

15 5. If, before protest is due, an instrument has been noted for pro-
16 test by the officer to make protest, the protest may be made at any
17 time thereafter as of the date of the noting.

1 **SEC. 3510. Evidence of dishonor and notice of dishonor.** The fol-
2 lowing are admissible as evidence and create a presumption of dis-
3 honor and of any notice of dishonor therein shown:

4 a. a document regular in form as provided in the preceding section
5 which purports to be a protest;

6 b. the purported stamp or writing of the drawee, payor bank or
7 presenting bank on the instrument or accompanying it stating that
8 acceptance or payment has been refused for reasons consistent with
9 dishonor;

10 c. Any book or record of the drawee, payor bank, or any collecting
11 bank kept in the usual course of business which shows dishonor, even
12 though there is no evidence of who made the entry.

1 **SEC. 3511. Waived or excused presentment, protest or notice of**
2 **dishonor or delay therein.**

3 1. Delay in presentment, protest or notice of dishonor is excused
4 when the party is without notice that it is due or when the delay is
5 caused by circumstances beyond his control and he exercises reason-
6 able diligence after the cause of the delay ceases to operate.

7 2. Presentment or notice or protest as the case may be is entirely
8 excused when

9 a. the party to be charged has waived it expressly or by implica-
10 tion either before or after it is due; or

11 b. such party has himself dishonored the instrument or has coun-
12 termanded payment or otherwise has no reason to expect or right to
13 require that the instrument be accepted or paid; or

14 c. by reasonable diligence the presentment or protest cannot be
15 made or the notice given.

16 3. Presentment is also entirely excused when

17 a. the maker, acceptor or drawee of any instrument except a docu-
18 mentary draft is dead or in insolvency proceedings instituted after
19 the issue of the instrument; or

20 b. acceptance or payment is refused but not for want of proper
21 presentment.

22 4. Where a draft has been dishonored by nonacceptance a later pre-

23 sentment for payment and any notice of dishonor and protest for
 24 nonpayment are excused unless in the meantime the instrument has
 25 been accepted.

26 5. A waiver of protest is also a waiver of presentment and of notice
 27 of dishonor even though protest is not required.

28 6. Where a waiver of presentment or notice or protest is embodied
 29 in the instrument itself it is binding upon all parties; but where it
 30 is written above the signature of an indorser it binds him only.

PART 6

DISCHARGE

1 SEC. 3601. Discharge of parties.

2 1. The extent of the discharge of any party from liability on an
 3 instrument is governed by the sections on

4 a. payment or satisfaction (Section 3603); or

5 b. tender of payment (Section 3604); or

6 c. cancellation or renunciation (Section 3605); or

7 d. impairment of right of recourse or of collateral (Section 3606);

8 or

9 e. reacquisition of the instrument by a prior party (Section 3208);

10 or

11 f. fraudulent and material alteration (Section 3407); or

12 g. certification of a check (Section 3411); or

13 h. acceptance varying a draft (Section 3412); or

14 i. unexcused delay in presentment or notice of dishonor or protest
 15 (Section 3502).

16 2. Any party is also discharged from his liability on an instrument
 17 to another party by any other act or agreement with such party
 18 which would discharge his simple contract for the payment of money.

19 3. The liability of all parties is discharged when any party who has
 20 himself no right of action or recourse on the instrument

21 a. reacquires the instrument in his own right; or

22 b. is discharged under any provision of this Article, except as
 23 otherwise provided with respect to discharge for impairment of re-
 24 course or of collateral (Section 3606).

1 SEC. 3602. Effect of discharge against holder in due course. No
 2 discharge of any party provided by this Article is effective against a
 3 subsequent holder in due course unless he has notice thereof when he
 4 takes the instrument.

1 SEC. 3603. Payment or satisfaction.

2 1. The liability of any party is discharged to the extent of his pay-
 3 ment or satisfaction to the holder even though it is made with knowl-
 4 edge of a claim of another person to the instrument unless prior to
 5 such payment or satisfaction the person making the claim either
 6 supplies indemnity deemed adequate by the party seeking the dis-
 7 charge or enjoins payment or satisfaction by order of a court of com-
 8 petent jurisdiction in an action in which the adverse claimant and the
 9 holder are parties. This subsection does not, however, result in the
 10 discharge of the liability

11 a. of a party who in bad faith pays or satisfies a holder who ac-
 12 quired the instrument by theft or who (unless having the rights of a

13 holder in due course) holds through one who so acquired it; or
 14 *b.* of a party (other than an intermediary bank or a payor bank
 15 which is not a depositary bank) who pays or satisfies the holder of
 16 an instrument which has been restrictively indorsed in a manner not
 17 consistent with the terms of such restrictive indorsement.
 18 2. Payment or satisfaction may be made with the consent of the
 19 holder by any person including a stranger to the instrument. Sur-
 20 render of the instrument to such a person gives him the rights of a
 21 transferee (Section 3201).

1 **SEC. 3604. Tender of payment.**

2 1. Any party making tender of full payment to a holder when or
 3 after it is due is discharged to the extent of all subsequent liability
 4 for interest, costs and attorney's fees.
 5 2. The holder's refusal of such tender wholly discharges any party
 6 who has a right of recourse against the party making the tender.
 7 3. Where the maker or acceptor of an instrument payable other-
 8 wise than on demand is able and ready to pay at every place of pay-
 9 ment specified in the instrument when it is due, it is equivalent to
 10 tender.
 11 4. Tender shall be made as provided by Section five hundred thirty-
 12 eight point five (538.5) of the Code.

1 **SEC. 3605. Cancellation and renunciation.**

2 1. The holder of an instrument may even without consideration
 3 discharge any party
 4 *a.* in any manner apparent on the face of the instrument or the
 5 indorsement, as by intentionally cancelling the instrument or the
 6 party's signature by destruction or mutilation, or by striking out the
 7 party's signature; or
 8 *b.* by renouncing his rights by a writing signed and delivered or by
 9 surrender of the instrument to the party to be discharged.
 10 2. Neither cancellation nor renunciation without surrender of the
 11 instrument affects the title thereto.

1 **SEC. 3606. Impairment of recourse or of collateral.**

2 1. The holder discharges any party to the instrument to the extent
 3 that without such party's consent the holder
 4 *a.* without express reservation of rights releases or agrees not to
 5 sue any person against whom the party has to the knowledge of the
 6 holder a right of recourse or agrees to suspend the right to enforce
 7 against such person the instrument or collateral or otherwise dis-
 8 charges such person, except that failure or delay in effecting any
 9 required presentment, protest or notice of dishonor with respect to
 10 any such person does not discharge any party as to whom present-
 11 ment, protest or notice of dishonor is effective or unnecessary; or
 12 *b.* unjustifiably impairs any collateral for the instrument given by
 13 or on behalf of the party or any person against whom he has a right
 14 of recourse.
 15 2. By express reservation of rights against a party with a right of
 16 recourse the holder preserves
 17 *a.* all his rights against such party as of the time when the instru-
 18 ment was originally due; and

- 19 *b.* the right of the party to pay the instrument as of that time;
 20 and
 21 *c.* all rights of such party to recourse against others.

PART 7

ADVICE ON INTERNATIONAL SIGHT DRAFT

1 **SEC. 3701. Letter of advice of international sight draft.**

2 1. A "letter of advice" is a drawer's communication to the drawee
 3 that a described draft has been drawn.

4 2. Unless otherwise agreed when a bank receives from another
 5 bank a letter of advice of an international sight draft the drawee
 6 bank may immediately debit the drawer's account and stop the run-
 7 ning of interest pro tanto. Such a debit and any resulting credit to
 8 any account covering outstanding drafts leaves in the drawer full
 9 power to stop payment or otherwise dispose of the amount and cre-
 10 ates no trust or interest in favor of the holder.

11 3. Unless otherwise agreed and except where a draft is drawn
 12 under a credit issued by the drawee, the drawee of an international
 13 sight draft owes the drawer no duty to pay an unadvised draft but
 14 if it does so and the draft is genuine, may appropriately debit the
 15 drawer's account.

PART 8

MISCELLANEOUS

1 **SEC. 3801. Drafts in a set.**

2 1. Where a draft is drawn in a set of parts, each of which is num-
 3 bered and expressed to be an order only if no other part has been
 4 honored, the whole of the parts constitutes one draft but a taker of
 5 any part may become a holder in due course of the draft.

6 2. Any person who negotiates, indorses or accepts a single part of
 7 a draft drawn in a set thereby becomes liable to any holder in due
 8 course of that part as if it were the whole set, but as between differ-
 9 ent holders in due course to whom different parts have been negoti-
 10 ated the holder whose title first accrues has all rights to the draft
 11 and its proceeds.

12 3. As against the drawee the first presented part of a draft drawn
 13 in a set is the part entitled to payment, or if a time draft to accept-
 14 ance and payment. Acceptance of any subsequently presented part
 15 renders the drawee liable thereon under subsection 2. With respect
 16 both to a holder and to the drawer payment of a subsequently pre-
 17 sented part of a draft payable at sight has the same effect as pay-
 18 ment of a check notwithstanding an effective stop order (Section
 19 4407).

20 4. Except as otherwise provided in this section, where any part of
 21 a draft in a set is discharged by payment or otherwise the whole draft
 22 is discharged.

1 **SEC. 3802. Effect of instrument on obligation for which it is**
 2 **given.**

3 1. Unless otherwise agreed where an instrument is taken for an
 4 underlying obligation

- 5 a. the obligation is pro tanto discharged if a bank is drawer, maker
6 or acceptor of the instrument and there is no recourse on the instru-
7 ment against the underlying obligor; and
- 8 b. in any other case the obligation is suspended pro tanto until the
9 instrument is due or if it is payable on demand until its presentment.
10 If the instrument is dishonored action may be maintained on either
11 the instrument or the obligation; discharge of the underlying obligor
12 on the instrument also discharges him on the obligation.
- 13 2. The taking in good faith of a check which is not postdated does
14 not of itself so extend the time on the original obligation as to dis-
15 charge a surety.

1 **SEC. 3803. Notice to third party.** Where a defendant is sued for
2 breach of an obligation for which a third person is answerable over
3 under this Article he may give the third person written notice of the
4 litigation, and the person notified may then give similar notice to any
5 other person who is answerable over to him under this Article. If the
6 notice states that the person notified may come in and defend and
7 that if the person notified does not do so he will in any action against
8 him by the person giving the notice be bound by any determination
9 of fact common to the two litigations, then unless after reasonable
10 receipt of the notice the person notified does come in and defend he
11 is so bound.

1 **SEC. 3804. Lost, destroyed or stolen instruments.** The owner of
2 an instrument which is lost, whether by destruction, theft or other-
3 wise, may maintain an action in his own name and recover from any
4 party liable thereon upon due proof of his ownership, the facts which
5 prevent his production of the instrument and its terms. The court
6 may require security indemnifying the defendant against loss by
7 reason of further claims on the instrument.

1 **SEC. 3805. Instruments not payable to order or to bearer.** This
2 Article applies to any instrument whose terms do not preclude trans-
3 fer and which is otherwise negotiable within this Article but which
4 is not payable to order or to bearer, except that there can be no holder
5 in due course of such an instrument.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

1 **SEC. 4101. Short title.** This Article shall be known and may be
2 cited as Uniform Commercial Code—Bank Deposits and Collections.

1 **SEC. 4102. Applicability.**

2 1. To the extent that items within this Article are also within the
3 scope of Articles 3 and 8, they are subject to the provisions of those
4 Articles. In the event of conflict the provisions of this Article govern
5 those of Article 3 but the provisions of Article 8 govern those of this
6 Article.

7 2. The liability of a bank for action or nonaction with respect to

8 any item handled by it for purposes of presentment, payment or col-
9 lection is governed by the law of the place where the bank is located.

1 **SEC. 4103. Variation by agreement—measure of damages—cer-**
2 **tain action constituting ordinary care.**

3 1. The effect of the provisions of this Article may be varied by
4 agreement except that no agreement can disclaim a bank's responsi-
5 bility for its own lack of good faith or failure to exercise ordinary
6 care or can limit the measure of damages for such lack or failure;
7 but the parties may by agreement determine the standards by which
8 such responsibility is to be measured if such standards are not mani-
9 festly unreasonable.

10 2. Federal Reserve regulations and operating letters, clearing
11 house rules, and the like, have the effect of agreements under sub-
12 section 1, whether or not specifically assented to by all parties inter-
13 ested in items handled.

14 3. Action or nonaction approved by this Article or pursuant to
15 Federal Reserve regulations or operating letters constitutes the exer-
16 cise of ordinary care and, in the absence of special instructions,
17 action or nonaction consistent with clearing house rules and the like
18 or with a general banking usage not disapproved by this Article,
19 prima facie constitutes the exercise of ordinary care.

20 4. The specification or approval of certain procedures by this Arti-
21 cle does not constitute disapproval of other procedures which may be
22 reasonable under the circumstances.

23 5. The measure of damages for failure to exercise ordinary care in
24 handling an item is the amount of the item reduced by an amount
25 which could not have been realized by the use of ordinary care, and
26 where there is bad faith it includes other damages, if any, suffered
27 by the party as a proximate consequence.

1 **SEC. 4104. Definitions and index of definitions.**

2 1. In this Article unless the context otherwise requires

3 a. "Account" means any account with a bank and includes a check-
4 ing, time, interest or savings account;

5 b. "Afternoon" means the period of a day between noon and mid-
6 night;

7 c. "Banking day" means that part of any day on which a bank is
8 open to the public for carrying on substantially all of its banking
9 functions;

10 d. "Clearing house" means any association of banks or other pay-
11 ors regularly clearing items;

12 e. "Customer" means any person having an account with a bank or
13 for whom a bank has agreed to collect items and includes a bank
14 carrying an account with another bank;

15 f. "Documentary draft" means any negotiable or nonnegotiable
16 draft with accompanying documents, securities or other papers to be
17 delivered against honor of the draft;

18 g. "Item" means any instrument for the payment of money even
19 though it is not negotiable but does not include money;

20 h. "Midnight deadline" with respect to a bank is midnight on its
21 next banking day following the banking day on which it receives the
22 relevant item or notice or from which the time for taking action com-

- 23 mences to run, whichever is later;
- 24 *i.* "Properly payable" includes the availability of funds for pay-
- 25 ment at the time of decision to pay or dishonor;
- 26 *j.* "Settle" means to pay in cash, by clearing house settlement, in
- 27 a charge or credit or by remittance, or otherwise as instructed. A
- 28 settlement may be either provisional or final;
- 29 *k.* "Suspends payments" with respect to a bank means that it has
- 30 been closed by order of the supervisory authorities, that a public
- 31 officer has been appointed to take it over or that it ceases or refuses to
- 32 make payments in the ordinary course of business.
- 33 2. Other definitions applying to this Article and the sections in
- 34 which they appear are:
- | | |
|------------------------|---------------|
| 35 "Collecting bank" | Section 4105. |
| 36 "Depositary bank" | Section 4105. |
| 37 "Intermediary bank" | Section 4105. |
| 38 "Payor bank" | Section 4105. |
| 39 "Presenting bank" | Section 4105. |
| 40 "Remitting bank" | Section 4105. |
- 41 3. The following definitions in other Articles apply to this Article:
- | | |
|-----------------------------|---------------|
| 42 "Acceptance" | Section 3410. |
| 43 "Certificate of deposit" | Section 3104. |
| 44 "Certification" | Section 3411. |
| 45 "Check" | Section 3104. |
| 46 "Draft" | Section 3104. |
| 47 "Holder in due course" | Section 3302. |
| 48 "Notice of dishonor" | Section 3508. |
| 49 "Presentment" | Section 3504. |
| 50 "Protest" | Section 3509. |
| 51 "Secondary party" | Section 3102. |
- 52 4. In addition Article 1 contains general definitions and principles
- 53 of construction and interpretation applicable throughout this Article.
- 1 SEC. 4105. "Depositary bank"—"intermediary bank"—"collecting
- 2 bank"—"payor bank"—"presenting bank"—"remitting bank". In
- 3 this Article unless the context otherwise requires:
- 4 *a.* "Depositary bank" means the first bank to which an item is
- 5 transferred for collection even though it is also the payor bank;
- 6 *b.* "Payor bank" means a bank by which an item is payable as
- 7 drawn or accepted;
- 8 *c.* "Intermediary bank" means any bank to which an item is trans-
- 9 ferred in course of collection except the depositary or payor bank;
- 10 *d.* "Collecting bank" means any bank handling the item for collec-
- 11 tion except the payor bank;
- 12 *e.* "Presenting bank" means any bank presenting an item except a
- 13 payor bank;
- 14 *f.* "Remitting bank" means any payor or intermediary bank remit-
- 15 ting for an item.
- 1 SEC. 4106. **Separate office of a bank.** A separate office of a bank
- 2 is a separate bank for the purpose of computing the time within
- 3 which and determining the place at or to which action may be taken
- 4 or notices or orders shall be given under this Article and under
- 5 Article 3.

1 **SEC. 4107. Time of receipt of items.**

2 1. For the purpose of allowing time to process items, prove bal-
 3 ances and make the necessary entries on its books to determine its
 4 position for the day, a bank may fix an afternoon hour of two P.M.
 5 or later as a cutoff hour for the handling of money and items and the
 6 making of entries on its books.

7 2. Any item or deposit of money received on any day after a cut-
 8 off hour so fixed or after the close of the banking day may be treated
 9 as being received at the opening of the next banking day.

1 **SEC. 4108. Delays.**

2 1. Unless otherwise instructed, a collecting bank in a good faith
 3 effort to secure payment may, in the case of specific items and with
 4 or without the approval of any person involved, waive, modify or
 5 extend time limits imposed or permitted by this Act for a period not
 6 in excess of an additional banking day without discharge of secondary
 7 parties and without liability to its transferor or any prior party.

8 2. Delay by a collecting bank or payor bank beyond time limits
 9 prescribed or permitted by this Act or by instructions is excused if
 10 caused by interruption of communication facilities, suspension of pay-
 11 ments by another bank, war, emergency conditions or other circum-
 12 stances beyond the control of the bank provided it exercises such
 13 diligence as the circumstances require.

1 **SEC. 4109. Process of posting.** The "process of posting" means
 2 the usual procedure followed by a payor bank in determining to pay
 3 an item and in recording the payment including one or more of the
 4 following or other steps as determined by the bank:

- 5 a. verification of any signature;
 6 b. ascertaining that sufficient funds are available;
 7 c. affixing a "paid" or other stamp;
 8 d. entering a charge or entry to a customer's account;
 9 e. correcting or reversing an entry or erroneous action with respect
 10 to the item.

PART 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

1 **SEC. 4201. Presumption and duration of agency status of collect-**
 2 **ing banks and provisional status of credits—applicability of Article—**
 3 **item indorsed "pay any bank".**

4 1. Unless a contrary intent clearly appears and prior to the time
 5 that a settlement given by a collecting bank for an item is or becomes
 6 final (subsection 3 of Section 4211 and Sections 4212 and 4213) the
 7 bank is an agent or subagent of the owner of the item and any settle-
 8 ment given for the item is provisional. This provision applies regard-
 9 less of the form of indorsement or lack of indorsement and even
 10 though credit given for the item is subject to immediate withdrawal
 11 as of right or is in fact withdrawn; but the continuance of ownership
 12 of an item by its owner and any rights of the owner to proceeds of
 13 the item are subject to rights of a collecting bank such as those re-
 14 sulting from outstanding advances on the item and valid rights of
 15 setoff. When an item is handled by banks for purposes of present-

16 ment, payment and collection, the relevant provisions of this Article
17 apply even though action of parties clearly establishes that a par-
18 ticular bank has purchased the item and is the owner of it.

19 2. After an item has been indorsed with the words "pay any bank"
20 or the like, only a bank may acquire the rights of a holder

21 a. until the item has been returned to the customer initiating col-
22 lection; or

23 b. until the item has been specially indorsed by a bank to a person
24 who is not a bank.

1 **SEC. 4202. Responsibility for collection—when action seasonable.**

2 1. A collecting bank must use ordinary care in

3 a. presenting an item or sending it for presentment; and

4 b. sending notice of dishonor or nonpayment or returning an item
5 other than a documentary draft to the bank's transferor or directly
6 to the depositary bank under subsection 2 of Section 4212 after learn-
7 ing that the item has not been paid or accepted, as the case may be;
8 and

9 c. settling for an item when the bank receives final settlement; and

10 d. making or providing for any necessary protest; and

11 e. notifying its transferor of any loss or delay in transit within a
12 reasonable time after discovery thereof.

13 2. A collecting bank taking proper action before its midnight dead-
14 line following receipt of an item, notice or payment acts seasonably;
15 taking proper action within a reasonably longer time may be season-
16 able but the bank has the burden of so establishing.

17 3. Subject to subsection 1 a, a bank is not liable for the insolvency,
18 neglect, misconduct, mistake or default of another bank or person or
19 for loss or destruction of an item in transit or in the possession of
20 others.

1 **SEC. 4203. Effect of instructions.** Subject to the provisions of
2 Article 3 concerning conversion of instruments (Section 3419) and the
3 provisions of both Article 3 and this Article concerning restrictive
4 indorsements only a collecting bank's transferor can give instruc-
5 tions which affect the bank or constitute notice to it and a collecting
6 bank is not liable to prior parties for any action taken pursuant to
7 such instructions or in accordance with any agreement with its trans-
8 feror.

1 **SEC. 4204. Methods of sending and presenting—sending direct to
2 payor bank.**

3 1. A collecting bank must send items by reasonably prompt method
4 taking into consideration any relevant instructions, the nature of the
5 item, the number of such items on hand, and the cost of collection
6 involved and the method generally used by it or others to present
7 such items.

8 2. A collecting bank may send

9 a. any item direct to the payor bank;

10 b. any item to any nonbank payor if authorized by its transferor;
11 and

12 c. any item other than documentary drafts to any nonbank payor,
13 if authorized by Federal Reserve regulation or operating letter, clear-
14 ing house rule or the like.

15 3. Presentment may be made by a presenting bank at a place where
16 the payor bank has requested that presentment be made.

1 **SEC. 4205. Supplying missing indorsement—no notice from prior**
2 **indorsement.**

3 1. A depository bank which has taken an item for collection may
4 supply any indorsement of the customer which is necessary to title
5 unless the item contains the words "payee's indorsement required"
6 or the like. In the absence of such a requirement a statement placed
7 on the item by the depository bank to the effect that the item was
8 deposited by a customer or credited to his account is effective as the
9 customer's indorsement.

10 2. An intermediary bank, or payor bank which is not a depository
11 bank, is neither given notice nor otherwise affected by a restrictive
12 indorsement of any person except the bank's immediate transferor.

1 **SEC. 4206. Transfer between banks.** Any agreed method which
2 identifies the transferor bank is sufficient for the item's further trans-
3 fer to another bank.

1 **SEC. 4207. Warranties of customer and collecting bank on trans-**
2 **fer or presentment of items—time for claims.**

3 1. Each customer or collecting bank who obtains payment or ac-
4 ceptance of an item and each prior customer and collecting bank war-
5 rants to the payor bank or other payor who in good faith pays or
6 accepts the item that

7 *a.* he has a good title to the item or is authorized to obtain pay-
8 ment or acceptance on behalf of one who has a good title; and

9 *b.* he has no knowledge that the signature of the maker or drawer
10 is unauthorized, except that this warranty is not given by any cus-
11 tomer or collecting bank that is a holder in due course and acts in
12 good faith

13 *i.* to a maker with respect to the maker's own signature; or

14 *ii.* to a drawer with respect to the drawer's own signature, whether
15 or not the drawer is also the drawee; or

16 *iii.* to an acceptor of an item if the holder in due course took the
17 item after the acceptance or obtained the acceptance without knowl-
18 edge that the drawer's signature was unauthorized; and

19 *c.* the item has not been materially altered, except that this war-
20 ranty is not given by any customer or collecting bank that is a holder
21 in due course and acts in good faith

22 *i.* to the maker of a note; or

23 *ii.* to the drawer of a draft whether or not the drawer is also the
24 drawee; or

25 *iii.* to the acceptor of an item with respect to an alteration made
26 prior to the acceptance if the holder in due course took the item after
27 the acceptance, even though the acceptance provided "payable as
28 originally drawn" or equivalent terms; or

29 *iv.* to the acceptor of an item with respect to an alteration made
30 after the acceptance.

31 2. Each customer and collecting bank who transfers an item and
32 receives a settlement or other consideration for it warrants to his
33 transferee and to any subsequent collecting bank who takes the item
34 in good faith that

35 a. he has a good title to the item or is authorized to obtain pay-
36 ment or acceptance on behalf of one who has a good title and the
37 transfer is otherwise rightful; and

38 b. all signatures are genuine or authorized; and

39 c. the item has not been materially altered; and

40 d. no defense of any party is good against him; and

41 e. he has no knowledge of any insolvency proceeding instituted
42 with respect to the maker or acceptor or the drawer of an unaccepted
43 item.

44 In addition each customer and collecting bank so transferring an
45 item and receiving a settlement or other consideration engages that
46 upon dishonor and any necessary notice of dishonor and protest he
47 will take up the item.

48 3. The warranties and the engagement to honor set forth in the
49 two preceding subsections arise notwithstanding the absence of
50 indorsement or words of guaranty or warranty in the transfer or
51 presentment and a collecting bank remains liable for their breach
52 despite remittance to its transferor. Damages for breach of such
53 warranties or engagement to honor shall not exceed the considera-
54 tion received by the customer or collecting bank responsible plus
55 finance charges and expenses related to the item, if any.

56 4. Unless a claim for breach of warranty under this section is made
57 within a reasonable time after the person claiming learns of the
58 breach, the person liable is discharged to the extent of any loss caused
59 by the delay in making claim.

1 **SEC. 4208. Security interest of collecting bank in items, accom-**
2 **panying documents and proceeds.**

3 1. A bank has a security interest in an item and any accompanying
4 documents or the proceeds of either

5 a. in case of an item deposited in an account to the extent to which
6 credit given for the item has been withdrawn or applied;

7 b. in case of an item for which it has given credit available for
8 withdrawal as of right, to the extent of the credit given whether or
9 not the credit is drawn upon and whether or not there is a right of
10 charge-back; or

11 c. if it makes an advance on or against the item.

12 2. When credit which has been given for several items received at
13 one time or pursuant to a single agreement is withdrawn or applied
14 in part the security interest remains upon all the items, any accom-
15 panying documents or the proceeds of either. For the purpose of this
16 section, credits first given are first withdrawn.

17 3. Receipt by a collecting bank of a final settlement for an item is
18 a realization on its security interest in the item, accompanying docu-
19 ments and proceeds. To the extent and so long as the bank does not
20 receive final settlement for the item or give up possession of the item
21 or accompanying documents for purposes other than collection, the
22 security interest continues and is subject to the provisions of Article
23 9 except that

24 a. no security agreement is necessary to make the security interest
25 enforceable (subsection 1 b of Section 9203); and

26 b. no filing is required to perfect the security interest; and

27 c. the security interest has priority over conflicting perfected se-
28 curity interests in the item, accompanying documents or proceeds.

1 **SEC. 4209. When bank gives value for purposes of holder in**
2 **due course.** For purposes of determining its status as a holder in
3 due course, the bank has given value to the extent that it has a
4 security interest in an item provided that the bank otherwise com-
5 plies with the requirements of Section 3302 on what constitutes a
6 holder in due course.

1 **SEC. 4210. Presentment by notice of item not payable by, through**
2 **or at a bank—liability of secondary parties.**

3 1. Unless otherwise instructed, a collecting bank may present an
4 item not payable by, through or at a bank by sending to the party to
5 accept or pay a written notice that the bank holds the item for ac-
6 ceptance or payment. The notice must be sent in time to be received
7 on or before the day when presentment is due and the bank must
8 meet any requirement of the party to accept or pay under Section
9 3505 by the close of the bank's next banking day after it knows of
10 the requirement.

11 2. Where presentment is made by notice and neither honor nor
12 request for compliance with a requirement under Section 3505 is
13 received by the close of business on the day after maturity or in the
14 case of demand items by the close of business on the third banking
15 day after notice was sent, the presenting bank may treat the item as
16 dishonored and charge any secondary party by sending him notice of
17 the facts.

1 **SEC. 4211. Media of remittance—provisional and final settlement**
2 **in remittance cases.**

3 1. A collecting bank may take in settlement of an item
4 a. a check of the remitting bank or of another bank on any bank
5 except the remitting bank; or

6 b. a cashier's check or similar primary obligation of a remitting
7 bank which is a member of or clears through a member of the same
8 clearing house or group as the collecting bank; or

9 c. appropriate authority to charge an account of the remitting
10 bank or of another bank with the collecting bank; or

11 d. if the item is drawn upon or payable by a person other than a
12 bank, a cashier's check, certified check or other bank check or obliga-
13 tion.

14 2. If before its midnight deadline the collecting bank properly dis-
15 honors a remittance check or authorization to charge on itself or
16 presents or forwards for collection a remittance instrument of or on
17 another bank which is of a kind approved by subsection 1 or has not
18 been authorized by it, the collecting bank is not liable to prior parties
19 in the event of the dishonor of such check, instrument or authoriza-
20 tion.

21 3. A settlement for an item by means of a remittance instrument
22 or authorization to charge is or becomes a final settlement as to both
23 the person making and the person receiving the settlement

24 a. if the remittance instrument or authorization to charge is of a
25 kind approved by subsection 1 or has not been authorized by the per-
26 son receiving the settlement and in either case the person receiving

27 the settlement acts seasonably before its midnight deadline in pre-
28 senting, forwarding for collection or paying the instrument or author-
29 ization,—at the time the remittance instrument or authorization is
30 finally paid by the payor by which it is payable;

31 *b.* if the person receiving the settlement has authorized remittance
32 by a nonbank check or obligation or by a cashier's check or similar
33 primary obligation of or a check upon the payor or other remitting
34 bank which is not of a kind approved by subsection 1 *b.*,—at the time
35 of receipt of such remittance check or obligation; or

36 *c.* if in a case not covered by subparagraphs *a* or *b* the person re-
37 ceiving the settlement fails to seasonably present, forward for collec-
38 tion, pay or return a remittance instrument or authorization to it to
39 charge before its midnight deadline,—at such midnight deadline.

1 **SEC. 4212. Right of charge-back or refund.**

2 1. If a collecting bank has made provisional settlement with its
3 customer for an item and itself fails by reason of dishonor, suspen-
4 sion of payments by a bank or otherwise to receive a settlement for
5 the item which is or becomes final, the bank may revoke the settle-
6 ment given by it, charge back the amount of any credit given for the
7 item to its customer's account or obtain refund from its customer
8 whether or not it is able to return the items if by its midnight dead-
9 line or within a longer reasonable time after it learns the facts it
10 returns the item or sends notification of the facts. These rights to
11 revoke, charge-back and obtain refund terminate if and when a settle-
12 ment for the item received by the bank is or becomes final (subsection
13 3 of Section 4211 and subsections 2 and 3 of Section 4213).

14 2. Within the time and manner prescribed by this section and Sec-
15 tion 4301, an intermediary or payor bank, as the case may be, may
16 return an unpaid item directly to the depositary bank and may send
17 for collection a draft on the depositary bank and obtain reimburse-
18 ment. In such case, if the depositary bank has received provisional
19 settlement for the item, it must reimburse the bank drawing the
20 draft and any provisional credits for the item between banks shall
21 become and remain final.

22 3. A depositary bank which is also the payor may charge-back the
23 amount of an item to its customer's account or obtain refund in ac-
24 cordance with the section governing return of an item received by a
25 payor bank for credit on its books (Section 4301).

26 4. The right to charge-back is not affected by

27 *a.* prior use of the credit given for the item; or

28 *b.* failure by any bank to exercise ordinary care with respect to
29 the item but any bank so failing remains liable.

30 5. A failure to charge-back or claim refund does not affect other
31 rights of the bank against the customer or any other party.

32 6. If credit is given in dollars as the equivalent of the value of an
33 item payable in a foreign currency the dollar amount of any charge-
34 back or refund shall be calculated on the basis of the buying sight
35 rate for the foreign currency prevailing on the day when the person
36 entitled to the charge-back or refund learns that it will not receive
37 payment in ordinary course.

1 **SEC. 4213. Final payment of item by payor bank—when provi-
2 sional debits and credits become final—when certain credits become**

3 available for withdrawal.

4 1. An item is finally paid by a payor bank when the bank has done
5 any of the following, whichever happens first:

6 a. paid the item in cash; or

7 b. settled for the item without reserving a right to revoke the set-
8 tlement and without having such right under statute, clearing house
9 rule or agreement; or

10 c. completed the process of posting the item to the indicated ac-
11 count of the drawer, maker or other person to be charged therewith;
12 or

13 d. made a provisional settlement for the item and failed to revoke
14 the settlement in the time and manner permitted by statute, clear-
15 ing house rule or agreement.

16 Upon a final payment under subparagraphs *b*, *c* or *d* the payor bank
17 shall be accountable for the amount of the item.

18 2. If provisional settlement for an item between the presenting and
19 payor banks is made through a clearing house or by debits or credits
20 in an account between them, then to the extent that provisional
21 debits or credits for the item are entered in accounts between the
22 presenting and payor banks or between the presenting and successive
23 prior collecting banks seriatim, they become final upon final payment
24 of the item by the payor bank.

25 3. If a collecting bank receives a settlement for an item which is
26 or becomes final (subsection 3 of Section 4211, subsection 2 of Section
27 4213) the bank is accountable to its customer for the amount of the
28 item and any provisional credit given for the item in an account with
29 its customer becomes final.

30 4. Subject to any right of the bank to apply the credit to an obli-
31 gation of the customer, credit given by a bank for an item in an ac-
32 count with its customer becomes available for withdrawal as of right

33 a. in any case where the bank has received a provisional settlement
34 for the item,—when such settlement becomes final and the bank has
35 had a reasonable time to learn that the settlement is final;

36 b. in any case where the bank is both a depository bank and a
37 payor bank and the item is finally paid,—at the opening of the bank's
38 second banking day following receipt of the item.

39 5. A deposit of money in a bank is final when made but, subject to
40 any right of the bank to apply the deposit to an obligation of the
41 customer, the deposit becomes available for withdrawal as of right
42 at the opening of the bank's next banking day following receipt of
43 the deposit.

1 **SEC. 4214. Insolvency and preference.**

2 1. Any item in or coming into the possession of a payor or collect-
3 ing bank which suspends payment and which item is not finally paid
4 shall be returned by the receiver, trustee or agent in charge of the
5 closed bank to the presenting bank or the closed bank's customer.

6 2. If a payor bank finally pays an item and suspends payments
7 without making a settlement for the item with its customer or the
8 presenting bank which settlement is or becomes final, the owner of
9 the item has a preferred claim against the payor bank.

10 3. If a payor bank gives or a collecting bank gives or receives a
11 provisional settlement for an item and thereafter suspends payments,

12 the suspension does not prevent or interfere with the settlement be-
 13 coming final if such finality occurs automatically upon the lapse of
 14 certain time or the happening of certain events (subsection 3 of Sec-
 15 tion 4211, subsections 1 *d*, 2 and 3 of Section 4213).

16 4. If a collecting bank receives from subsequent parties settlement
 17 for an item which settlement is or becomes final and suspends pay-
 18 ments without making a settlement for the item with its customer
 19 which is or becomes final, the owner of the item has a preferred claim
 20 against such collecting bank.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

1 **SEC. 4301. Deferred posting—recovery of payment by return of**
 2 **items—time of dishonor.**

3 1. Where an authorized settlement for a demand item (other than
 4 a documentary draft) received by a payor bank otherwise than for
 5 immediate payment over the counter has been made before midnight
 6 of the banking day of receipt the payor bank may revoke the settle-
 7 ment and recover any payment if before it has made final payment
 8 (subsection 1 of Section 4213) and before its midnight deadline it

9 *a.* returns the item; or
 10 *b.* sends written notice of dishonor or nonpayment if the item is
 11 held for protest or is otherwise unavailable for return and the item or
 12 notice includes the reason for dishonor.

13 2. If a demand item is received by a payor bank for credit on its
 14 books it may return such item or send notice of dishonor and may
 15 revoke any credit given or recover the amount thereof withdrawn by
 16 its customer, if it acts within the time limit and in the manner speci-
 17 fied in the preceding subsection.

18 3. Unless previous notice of dishonor has been sent an item is dis-
 19 honored at the time when for purposes of dishonor it is returned or
 20 notice sent in accordance with this section.

21 4. An item is returned:

22 *a.* as to an item received through a clearing house, when it is de-
 23 livered to the presenting or last collecting bank or to the clearing
 24 house or is sent or delivered in accordance with its rules; or

25 *b.* in all other cases, when it is sent or delivered to the bank's cus-
 26 tomer or transferor or pursuant to his instructions.

1 **SEC. 4302. Payor bank's responsibility for late return of item.**

2 In the absence of a valid defense such as breach of a presentment
 3 warranty (subsection 1 of Section 4207), settlement effected or the
 4 like, if an item is presented on and received by a payor bank the bank
 5 is accountable for the amount of

6 *a.* a demand item other than a documentary draft whether proper-
 7 ly payable or not if the bank, in any case where it is not also the
 8 depositary bank, retains the item beyond midnight of the banking
 9 day of receipt without settling for it or, regardless of whether it is
 10 also the depositary bank, does not pay or return the item or send
 11 notice of dishonor until after its midnight deadline; or

12 *b.* Any other properly payable item unless within the time allowed

13 for acceptance or payment of that item the bank either accepts or
14 pays the item or returns it and accompanying documents.

1 **SEC. 4303. When items subject to notice, stop order, legal process**
2 **or setoff—order in which items may be charged or certified.**

3 1. Any knowledge, notice or stop order received by, legal process
4 served upon or setoff exercised by a payor bank, whether or not effec-
5 tive under other rules of law to terminate, suspend or modify the
6 bank's right or duty to pay an item or to charge its customer's account
7 for the item, comes too late to so terminate, suspend or modify such
8 right or duty if the knowledge, notice, stop order or legal process is
9 received or served and a reasonable time for the bank to act thereon
10 expires or the setoff is exercised after the bank has done any of the
11 following:

12 *a.* accepted or certified the item;

13 *b.* paid the item in cash;

14 *c.* settled for the item without reserving a right to revoke the set-
15 tlement and without having such right under statute, clearing house
16 rule or agreement;

17 *d.* completed the process of posting the item to the indicated ac-
18 count of the drawer, maker or other person to be charged therewith
19 or otherwise has evidenced by examination of such indicated account
20 and by action its decision to pay the item; or

21 *e.* become accountable for the amount of the item under subsection
22 1 *d* of Section 4213 and Section 4302 dealing with the payor bank's
23 responsibility for late return of items.

24 2. Subject to the provisions of subsection 1 items may be accepted,
25 paid, certified or charged to the indicated account of its customer in
26 any order convenient to the bank.

PART 4

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

1 **SEC. 4401. When bank may charge customer's account.**

2 1. As against its customer, a bank may charge against his account
3 any item which is otherwise properly payable from that account even
4 though the charge creates an overdraft.

5 2. A bank which in good faith makes payment to a holder may
6 charge the indicated account of its customer according to

7 *a.* the original tenor of his altered item; or

8 *b.* the tenor of his completed item, even though the bank knows
9 the item has been completed unless the bank has notice that the com-
10 pletion was improper.

1 **SEC. 4402. Bank's liability to customer for wrongful dishonor.** A
2 payor bank is liable to its customer for damages proximately caused
3 by the wrongful dishonor of an item. When the dishonor occurs
4 through mistake liability is limited to actual damages proved. If so
5 proximately caused and proved damages may include damages for an
6 arrest or prosecution of the customer or other consequential damages.
7 Whether any consequential damages are proximately caused by the
8 wrongful dishonor is a question of fact to be determined in each case.

1 **SEC. 4403. Customer's right to stop payment—burden of proof of**
2 **loss.**

3 1. A customer may by order to his bank stop payment of any item
4 payable for his account but the order must be received at such time
5 and in such manner as to afford the bank a reasonable opportunity to
6 act on it prior to any action by the bank with respect to the item
7 described in Section 4303.

8 2. An oral order is binding upon the bank only for fourteen calen-
9 dar days unless confirmed in writing within that period. A written
10 order is effective for only six months unless renewed in writing.

11 3. The burden of establishing the fact and amount of loss resulting
12 from the payment of an item contrary to a binding stop payment
13 order is on the customer.

1 **SEC. 4404. Bank not obligated to pay check more than six months**
2 **old.** A bank is under no obligation to a customer having a checking
3 account to pay a check, other than a certified check, which is pre-
4 sented more than six months after its date, but it may charge its
5 customer's account for a payment made thereafter in good faith.

1 **SEC. 4405. Death or incompetence of customer.**

2 1. A payor or collecting bank's authority to accept, pay or collect
3 an item or to account for proceeds of its collection if otherwise effec-
4 tive is not rendered ineffective by incompetence of a customer of
5 either bank existing at the time the item is issued or its collection is
6 undertaken if the bank does not know of an adjudication of incom-
7 petence. Neither death nor incompetence of a customer revokes such
8 authority to accept, pay, collect or account until the bank knows of
9 the fact of death or of an adjudication of incompetence and has
10 reasonable opportunity to act on it.

11 2. Even with knowledge a bank may for ten days after the date of
12 death pay or certify checks drawn on or prior to that date unless
13 ordered to stop payment by a person claiming an interest in the
14 account.

1 **SEC. 4406. Customer's duty to discover and report unauthorized**
2 **signature or alteration.**

3 1. When a bank sends to its customer a statement of account ac-
4 companied by items paid in good faith in support of the debit entries
5 or holds the statement and items pursuant to a request or instruc-
6 tions of its customer or otherwise in a reasonable manner makes the
7 statement and items available to the customer, the customer must
8 exercise reasonable care and promptness to examine the statement
9 and items to discover his unauthorized signature or any alteration on
10 an item and must notify the bank promptly after discovery thereof.

11 2. If the bank establishes that the customer failed with respect to
12 an item to comply with the duties imposed on the customer by sub-
13 section 1 the customer is precluded from asserting against the bank

14 a. his unauthorized signature or any alteration on the item if the
15 bank also establishes that it suffered a loss by reason of such failure;
16 and

17 b. an unauthorized signature or alteration by the same wrongdoer
18 on any other item paid in good faith by the bank after the first item
19 and statement was available to the customer for a reasonable period

20 not exceeding fourteen calendar days and before the bank receives
 21 notification from the customer of any such unauthorized signature or
 22 alteration.

23 3. The preclusion under subsection 2 does not apply if the cus-
 24 tomer establishes lack of ordinary care on the part of the bank in
 25 paying the item(s).

26 4. Without regard to care or lack of care of either the customer or
 27 the bank a customer who does not within one year from the time the
 28 statement and items are made available to the customer (subsection
 29 1) discover and report his unauthorized signature or any alteration
 30 on the face or back of the item or does not within three years from
 31 that time discover and report any unauthorized indorsement is pre-
 32 cluded from asserting against the bank such unauthorized signature
 33 or indorsement or such alteration.

34 5. If under this section a payor bank has a valid defense against a
 35 claim of a customer upon or resulting from payment of an item and
 36 waives or fails upon request to assert the defense the bank may not
 37 assert against any collecting bank or other prior party presenting or
 38 transferring the item a claim based upon the unauthorized signature
 39 or alteration giving rise to the customer's claim.

1 **SEC. 4407. Payor bank's right to subrogation on improper pay-**
 2 **ment.** If a payor bank has paid an item over the stop payment order
 3 of the drawer or maker or otherwise under circumstances giving a
 4 basis for objection by the drawer or maker, to prevent unjust enrich-
 5 ment and only to the extent necessary to prevent loss to the bank by
 6 reason of its payment of the item, the payor bank shall be subrogated
 7 to the rights

8 a. of any holder in due course on the item against the drawer or
 9 maker; and

10 b. of the payee or any other holder of the item against the drawer
 11 or maker either on the item or under the transaction out of which the
 12 item arose; and

13 c. of the drawer or maker against the payee or any other holder of
 14 the item with respect to the transaction out of which the item arose.

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

1 **SEC. 4501. Handling of documentary drafts—duty to send for**
 2 **presentment and to notify customer of dishonor.** A bank which
 3 takes a documentary draft for collection must present or send the
 4 draft and accompanying documents for presentment and upon learn-
 5 ing that the draft has not been paid or accepted in due course must
 6 seasonably notify its customer of such fact even though it may have
 7 discounted or brought the draft or extended credit available for
 8 withdrawal as of right.

1 **SEC. 4502. Presentment of "on arrival" drafts.** When a draft or
 2 the relevant instructions require presentment "on arrival", "when
 3 goods arrive" or the like, the collecting bank need not present until
 4 in its judgment a reasonable time for arrival of the goods has ex-
 5 pired. Refusal to pay or accept because the goods have not arrived

6 is not dishonor; the bank must notify its transferor of such refusal
 7 but need not present the draft again until it is instructed to do so or
 8 learns of the arrival of the goods.

1 **SEC. 4503. Responsibility of presenting bank for documents and**
 2 **goods—report of reasons for dishonor—referee in case of need.** Un-
 3 less otherwise instructed and except as provided in Article 5 a bank
 4 presenting a documentary draft

5 *a.* must deliver the documents to the drawee on acceptance of the
 6 draft if it is payable more than three days after presentment; other-
 7 wise, only on payment; and

8 *b.* upon dishonor, either in the case of presentment for acceptance
 9 or presentment for payment, may seek and follow instructions from
 10 any referee in case of need designated in the draft or if the present-
 11 ing bank does not choose to utilize his services it must use diligence
 12 and good faith to ascertain the reason for dishonor, must notify its
 13 transferor of the dishonor and of the results of its effort to ascertain
 14 the reasons therefor and must request instructions.

15 But the presenting bank is under no obligation with respect to goods
 16 represented by the documents except to follow any reasonable in-
 17 structions seasonably received; it has a right to reimbursement for
 18 any expense incurred in following instructions and to prepayment of
 19 or indemnity for such expenses.

1 **SEC. 4504. Privilege of presenting bank to deal with goods—se-**
 2 **curity interest for expenses.**

3 1. A presenting bank which, following the dishonor of a documen-
 4 tary draft, has seasonably requested instructions but does not receive
 5 them within a reasonable time may store, sell, or otherwise deal with
 6 the goods in any reasonable manner.

7 2. For its reasonable expenses incurred by action under subsection
 8 1 the presenting bank has a lien upon the goods or their proceeds,
 9 which may be foreclosed in the same manner as an unpaid seller's
 10 lien.

ARTICLE 5

LETTERS OF CREDIT

1 **SEC. 5101. Short title.** This Article shall be known and may be
 2 cited as Uniform Commercial Code—Letters of Credit.

1 **SEC. 5102. Scope.**

2 1. This Article applies

3 *a.* to a credit issued by a bank if the credit requires a documentary
 4 draft or a documentary demand for payment; and

5 *b.* to a credit issued by a person other than a bank if the credit
 6 requires that the draft or demand for payment be accompanied by a
 7 document of title; and

8 *c.* to a credit issued by a bank or other person if the credit is not
 9 within subparagraphs *a* or *b* but conspicuously states that it is a
 10 letter of credit or is conspicuously so entitled.

11 2. Unless the engagement meets the requirements of subsection 1,
 12 this Article does not apply to engagements to make advances or to
 13 honor drafts or demands for payment, to authorities to pay or pur-

14 chase, to guarantees or to general agreements.

15 3. This Article deals with some but not all of the rules and con-
 16 cepts of letters of credit as such rules or concepts have developed
 17 prior to this Act or may hereafter develop. The fact that this Article
 18 states a rule does not by itself require, imply or negate application of
 19 the same or a converse rule to a situation not provided for or to a
 20 person not specified by this Article.

1 SEC. 5103. **Definitions.**

2 1. In this Article unless the context otherwise requires

3 a. "Credit" or "letter of credit" means an engagement by a bank
 4 or other person made at the request of a customer and of a kind
 5 within the scope of this Article (Section 5102) that the issuer will
 6 honor drafts or other demands for payment upon compliance with
 7 the conditions specified in the credit. A credit may be either revocable
 8 or irrevocable. The engagement may be either an agreement to honor
 9 or a statement that the bank or other person is authorized to honor.

10 b. A "documentary draft" or a "documentary demand for pay-
 11 ment" is one honor of which is conditioned upon the presentation of a
 12 document or documents. "Document" means any paper including
 13 document of title, security, invoice, certificate, notice of default and
 14 the like.

15 c. An "issuer" is a bank or other person issuing a credit.

16 d. A "beneficiary" of a credit is a person who is entitled under its
 17 terms to draw or demand payment.

18 e. An "advising bank" is a bank which gives notification of the
 19 issuance of a credit by another bank.

20 f. A "confirming bank" is a bank which engages either that it will
 21 itself honor a credit already issued by another bank or that such a
 22 credit will be honored by the issuer or a third bank.

23 g. A "customer" is a buyer or other person who causes an issuer to
 24 issue a credit. The term also includes a bank which procures issu-
 25 ance or confirmation on behalf of that bank's customer.

26 2. Other definitions applying to this Article and the sections in
 27 which they appear are:

28 "Notation of Credit". Section 5108.

29 "Presenter". Section 5112 sub. 3.

30 3. Definitions in other Articles applying to this Article and the sec-
 31 tions in which they appear are:

32 "Accept" or "Acceptance". Section 3410.

33 "Contract for sale". Section 2106.

34 "Draft". Section 3104.

35 "Holder in due course". Section 3302.

36 "Midnight deadline". Section 4104.

37 "Security". Section 8102.

38 4. In addition, Article 1 contains general definitions and principles
 39 of construction and interpretation applicable throughout this Article.

1 SEC. 5104. **Formal requirements—signing.**

2 1. Except as otherwise required in subsection 1 c of Section 5102
 3 on scope, no particular form of phrasing is required for a credit. A
 4 credit must be in writing and signed by the issuer and a confirmation
 5 must be in writing and signed by the confirming bank. A modification

6 of the terms of a credit or confirmation must be signed by the issuer
7 or confirming bank.

8 2. A telegram may be a sufficient signed writing if it identifies its
9 sender by an authorized authentication. The authentication may be in
10 code and the authorized naming of the issuer in an advice of credit
11 is a sufficient signing.

1 **SEC. 5105. Consideration.** No consideration is necessary to es-
2 tablish a credit or to enlarge or otherwise modify its terms.

1 **SEC. 5106. Time and effect of establishment of credit.**

2 1. Unless otherwise agreed a credit is established

3 *a.* as regards the customer as soon as a letter of credit is sent to
4 him or the letter of credit or an authorized written advice of its issu-
5 ance is sent to the beneficiary; and

6 *b.* as regards the beneficiary when he receives a letter of credit or
7 an authorized written advice of its issuance.

8 2. Unless otherwise agreed once an irrevocable credit is established
9 as regards the customer it can be modified or revoked only with the
10 consent of the customer and once it is established as regards the
11 beneficiary it can be modified or revoked only with his consent.

12 3. Unless otherwise agreed after a revocable credit is established
13 it may be modified or revoked by the issuer without notice to or con-
14 sent from the customer or beneficiary.

15 4. Notwithstanding any modification or revocation of a revocable
16 credit any person authorized to honor or negotiate under the terms
17 of the original credit is entitled to reimbursement for or honor of any
18 draft or demand for payment duly honored or negotiated before re-
19 ceipt of notice of the modification or revocation and the issuer in turn
20 is entitled to reimbursement from its customer.

1 **SEC. 5107. Advice of credit—confirmation—error in statement of**
2 **terms.**

3 1. Unless otherwise specified an advising bank by advising a credit
4 issued by another bank does not assume any obligation to honor
5 drafts drawn or demands for payment made under the credit but it
6 does assume obligation for the accuracy of its own statement.

7 2. A confirming bank by confirming a credit becomes directly obli-
8 gated on the credit to the extent of its confirmation as though it were
9 its issuer and acquires the rights of an issuer.

10 3. Even though an advising bank incorrectly advises the terms of
11 a credit it has been authorized to advise the credit is established as
12 against the issuer to the extent of its original terms.

13 4. Unless otherwise specified the customer bears as against the
14 issuer all risks of transmission and reasonable translation or inter-
15 pretation of any message relating to a credit.

1 **SEC. 5108. "Notation credit"—exhaustion of credit.**

2 1. A credit which specifies that any person purchasing or paying
3 drafts drawn or demands for payment made under it must note the
4 amount of the draft or demand on the letter or advice of credit is a
5 "notation credit".

6 2. Under a notation credit

7 *a.* a person paying the beneficiary or purchasing a draft or demand
8 for payment from him acquires a right to honor only if the appro-

9 puate notation is made and by transferring or forwarding for honor
10 the documents under the credit such a person warrants to the issuer
11 that the notation has been made; and

12 b. unless the credit or a signed statement that an appropriate nota-
13 tion has been made accompanies the draft or demand for payment
14 the issuer may delay honor until evidence of notation has been pro-
15 cured which is satisfactory to it but its obligation and that of its
16 customer continue for a reasonable time not exceeding thirty days to
17 obtain such evidence.

18 3. If the credit is not a notation credit

19 a. the issuer may honor complying drafts or demands for payment
20 presented to it in the order in which they are presented and is dis-
21 charged pro tanto by honor of any such draft or demand;

22 b. as between competing good faith purchasers of complying drafts
23 or demands the person first purchasing has priority over a subsequent
24 purchaser even though the later purchased draft or demand has been
25 first honored.

1 **SEC. 5109. Issuer's obligation to its customer.**

2 1. An issuer's obligation to its customer includes good faith and
3 observance of any general banking usage but unless otherwise agreed
4 does not include liability or responsibility

5 a. for performance of the underlying contract for sale or other
6 transaction between the customer and the beneficiary; or

7 b. for any act or omission of any person other than itself or its own
8 branch or for loss or destruction of a draft, demand or document in
9 transit or in the possession of others; or

10 c. based on knowledge or lack of knowledge of any usage of any
11 particular trade.

12 2. An issuer must examine documents with care so as to ascertain
13 that on their face they appear to comply with the terms of the credit
14 but unless otherwise agreed assumes no liability or responsibility for
15 the genuineness, falsification or effect of any document which appears
16 on such examination to be regular on its face.

17 3. A nonbank issuer is not bound by any banking usage of which it
18 has no knowledge.

1 **SEC. 5110. Availability of credit in portions—presenter's reserva-**
2 **tion of lien or claim.**

3 1. Unless otherwise specified a credit may be used in portions in
4 the discretion of the beneficiary.

5 2. Unless otherwise specified a person by presenting a documentary
6 draft or demand for payment under a credit relinquishes upon its
7 honor all claims to the documents and a person by transferring such
8 draft or demand or causing such presentment authorizes such relin-
9 quishment. An explicit reservation of claim makes the draft or de-
10 mand noncomplying.

1 **SEC. 5111. Warranties on transfer and presentment.**

2 1. Unless otherwise agreed the beneficiary by transferring or pre-
3 senting a documentary draft or demand for payment warrants to all
4 interested parties that the necessary conditions of the credit have
5 been complied with. This is in addition to any warranties arising
6 under Articles 3, 4, 7 and 8.

7 2. Unless otherwise agreed a negotiating, advising, confirming, col-
 8 lecting or issuing bank presenting or transferring a draft or demand
 9 for payment under a credit warrants only the matters warranted by
 10 a collecting bank under Article 4 and any such bank transferring a
 11 document warrants only the matters warranted by an intermediary
 12 under Articles 7 and 8.

1 **SEC. 5112. Time allowed for honor or rejection — withholding**
 2 **honor or rejection by consent—"presenter".**

3 1. A bank to which a documentary draft or demand for payment is
 4 presented under a credit may without dishonor of the draft, demand
 5 or credit

6 a. defer honor until the close of the third banking day following
 7 receipt of the documents; and

8 b. further defer honor if the presenter has expressly or impliedly
 9 consented thereto.

10 Failure to honor within the time here specified constitutes dishonor
 11 of the draft or demand and of the credit except as otherwise provided
 12 in subsection 4 of Section 5114 on conditional payment.

13 2. Upon dishonor the bank may unless otherwise instructed fulfill
 14 its duty to return the draft or demand and the documents by holding
 15 them at the disposal of the presenter and sending him an advice to
 16 that effect.

17 3. "Presenter" means any person presenting a draft or demand for
 18 payment for honor under a credit even though that person is a con-
 19 firming bank or other correspondent which is acting under an issuer's
 20 authorization.

1 **SEC. 5113. Indemnities.**

2 1. A bank seeking to obtain (whether for itself or another) honor,
 3 negotiation or reimbursement under a credit may give an indemnity
 4 to induce such honor, negotiation or reimbursement.

5 2. An indemnity agreement inducing honor, negotiation or reim-
 6 bursement

7 a. unless otherwise explicitly agreed applies to defects in the docu-
 8 ments but not in the goods; and

9 b. unless a longer time is explicitly agreed expires at the end of
 10 ten business days following receipt of the documents by the ultimate
 11 customer unless notice of objection is sent before such expiration
 12 date. The ultimate customer may send notice of objection to the per-
 13 son from whom he received the documents and any bank receiving
 14 such notice is under a duty to send notice to its transferor before its
 15 midnight deadline.

1 **SEC. 5114. Issuer's duty and privilege to honor—right to reim-**
 2 **bursement.**

3 1. An issuer must honor a draft or demand for payment which
 4 complies with the terms of the relevant credit regardless of whether
 5 the goods or documents conform to the underlying contract for sale
 6 or other contract between the customer and the beneficiary. The
 7 issuer is not excused from honor of such a draft or demand by reason
 8 of an additional general term that all documents must be satisfactory
 9 to the issuer, but an issuer may require that specified documents
 10 must be satisfactory to it.

11 2. Unless otherwise agreed when documents appear on their face
 12 to comply with the terms of a credit but a required document does
 13 not in fact conform to the warranties made on negotiation or transfer
 14 of a document of title (Section 7507) or of a security (Section 8306)
 15 or is forged or fraudulent or there is fraud in the transaction

16 a. the issuer must honor the draft or demand for payment if honor
 17 is demanded by a negotiating bank of other holder of the draft or
 18 demand which has taken the draft or demand under the credit and
 19 under circumstances which would make it a holder in due course
 20 (Section 3302) and in an appropriate case would make it a person to
 21 whom a document of title has been duly negotiated (Section 7502)
 22 or a bona fide purchaser of a security (Section 8302); and

23 b. in all other cases as against its customer, an issuer acting in
 24 good faith may honor the draft or demand for payment despite noti-
 25 fication from the customer of fraud, forgery or other defect not
 26 apparent on the face of the documents but a court of appropriate
 27 jurisdiction may enjoin such honor.

28 3. Unless otherwise agreed an issuer which has duly honored a
 29 draft or demand for payment is entitled to immediate reimbursement
 30 of any payment made under the credit and to be put in effectively
 31 available funds not later than the day before maturity of any ac-
 32 ceptance made under the credit.

33 4. When a credit provides for payment by the issuer on receipt of
 34 notice that the required documents are in the possession of a cor-
 35 respondent or other agent of the issuer

36 a. any payment made on receipt of such notice is conditional; and

37 b. the issuer may reject documents which do not comply with the
 38 credit if it does so within three banking days following its receipt of
 39 the documents; and

40 c. in the event of such rejection, the issuer is entitled by charge-
 41 back or otherwise to return of the payment made.

42 5. In the case covered by subsection 4 failure to reject documents
 43 within the time specified in subparagraph b constitutes acceptance of
 44 the documents and makes the payment final in favor of the bene-
 45 ficiary.

1 SEC. 5115. Remedy for improper dishonor or anticipatory repudi-
 2 ation.

3 1. When an issuer wrongfully dishonors a draft or demand for pay-
 4 ment presented under a credit the person entitled to honor has with
 5 respect to any documents the rights of a person in the position of a
 6 seller (Section 2707) and may recover from the issuer the face
 7 amount of the draft or demand together with incidental damages
 8 under Section 2710 on seller's incidental damages and interest but
 9 less any amount realized by resale or other use or disposition of the
 10 subject matter of the transaction. In the event no resale or other
 11 utilization is made the documents, goods or other subject matter
 12 involved in the transaction must be turned over to the issuer on pay-
 13 ment of judgment.

14 2. When an issuer wrongfully cancels or otherwise repudiates a
 15 credit before presentment of a draft or demand for payment drawn
 16 under it the beneficiary has the rights of a seller after anticipatory
 17 repudiation by the buyer under Section 2610 if he learns of the re-

18 pudiation in time reasonably to avoid procurement of the required
19 documents. Otherwise the beneficiary has an immediate right of
20 action for wrongful dishonor.

1 **SEC. 5116. Transfer and assignment.**

2 1. The right to draw under a credit can be transferred or assigned
3 only when the credit is expressly designated as transferable or assign-
4 able.

5 2. Even though the credit specifically states that it is nontransfer-
6 able or nonassignable the beneficiary may before performance of the
7 conditions of the credit assign his right to proceeds. Such an assign-
8 ment is an assignment of a contract right under Article 9 on Secured
9 Transactions and is governed by that Article except that

10 a. the assignment is ineffective until the letter of credit or advice
11 of credit is delivered to the assignee which delivery constitutes per-
12 fection of the security interest under Article 9; and

13 b. the issuer may honor drafts or demands for payment drawn
14 under the credit until it receives a notification of the assignment
15 signed by the beneficiary which reasonably identifies the credit in-
16 volved in the assignment and contains a request to pay the assignee;
17 and

18 c. after what reasonably appears to be such a notification has been
19 received the issuer may without dishonor refuse to accept or pay even
20 to a person otherwise entitled to honor until the letter of credit or
21 advice of credit is exhibited to the issuer.

22 3. Except where the beneficiary has effectively assigned his right
23 to draw or his right to proceeds, nothing in this section limits his
24 right to transfer or negotiate drafts or demands drawn under the
25 credit.

1 **SEC. 5117. Insolvency of bank holding funds for documentary
2 credit.**

3 1. Where an issuer or an advising or confirming bank or a bank
4 which has for a customer procured issuance of a credit by another
5 bank becomes insolvent before final payment under the credit and the
6 credit is one to which this Article is made applicable by paragraphs
7 a or b of Section 5102 subsection 1 on scope, the receipt or allocation
8 of funds or collateral to secure or meet obligations under the credit
9 shall have the following results:

10 a. to the extent of any funds or collateral turned over after or
11 before the insolvency as indemnity against or specifically for the
12 purpose of payment of drafts or demands for payment drawn under
13 the designated credit, the drafts or demands are entitled to payment
14 in preference over depositors or other general creditors of the issuer
15 or bank; and

16 b. on expiration of the credit or surrender of the beneficiary's
17 rights under it unused any person who has given such funds or col-
18 lateral is similarly entitled to return thereof; and

19 c. a change to a general or current account with a bank if specifical-
20 ly consented to for the purpose of indemnity against or payment of
21 drafts or demands for payment drawn under the designated credit
22 falls under the same rules as if the funds had been drawn out in cash
23 and then turned over with specific instructions.

24 2. After honor or reimbursement under this section the customer

25 or other person for whose account the insolvent bank has acted is
26 entitled to receive the documents involved.

ARTICLE 6

BULK TRANSFERS

1 SEC. 6101. **Short title.** This Article shall be known and may be
2 cited as Uniform Commercial Code—Bulk Transfers.

1 SEC. 6102. **“Bulk transfers” — transfers of equipment — enter-**
2 **prises subject to this Article—bulk transfers subject to this Article.**

3 1. A “bulk transfer” is any transfer in bulk and not in the ordinary
4 course of the transferor’s business of a major part in value of the
5 materials, supplies, merchandise or other inventory (Section 9109)
6 of an enterprise subject to this Article.

7 2. A transfer of a substantial part of the equipment (Section 9109)
8 of such an enterprise is a bulk transfer if it is made in connection
9 with a bulk transfer of inventory, but not otherwise.

10 3. The enterprises subject to this Article are all those whose prin-
11 cipal business is the sale of merchandise from stock, including those
12 who manufacture what they sell.

13 4. Except as limited by the following section all bulk transfers of
14 goods located within this state are subject to this Article.

1 SEC. 6103. **Transfers excepted from this Article.** The following
2 transfers are not subject to this Article:

3 1. Those made to give security for the performance of an obliga-
4 tion;

5 2. General assignments for the benefit of all the creditors of the
6 transferor, and subsequent transfers by the assignee thereunder;

7 3. Transfers in settlement or realization of a lien or other security
8 interest;

9 4. Sales by executors, administrators, receivers, trustees in bank-
10 ruptcy, or any public officer under judicial process;

11 5. Sales made in the course of judicial or administrative proceed-
12 ings for the dissolution or reorganization of a corporation and of
13 which notice is sent to the creditors of the corporation pursuant to
14 order of the court or administrative agency;

15 6. Transfers to a person maintaining a known place of business in
16 this State who becomes bound to pay the debts of the transferor in
17 full and gives public notice of that fact, and who is solvent after be-
18 coming so bound;

19 7. A transfer to a new business enterprise organized to take over
20 and continue the business, if public notice of the transaction is given
21 and the new enterprise assumes the debts of the transferor and he
22 receives nothing from the transaction except an interest in the new
23 enterprise junior to the claims of creditors;

24 8. Transfers of property which is exempt from execution. Public
25 notice under subsection 6 or subsection 7 may be given by publishing
26 once a week for two consecutive weeks in a newspaper of general
27 circulation where the transferor had its principal place of business in
28 this state an advertisement including the names and addresses of the
29 transferor and transferee and the effective date of the transfer.

1 **SEC. 6104. Schedule of property, list of creditors.**

2 1. Except as provided with respect to auction sales (Section 6108),
3 a bulk transfer subject to this Article is ineffective against any
4 creditor of the transferor unless:

5 a. The transferee requires the transferor to furnish a list of his
6 existing creditors prepared as stated in this section; and

7 b. The parties prepare a schedule of the property transferred suffi-
8 cient to identify it; and

9 c. The transferee preserves the list and schedule for six months
10 next following the transfer and permits inspection of either or both
11 and copying therefrom at all reasonable hours by any creditor of the
12 transferor, or files the list and schedule in the office of the Recorder in
13 the county or counties where the goods are located.

14 2. The list of creditors must be signed and sworn to or affirmed by
15 the transferor or his agent. It must contain the names and business
16 addresses of all creditors of the transferor, with the amounts when
17 known, and also the names of all persons who are known to the trans-
18 feror to assert claims against him even though such claims are dis-
19 puted. If the transferor is the obligor of an outstanding issue of
20 bonds, debentures or the like as to which there is an indenture trust-
21 ee, the list of creditors need include only the name and address of
22 the indenture trustee and the aggregate outstanding principal amount
23 of the issue.

24 3. Responsibility for the completeness and accuracy of the list of
25 creditors rests on the transferor, and the transfer is not rendered
26 ineffective by errors or omissions therein unless the transferee is
27 shown to have had knowledge.

1 **SEC. 6105. Notice to creditors.** In addition to the requirements
2 of the preceding section, any bulk transfer subject to this Article
3 except one made by auction sale (Section 6108) is ineffective against
4 any creditor of the transferor unless at least ten days before he takes
5 possession of the goods or pays for them, whichever happens first, the
6 transferee gives notice of the transfer in the manner and to the per-
7 sons hereafter provided (Section 6107).

1 **SEC. 6106.** This section reserved for future use.

1 **SEC. 6107. The notice.**

2 1. The notice to creditors (Section 6105) shall state:

3 a. that a bulk transfer is about to be made; and

4 b. the names and business addresses of the transferor and trans-
5 feree, and all other business names and addresses used by the trans-
6 feror within three years last past so far as known to the transferee;
7 and

8 c. whether or not all the debts of the transferor are to be paid in
9 full as they fall due as a result of the transaction, and if so, the
10 address to which creditors should send their bills.

11 2. If the debts of the transferor are not to be paid in full as they
12 fall due or if the transferee is in doubt on that point then the notice
13 shall state further:

14 a. the location and general description of the property to be trans-
15 ferred and the estimated total of the transferor's debts;

16 b. the address where the schedule of property and list of creditors

17 (Section 6104) may be inspected;

18 *c.* whether the transfer is to pay existing debts and if so the
19 amount of such debts and to whom owing;

20 *d.* whether the transfer is for new consideration and if so the
21 amount of such consideration and the time and place of payment.

22 3. The notice in any case shall be delivered personally or sent by
23 registered or certified mail to all the persons shown on the list of
24 creditors furnished by the transferor (Section 6104) and to all other
25 persons who are known to the transferee to hold or assert claims
26 against the transferor.

1 **SEC. 6108. Auction sales—"auctioneer".**

2 1. A bulk transfer is subject to this Article even though it is by
3 sale at auction, but only in the manner and with the results stated in
4 this section.

5 2. The transferor shall furnish a list of his creditors and assist in
6 the preparation of a schedule of the property to be sold, both pre-
7 pared as before stated (Section 6104).

8 3. The person or persons other than the transferor who direct,
9 control or are responsible for the auction are collectively called the
10 "auctioneer". The auctioneer shall:

11 *a.* receive and retain the list of creditors and prepare and retain
12 the schedule of property for the period stated in this Article (Sec-
13 tion 6104);

14 *b.* give notice of the auction personally or by registered or certified
15 mail at least ten days before it occurs to all persons shown on the list
16 of creditors and to all other persons who are known to him to hold or
17 assert claims against the transferor.

18 4. Failure of the auctioneer to perform any of these duties does
19 not affect the validity of the sale or the title of the purchasers, but
20 if the auctioneer knows that the auction constitutes a bulk transfer
21 such failure renders the auctioneer liable to the creditors of the trans-
22 feror as a class for the sums owing to them from the transferor up
23 to but not exceeding the net proceeds of the auction. If the auctioneer
24 consists of several persons their liability is joint and several.

1 **SEC. 6109. What creditors protected.** The creditors of the trans-
2 feror mentioned in this Article are those holding claims based on
3 transactions or events occurring before the bulk transfer, but cred-
4 itors who become such after notice to creditors is given (Sections
5 6105 and 6107) are not entitled to notice.

1 **SEC. 6110. Subsequent transfers.** When the title of a transferee
2 to property is subject to a defect by reason of his noncompliance with
3 the requirements of this Article, then:

4 1. a purchaser of any of such property from such transferee who
5 pays no value or who takes with notice of such noncompliance takes
6 subject to such defect, but

7 2. a purchaser for value in good faith and without such notice takes
8 free of such defect.

1 **SEC. 6111. Limitation of actions and levies.** No action under this
2 Article shall be brought nor levy made more than six months after
3 the date on which the transferee took possession of the goods unless

4 the transfer has been concealed. If the transfer has been concealed,
5 actions may be brought or levies made within six months after its
6 discovery.

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1

GENERAL

1 SEC. 7101. **Short title.** This Article shall be known and may be
2 cited as Uniform Commercial Code—Documents of Title.

1 SEC. 7102. **Definitions and index of definitions.**

2 1. In this Article, unless the context otherwise requires:

3 a. "Bailee" means the person who by a warehouse receipt, bill of
4 lading or other document of title acknowledges possession of goods
5 and contracts to deliver them.

6 b. "Consignee" means the person named in a bill to whom or to
7 whose order the bill promises delivery.

8 c. "Consignor" means the person named in a bill as the person
9 from whom the goods have been received for shipment.

10 d. "Delivery order" means a written order to deliver goods directed
11 to a warehouseman, carrier or other person who in the ordinary
12 course of business issues warehouse receipts or bills of lading.

13 e. "Document" means document of title as defined in the general
14 definitions in Article 1 (Section 1201).

15 f. "Goods" means all things which are treated as movable for the
16 purposes of a contract of storage or transportation.

17 g. "Issuer" means a bailee who issues a document except that in
18 relation to an unaccepted delivery order it means the person who
19 orders the possessor of goods to deliver. Issuer includes any person
20 for whom an agent or employee purports to act in issuing a document
21 if the agent or employee has real or apparent authority to issue docu-
22 ments, notwithstanding that the issuer received no goods or that the
23 goods were misdescribed or that in any other respect the agent or
24 employee violated his instructions.

25 h. "Warehouseman" is a person engaged in the business of storing
26 goods for hire.

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

29 "Duly negotiate". Section 7501.

30 "Person entitled under the document". Section 7403 subsection 4.

31 3. Definitions in other Articles applying to this Article and the sec-
32 tions in which they appear are:

33 "Contract for sale". Section 2106.

34 "Overseas". Section 2323.

35 "Receipt" of goods. Section 2103.

36 4. In addition Article 1 contains general definitions and principles
37 of construction and interpretation applicable throughout this Article.

1 SEC. 7103. **Relation of Article to treaty, statute, tariff, classifica-
2 tion or regulation.** To the extent that any treaty or statute of the

3 United States, regulatory statute of this State or tariff, classification
4 or regulation filed or issued pursuant thereto is applicable, the pro-
5 visions of this Article are subject thereto.

1 **SEC. 7104. Negotiable and nonnegotiable warehouse receipt, bill**
2 **of lading or other document of title.**

3 1. A warehouse receipt, bill of lading or other document of title is
4 negotiable

5 *a.* if by its terms the goods are to be delivered to bearer or to the
6 order of a named person; or

7 *b.* where recognized in overseas trade, if it runs to a named person
8 or assigns.

9 2. Any other document is nonnegotiable. A bill of lading in which
10 it is stated that the goods are consigned to a named person is not
11 made negotiable by a provision that the goods are to be delivered
12 only against a written order signed by the same or another named
13 person.

1 **SEC. 7105. Construction against negative implication.** The omis-
2 sion from either Part 2 or Part 3 of this Article of a provision cor-
3 responding to a provision made in the other Part does not imply that
4 a corresponding rule of law is not applicable.

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

1 **SEC. 7201. Who may issue a warehouse receipt—storage under**
2 **government bond.**

3 1. A warehouse receipt may be issued by any warehouseman.

4 2. Where goods including distilled spirits and agricultural com-
5 modities are stored under a statute requiring a bond against with-
6 drawal or a license for the issuance of receipts in the nature of ware-
7 house receipts, a receipt issued for the goods has like effect as a ware-
8 house receipt even though issued by a person who is the owner of the
9 goods and is not a warehouseman.

1 **SEC. 7202. Form of warehouse receipt—essential terms—optional**
2 **terms.**

3 1. A warehouse receipt need not be in any particular form.

4 2. Unless a warehouse receipt embodies within its written or
5 printed terms each of the following, the warehouseman is liable for
6 damages caused by the omission to a person injured thereby:

7 *a.* the location of the warehouse where the goods are stored;

8 *b.* the date of issue of the receipt;

9 *c.* the consecutive number of the receipt;

10 *d.* a statement whether the goods received will be delivered to the
11 bearer, to a specified person, or to a specified person or his order;

12 *e.* the rate of storage and handling charges, except that where
13 goods are stored under a field warehousing arrangement a statement
14 of that fact is sufficient on a nonnegotiable receipt;

15 *f.* a description of the goods or of the packages containing them;

16 *g.* the signature of the warehouseman, which may be made by his
17 authorized agent;

18 *h.* if the receipt is issued for goods of which the warehouseman is

19 owner, either solely or jointly or in common with others, the fact of
20 such ownership; and

21 *i.* a statement of the amount of advances made and of liabilities
22 incurred for which the warehouseman claims a lien or security
23 interest (Section 7209). If the precise amount of such advances made
24 or of such liabilities incurred is, at the time of the issue of the re-
25 ceipt, unknown to the warehouseman or to his agent who issues it,
26 a statement of the fact that advances have been made or liabilities
27 incurred and the purpose thereof is sufficient.

28 3. A warehouseman may insert in his receipt any other terms
29 which are not contrary to the provisions of this Act and do not im-
30 pair his obligation of delivery (Section 7403) or his duty of care
31 (Section 7204). Any contrary provisions shall be ineffective.

1 **SEC. 7203. Liability for nonreceipt or misdescription.** A party
2 to or purchaser for value in good faith of a document of title other
3 than a bill of lading relying in either case upon the description therein
4 of the goods may recover from the issuer damages caused by the non-
5 receipt or misdescription of the goods, except to the extent that the
6 document conspicuously indicates that the issuer does not know
7 whether any part or all of the goods in fact were received or con-
8 form to the description, as where the description is in terms of marks
9 or labels or kind, quantity or condition, or the receipt or description
10 is qualified by "contents, condition and quality unknown", "said to
11 contain" or the like, if such indication be true, or the party or pur-
12 chaser otherwise has notice.

1 **SEC. 7204. Duty of care—contractual limitation of warehouse-**
2 **man's liability.**

3 1. A warehouseman is liable for damages for loss of or injury to
4 the goods caused by his failure to exercise such care in regard to
5 them as a reasonably careful man would exercise under like circum-
6 stances but unless otherwise agreed he is not liable for damages
7 which could not have been avoided by the exercise of such care.

8 2. Damages may be limited by a term in the warehouse receipt or
9 storage agreement limiting the amount of liability in case of loss or
10 damage, and setting forth a specific liability per article or item, or
11 value per unit of weight, beyond which the warehouseman shall not
12 be liable; provided, however, that such liability may on written re-
13 quest of the bailor at the time of signing such storage agreement or
14 within a reasonable time after receipt of the warehouse receipt be
15 increased on part or all of the goods thereunder, in which event in-
16 creased rates may be charged based on such increased valuation, but
17 that no such increase shall be permitted contrary to a lawful limita-
18 tion of liability contained in the warehouseman's tariff, if any. No
19 such limitation is effective with respect to the warehouseman's liabil-
20 ity for conversion to his own use.

21 3. Reasonable provisions as to the time and manner of presenting
22 claims and instituting actions based on the bailment may be included
23 in the warehouse receipt or tariff.

1 **SEC. 7205. Title under warehouse receipt defeated in certain**
2 **cases.** A buyer in the ordinary course of business of fungible goods
3 sold and delivered by a warehouseman who is also in the business of

4 buying and selling such goods takes free of any claim under a ware-
5 house receipt even though it has been duly negotiated.

1 **SEC. 7206. Termination of storage at warehouseman's option.**

2 1. A warehouseman may on notifying the person on whose account
3 the goods are held and any other person known to claim an interest in
4 the goods require payment of any charges and removal of the goods
5 from the warehouse at the termination of the period of storage fixed
6 by the document, or, if no period is fixed, within a stated period not
7 less than thirty days after the notification. If the goods are not re-
8 moved before the date specified in the notification, the warehouseman
9 may sell them in accordance with the provisions of the section on
10 enforcement of a warehouseman's lien (Section 7210).

11 2. If a warehouseman in good faith believes that the goods are
12 about to deteriorate or decline in value to less than the amount of his
13 lien within the time prescribed in subsection 1 for notification, ad-
14 vertisement and sale, the warehouseman may specify in the notifica-
15 tion any reasonable shorter time for removal of the goods and in case
16 the goods are not removed, may sell them at public sale held not less
17 than one week after a single advertisement or posting.

18 3. If as a result of a quality or condition of the goods of which the
19 warehouseman had no notice at the time of deposit the goods are a
20 hazard to other property or to the warehouse or to persons, the ware-
21 houseman may sell the goods at public or private sale without ad-
22 vertisement on reasonable notification to all persons known to claim
23 an interest in the goods. If the warehouseman after a reasonable
24 effort is unable to sell the goods he may dispose of them in any law-
25 ful manner and shall incur no liability by reason of such disposition.

26 4. The warehouseman must deliver the goods to any person entitled
27 to them under this Article upon due demand made at any time prior
28 to sale or other disposition under this section.

29 5. The warehouseman may satisfy his lien from the proceeds of
30 any sale or disposition under this section but must hold the balance
31 for delivery on the demand of any person to whom he would have
32 been bound to deliver the goods.

1 **SEC. 7207. Goods must be kept separate—fungible goods.**

2 1. Unless the warehouse receipt otherwise provides, a warehouse-
3 man must keep separate the goods covered by each receipt so as to
4 permit at all times identification and delivery of those goods except
5 that different lots of fungible goods may be commingled.

6 2. Fungible goods so commingled are owned in common by the per-
7 sons entitled thereto and the warehouseman is severally liable to each
8 owner for that owner's share. Where because of overissue a mass of
9 fungible goods is insufficient to meet all the receipts which the ware-
10 houseman has issued against it, the persons entitled include all hold-
11 ers to whom overissued receipts have been duly negotiated.

1 **SEC. 7208. Altered warehouse receipts.** Where a blank in a
2 negotiable warehouse receipt has been filled in without authority, a
3 purchaser for value and without notice of the want of authority may
4 treat the insertion as authorized. Any other unauthorized alteration
5 leaves any receipt enforceable against the issuer according to its
6 original tenor.

1 **SEC. 7209. Lien of warehouseman.**

2 1. A warehouseman has a lien against the bailor on the goods cov-
3 ered by a warehouse receipt or on the proceeds thereof in his posses-
4 sion for charges for storage or transportation (including demurrage
5 and terminal charges), insurance, labor, or charges present or future
6 in relation to the goods, and for expenses necessary for preservation
7 of the goods or reasonably incurred in their sale pursuant to law. If
8 the person on whose account the goods are held is liable for like
9 charges or expenses in relation to other goods whenever deposited
10 and it is stated in the receipt that a lien is claimed for charges and
11 expenses in relation to other goods, the warehouseman also has a lien
12 against him for such charges and expenses whether or not the other
13 goods have been delivered by the warehouseman. But against a per-
14 son to whom a negotiable warehouse receipt is duly negotiated a
15 warehouseman's lien is limited to charges in an amount or at a rate
16 specified on the receipt or if no charges are so specified then to a
17 reasonable charge for storage of the goods covered by the receipt
18 subsequent to the date of the receipt.

19 2. The warehouseman may also reserve a security interest against
20 the bailor for a maximum amount specified on the receipt for charges
21 other than those specified in subsection 1, such as for money ad-
22 vanced and interest. Such a security interest is governed by the
23 Article on Secured Transactions (Article 9).

24 3. A warehouseman's lien for charges and expenses under subsec-
25 tion 1 or a security interest under subsection 2 is also effective
26 against any person who so entrusted the bailor with possession of
27 the goods that a pledge of them by him to a good faith purchaser for
28 value would have been valid but is not effective against a person as
29 to whom the document confers no right in the goods covered by it
30 under Section 7503.

31 4. A warehouseman loses his lien on any goods which he voluntar-
32 ily delivers or which he unjustifiably refuses to deliver.

1 **SEC. 7210. Enforcement of warehouseman's lien.**

2 1. Except as provided in subsection 2, a warehouseman's lien may
3 be enforced by public or private sale of the goods in block or in par-
4 cels, at any time or place and on any terms which are commercially
5 reasonable, after notifying all persons known to claim an interest in
6 the goods. Such notification must include a statement of the amount
7 due, the nature of the proposed sale and the time and place of any
8 public sale. The fact that a better price could have been obtained by a
9 sale at a different time or in a different method from that selected by
10 the warehouseman is not of itself sufficient to establish that the sale
11 was not made in a commercially reasonable manner. If the warehouse-
12 man either sells the goods in the usual manner in any recognized mar-
13 ket therefor, or if he sells at the price current in such market at the
14 time of his sale, or if he has otherwise sold in conformity with com-
15 mercially reasonable practices among dealers in the type of goods
16 sold, he has sold in a commercially reasonable manner. A sale of
17 more goods than apparently necessary to be offered to insure satis-
18 faction of the obligation is not commercially reasonable except in
19 cases covered by the preceding sentence.

20 2. A warehouseman's lien on goods other than goods stored by a
21 merchant in the course of his business may be enforced only as fol-
22 lows:

23 a. All persons known to claim an interest in the goods must be noti-
24 fied.

25 b. The notification must be delivered in person or sent by registered
26 or certified letter to the last known address of any person to be noti-
27 fied.

28 c. The notification must include an itemized statement of the claim,
29 a description of the goods subject to the lien, a demand for payment
30 within a specified time not less than ten days after receipt of the
31 notification, and a conspicuous statement that unless the claim is paid
32 within that time the goods will be advertised for sale and sold by
33 auction at a specified time and place.

34 d. The sale must conform to the terms of the notification.

35 e. The sale must be held at the nearest suitable place to that where
36 the goods are held or stored.

37 f. After the expiration of the time given in the notification, an ad-
38 vertisement of the sale must be published once a week for two weeks
39 consecutively in a newspaper of general circulation where the sale is
40 to be held. The advertisement must include a description of the
41 goods, the name of the person on whose account they are being held,
42 and the time and place of the sale. The sale must take place at least
43 fifteen days after the first publication. If there is no newspaper of
44 general circulation where the sale is to be held, the advertisement
45 must be posted at least ten days before the sale in not less than six
46 conspicuous places in the neighborhood of the proposed sale.

47 3. Before any sale pursuant to this section any person claiming a
48 right in the goods may pay the amount necessary to satisfy the lien
49 and the reasonable expenses incurred under this section. In that
50 event the goods must not be sold, but must be retained by the ware-
51 houseman subject to the terms of the receipt and this Article.

52 4. The warehouseman may buy at any public sale pursuant to this
53 section.

54 5. A purchaser in good faith of goods sold to enforce a warehouse-
55 man's lien takes the goods free of any rights of persons against whom
56 the lien was valid, despite noncompliance by the warehouseman with
57 the requirements of this section.

58 6. The warehouseman may satisfy his lien from the proceeds of
59 any sale pursuant to this section but must hold the balance, if any,
60 for delivery on demand to any person to whom he would have been
61 bound to deliver the goods.

62 7. The rights provided by this section shall be in addition to all
63 other rights allowed by law to a creditor against his debtor.

64 8. Where a lien is on goods stored by a merchant in the course of
65 his business the lien may be enforced in accordance with either sub-
66 section 1 or 2.

67 9. The warehouseman is liable for damages caused by failure to
68 comply with the requirements for sale under this section and in case
69 of willful violation is liable for conversion.

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

1 **SEC. 7301. Liability for nonreceipt or misdescription—“said to**
2 **contain”—“shipper’s load and count”—improper handling.**

3 1. A consignee of a nonnegotiable bill who has given value in good
4 faith or a holder to whom a negotiable bill has been duly negotiated
5 relying in either case upon the description therein of the goods, or
6 upon the date therein shown, may recover from the issuer damages
7 caused by the misdating of the bill or the nonreceipt or misdescription
8 of the goods, except to the extent that the document indicates
9 that the issuer does not know whether any part or all of the goods in
10 fact were received or conform to the description, as where the descrip-
11 tion is in terms of marks or labels or kind, quantity, or condition or
12 the receipt or description is qualified by “contents or condition of con-
13 tents of packages unknown”, “said to contain”, “shipper’s weight, load
14 and count” or the like, if such indication be true.

15 2. When goods are loaded by an issuer who is a common carrier,
16 the issuer must count the packages of goods if package freight and
17 ascertain the kind and quantity if bulk freight. In such cases “ship-
18 per’s weight, load and count” or other words indicating that the
19 description was made by the shipper are ineffective except as to
20 freight concealed by packages.

21 3. When bulk freight is loaded by a shipper who makes available
22 to the issuer adequate facilities for weighing such freight, an issuer
23 who is a common carrier must ascertain the kind and quantity within
24 a reasonable time after receiving the written request of the shipper
25 to do so. In such cases “shipper’s weight” or other words of like
26 purport are ineffective.

27 4. The issuer may by inserting in the bill the words “shipper’s
28 weight, load and count” or other words of like purport indicate that
29 the goods were loaded by the shipper; and if such statement be true
30 the issuer shall not be liable for damages caused by the improper
31 loading. But their omission does not imply liability for such dam-
32 ages.

33 5. The shipper shall be deemed to have guaranteed to the issuer
34 the accuracy at the time of shipment of the description, marks, labels,
35 number, kind, quantity, condition and weight, as furnished by him;
36 and the shipper shall indemnify the issuer against damage caused by
37 inaccuracies in such particulars. The right of the issuer to such in-
38 demnity shall in no way limit his responsibility and liability under the
39 contract of carriage to any person other than the shipper.

1 **SEC. 7302. Through bills of lading and similar documents.**

2 1. The issuer of a through bill of lading or other document embody-
3 ing an undertaking to be performed in part by persons acting as its
4 agents or by connecting carriers is liable to anyone entitled to re-
5 cover on the document for any breach by such other persons or by a
6 connecting carrier of its obligation under the document but to the
7 extent that the bill covers an undertaking to be performed overseas
8 or in territory not contiguous to the continental United States or an
9 undertaking including matters other than transportation this liabil-
10 ity may be varied by agreement of the parties.

11 2. Where goods covered by a through bill of lading or other docu-
 12 ment embodying an undertaking to be performed in part by persons
 13 other than the issuer are received by any such person, he is subject
 14 with respect to his own performance while the goods are in his pos-
 15 session to the obligation of the issuer. His obligation is discharged
 16 by delivery of the goods to another such person pursuant to the docu-
 17 ment, and does not include liability for breach by any other such
 18 persons or by the issuer.

19 3. The issuer of such through bill of lading or other document
 20 shall be entitled to recover from the connecting carrier or such other
 21 person in possession of the goods when the breach of the obligation
 22 under the document occurred, the amount it may be required to pay
 23 to anyone entitled to recover on the document therefor, as may be
 24 evidenced by any receipt, judgment, or transcript thereof, and the
 25 amount of any expense reasonably incurred by it in defending any
 26 action brought by anyone entitled to recover on the document there-
 27 for.

1 **SEC. 7303. Diversion—reconsignment—change of instructions.**

2 1. Unless the bill of lading otherwise provides, the carrier may de-
 3 liver the goods to a person or destination other than that stated in
 4 the bill or may otherwise dispose of the goods on instructions from

- 5 a. the holder of a negotiable bill; or
- 6 b. the consignor on a nonnegotiable bill notwithstanding contrary
- 7 instructions from the consignee; or
- 8 c. the consignee on a nonnegotiable bill in the absence of contrary
- 9 instructions from the consignor, if the goods have arrived at the
- 10 billed destination or if the consignee is in possession of the bill; or
- 11 d. the consignee on a nonnegotiable bill if he is entitled as against
- 12 the consignor to dispose of them.

13 2. Unless such instructions are noted on a negotiable bill of lading,
 14 a person to whom the bill is duly negotiated can hold the bailee ac-
 15 cording to the original terms.

1 **SEC. 7304. Bills of lading in a set.**

2 1. Except where customary in overseas transportation, a bill of
 3 lading must not be issued in a set of parts. The issuer is liable for
 4 damages caused by violation of this subsection.

5 2. Where a bill of lading is lawfully drawn in a set of parts, each
 6 of which is numbered and expressed to be valid only if the goods
 7 have not been delivered against any other part, the whole of the parts
 8 constitute one bill.

9 3. Where a bill of lading is lawfully issued in a set of parts and
 10 different parts are negotiated to different persons, the title of the
 11 holder to whom the first due negotiation is made prevails as to both
 12 the document and the goods even though any later holder may have
 13 received the goods from the carrier in good faith and discharged the
 14 carrier's obligation by surrender of his part.

15 4. Any person who negotiates or transfers a single part of a bill of
 16 lading drawn in a set is liable to holders of that part as if it were the
 17 whole set.

18 5. The bailee is obliged to deliver in accordance with Part 4 of this
 19 Article against the first presented part of a bill of lading lawfully

20 drawn in a set. Such delivery discharges the bailee's obligation on
21 the whole bill.

1 **SEC. 7305. Destination bills.**

2 1. Instead of issuing a bill of lading to the consignor at the place
3 of shipment a carrier may at the request of the consignor procure
4 the bill to be issued at destination or at any other place designated in
5 the request.

6 2. Upon request of anyone entitled as against the carrier to control
7 the goods while in transit and on surrender of any outstanding bill of
8 lading or other receipt covering such goods, the issuer may procure a
9 substitute bill to be issued at any place designated in the request.

1 **SEC. 7306. Altered bills of lading.** An unauthorized alteration or
2 filling in of a blank in a bill of lading leaves the bill enforceable ac-
3 cording to its original tenor.

1 **SEC. 7307. Lien of carrier.**

2 1. A carrier has a lien on the goods covered by a bill of lading for
3 charges subsequent to the date of its receipt of the goods for storage
4 or transportation (including demurrage and terminal charges) and
5 for expenses necessary for preservation of the goods incident to their
6 transportation or reasonably incurred in their sale pursuant to law.
7 But against a purchaser for value of a negotiable bill of lading a car-
8 rier's lien is limited to charges stated in the bill or the applicable
9 tariffs, or if no charges are stated then to a reasonable charge.

10 2. A lien for charges and expenses under subsection 1 on goods
11 which the carrier was required by law to receive for transportation
12 is effective against the consignor or any person entitled to the goods
13 unless the carrier had notice that the consignor lacked authority to
14 subject the goods to such charges and expenses. Any other lien under
15 subsection 1 is effective against the consignor and any person who
16 permitted the bailor to have control or possession of the goods unless
17 the carrier had notice that the bailor lacked such authority.

18 3. A carrier loses his lien on any goods which he voluntarily de-
19 livers or which he unjustifiably refuses to deliver.

1 **SEC. 7308. Enforcement of carrier's lien.**

2 1. A carrier's lien may be enforced by public or private sale of the
3 goods, in bloc or in parcels, at any time or place and on any terms
4 which are commercially reasonable, after notifying all persons known
5 to claim an interest in the goods. Such notification must include a
6 statement of the amount due, the nature of the proposed sale and the
7 time and place of any public sale. The fact that a better price could
8 have been obtained by a sale at a different time or in a different
9 method from that selected by the carrier is not of itself sufficient to
10 establish that the sale was not made in a commercially reasonable
11 manner. If the carrier either sells the goods in the usual manner in
12 any recognized market therefor or if he sells at the price current in
13 such market at the time of his sale or if he has otherwise sold in con-
14 formity with commercially reasonable practices among dealers in the
15 type of goods sold he has sold in a commercially reasonable manner. A
16 sale of more goods than apparently necessary to be offered to ensure
17 satisfaction of the obligation is not commercially reasonable except

18 in cases covered by the preceding sentence.

19 2. Before any sale pursuant to this section any person claiming a
20 right in the goods may pay the amount necessary to satisfy the lien
21 and the reasonable expenses incurred under this section. In that
22 event the goods must not be sold, but must be retained by the carrier
23 subject to the terms of the bill and this Article.

24 3. The carrier may buy at any public sale pursuant to this section.

25 4. A purchaser in good faith of goods sold to enforce a carrier's
26 lien takes the goods free of any rights of persons against whom the
27 lien was valid, despite noncompliance by the carrier with the require-
28 ments of this section.

29 5. The carrier may satisfy his lien from the proceeds of any sale
30 pursuant to this section but must hold the balance, if any, for delivery
31 on demand to any person to whom he would have been bound to de-
32 liver the goods.

33 6. The rights provided by this section shall be in addition to all
34 other rights allowed by law to a creditor against his debtor.

35 7. A carrier's lien may be enforced in accordance with either sub-
36 section 1 or the procedure set forth in subsection 2 of Section 7210.

37 8. The carrier is liable for damages caused by failure to comply
38 with the requirements for sale under this section and in case of will-
39 ful violation is liable for conversion.

1 **SEC. 7309. Duty of care—contractual limitation of carrier's lia-**
2 **bility.**

3 1. A carrier who issues a bill of lading whether negotiable or non-
4 negotiable must exercise the degree of care in relation to the goods
5 which a reasonably careful man would exercise under like circum-
6 stances. This subsection does not repeal or change any law or rule of
7 law which imposes liability upon a common carrier for damages not
8 caused by its negligence.

9 2. Damages may be limited by a provision that the carrier's lia-
10 bility shall not exceed a value stated in the document if the carrier's
11 rates are dependent upon value and the consignor by the carrier's
12 tariff is afforded an opportunity to declare a higher value or a value
13 as lawfully provided in the tariff, or where no tariff is filed he is
14 otherwise advised of such opportunity; but no such limitation is
15 effective with respect to the carrier's liability for conversion to its
16 own use.

17 3. Reasonable provisions as to the time and manner of presenting
18 claims and instituting actions based on the shipment may be included
19 in a bill of lading or tariff.

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING:
GENERAL OBLIGATIONS

1 **SEC. 7401. Irregularities in issue of receipt or bill or conduct of**
2 **issuer.** The obligations imposed by this Article on an issuer apply
3 to a document of title regardless of the fact that
4 a. the document may not comply with the requirements of this
5 Article or of any other law or regulation regarding its issue, form or
6 content; or

- 7 *b.* the issuer may have violated laws regulating the conduct of his
8 business; or
9 *c.* the goods covered by the document were owned by the bailee at
10 the time the document was issued; or
11 *d.* the person issuing the document does not come within the defi-
12 nition of warehouseman if it purports to be a warehouse receipt.

1 **SEC. 7402. Duplicate receipt or bill—overissue.** Neither a dupli-
2 cate nor any other document of title purporting to cover goods already
3 represented by an outstanding document of the same issuer confers
4 any right in the goods, except as provided in the case of bills in a set,
5 overissue of documents for fungible goods and substitutes for lost,
6 stolen or destroyed documents. But the issuer is liable for damages
7 caused by his overissue or failure to identify a duplicate document as
8 such by conspicuous notation on its face.

1 **SEC. 7403. Obligation of warehouseman or carrier to deliver—**
2 **excuse.**

3 1. The bailee must deliver the goods to a person entitled under the
4 document who complies with subsections 2 and 3, unless and to the
5 extent that the bailee establishes any of the following:

- 6 *a.* delivery of the goods to a person whose receipt was rightful as
7 against the claimant;
8 *b.* damage to or delay, loss or destruction of the goods for which
9 the bailee is not liable, but the burden of establishing negligence in
10 such cases is on the person entitled under the document;
11 *c.* previous sale or other disposition of the goods in lawful enforce-
12 ment of a lien or on warehouseman's lawful termination of storage;
13 *d.* the exercise by a seller of his right to stop delivery pursuant to
14 the provisions of the Article on Sales (Section 2705);
15 *e.* a diversion, reconsignment or other disposition pursuant to the
16 provisions of this Article (Section 7303) or tariff regulating such
17 right;
18 *f.* release, satisfaction or any other fact affording a personal de-
19 fense against the claimant;
20 *g.* any other lawful excuse.

21 2. A person claiming goods covered by a document of title must
22 satisfy the bailee's lien where the bailee so requests or where the
23 bailee is prohibited by law from delivering the goods until the charges
24 are paid.

25 3. Unless the person claiming is one against whom the document
26 confers no right under Section 7503 subsection 1, he must surrender
27 for cancellation or notation of partial deliveries any outstanding
28 negotiable document covering the goods, and the bailee must cancel
29 the document or conspicuously note the partial delivery thereon or be
30 liable to any person to whom the document is duly negotiated.

31 4. "Person entitled under the document" means holder in the case
32 of a negotiable document, or the person to whom delivery is to be
33 made by the terms of or pursuant to written instructions under a non-
34 negotiable document.

1 **SEC. 7404. No liability for good faith delivery pursuant to receipt**
2 **or bill.** A bailee who in good faith including observance of reason-
3 able commercial standards has received goods and delivered or other-

4 wise disposed of them according to the terms of the document of title
 5 or pursuant to this Article is not liable therefor. This rule applies
 6 even though the person from whom he received the goods had no
 7 authority to procure the document or to dispose of the goods and
 8 even though the person to whom he delivered the goods had no au-
 9 thority to receive them.

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:
 NEGOTIATION AND TRANSFER

1 **SEC. 7501. Form of negotiation and requirements of "due negoti-**
 2 **ation."**

3 1. A negotiable document of title running to the order of a named
 4 person is negotiated by his indorsement and delivery. After his in-
 5 dorsement in blank or to bearer any person can negotiate it by de-
 6 livery alone.

7 2. *a.* A negotiable document of title is also negotiated by delivery
 8 alone when by its original terms it runs to bearer.

9 *b.* When a document running to the order of a named person is
 10 delivered to him the effect is the same as if the document had been
 11 negotiated.

12 3. Negotiation of a negotiable document of title after it has been
 13 indorsed to a specified person requires indorsement by the special
 14 indorsee as well as delivery.

15 4. A negotiable document of title is "duly negotiated" when it is
 16 negotiated in the manner stated in this section to a holder who pur-
 17 chases it in good faith without notice of any defense against or claim
 18 to it on the part of any person and for value, unless it is established
 19 that the negotiation is not in the regular course of business or financ-
 20 ing or involves receiving the document in settlement or payment of
 21 a money obligation.

22 5. Indorsement of a nonnegotiable document neither makes it
 23 negotiable nor adds to the transferee's rights.

24 6. The naming in a negotiable bill of a person to be notified of the
 25 arrival of the goods does not limit the negotiability of the bill nor
 26 constitute notice to a purchaser thereof of any interest of such person
 27 in the goods.

1 **SEC. 7502. Rights acquired by due negotiation.**

2 1. Subject to the following section and to the provisions of Section
 3 7205 on fungible goods, a holder to whom a negotiable document of
 4 title has been duly negotiated acquires thereby:

5 *a.* title to the document;

6 *b.* title to the goods;

7 *c.* all rights accruing under the law of agency or estoppel, including
 8 rights to goods delivered to the bailee after the document was issued;
 9 and

10 *d.* the direct obligation of the issuer to hold or deliver the goods
 11 according to the terms of the document free of any defense or claim
 12 by him except those arising under the terms of the document or under
 13 this Article. In the case of a delivery order the bailee's obligation
 14 accrues only upon acceptance and the obligation acquired by the

15 holder is that the issuer and any indorser will procure the acceptance
16 of the bailee.

17 2. Subject to the following section, title and rights so acquired are
18 not defeated by any stoppage of the goods represented by the docu-
19 ment or by surrender of such goods by the bailee, and are not im-
20 paired even though the negotiation or any prior negotiation consti-
21 tuted a breach of duty or even though any person has been deprived
22 of possession of the document by misrepresentation, fraud, accident,
23 mistake, duress, loss, theft or conversion, or even though a previous
24 sale or other transfer of the goods or document has been made to a
25 third person.

1 **SEC. 7503. Document of title to goods defeated in certain cases.**

2 1. A document of title confers no right in goods against a person
3 who before issuance of the document had a legal interest or a per-
4 fected security interest in them and who neither

5 *a.* delivered or entrusted them or any document of title covering
6 them to the bailor or his nominee with actual or apparent authority
7 to ship, store or sell or with power to obtain delivery under this
8 Article (Section 7403) or with power of disposition under this Act
9 (Sections 2403 and 9307) or other statute or rule of law; nor

10 *b.* acquiesced in the procurement by the bailor or his nominee of
11 any document of title.

12 2. Title to goods based upon an unaccepted delivery order is sub-
13 ject to the rights of anyone to whom a negotiable warehouse receipt
14 or bill of lading covering the goods has been duly negotiated. Such
15 a title may be defeated under the next section to the same extent as
16 the rights of the issuer or a transferee from the issuer.

17 3. Title to goods based upon a bill of lading issued to a freight for-
18 warder is subject to the rights of anyone to whom a bill issued by
19 the freight forwarder is duly negotiated; but delivery by the carrier
20 in accordance with Part 4 of this Article pursuant to its own bill of
21 lading discharges the carrier's obligation to deliver.

1 **SEC. 7504. Rights acquired in the absence of due negotiation—
2 effect of diversion—seller's stoppage of delivery.**

3 1. A transferee of a document, whether negotiable or nonnegoti-
4 able, to whom the document has been delivered but not duly negoti-
5 ated, acquires the title and rights which his transferor had or had
6 actual authority to convey.

7 2. In the case of a nonnegotiable document, until but not after the
8 bailee receives notification of the transfer, the rights of the trans-
9 feree may be defeated

10 *a.* by those creditors of the transferor who could treat the sale as
11 void under Section 2402; or

12 *b.* by a buyer from the transferor in ordinary course of business if
13 the bailee has delivered the goods to the buyer or received notification
14 of his rights; or

15 *c.* as against the bailee by good faith dealings of the bailee with
16 the transferor.

17 3. A diversion or other change of shipping instructions by the con-
18 signor in a nonnegotiable bill of lading which causes the bailee not to
19 deliver to the consignee defeats the consignee's title to the goods if

20 they have been delivered to a buyer in ordinary course of business and
21 in any event defeats the consignee's rights against the bailee.

22 4. Delivery pursuant to a nonnegotiable document may be stopped
23 by a seller under Section 2705, and subject to the requirement of due
24 notification there provided. A bailee honoring the seller's instruc-
25 tions is entitled to be indemnified by the seller against any resulting
26 loss or expense.

1 SEC. 7505. **Indorser not a guarantor for other parties.** The in-
2 dorsement of a document of title issued by a bailee does not make the
3 indorser liable for any default by the bailee or by previous indorsers.

1 SEC. 7506. **Delivery without indorsement—right to compel in-**
2 **dorsement.** The transferee of a negotiable document of title has a
3 specifically enforceable right to have his transferor supply any neces-
4 sary indorsement but the transfer becomes a negotiation only as of
5 the time the indorsement is supplied.

1 SEC. 7507. **Warranties on negotiation or transfer of receipt or**
2 **bill.** Where a person negotiates or transfers a document of title for
3 value otherwise than as a mere intermediary under the next follow-
4 ing section, then unless otherwise agreed he warrants to his immedi-
5 ate purchaser only in addition to any warranty made in selling the
6 goods

7 a. that the document is genuine; and

8 b. that he has no knowledge of any fact which would impair its
9 validity or worth; and

10 c. that his negotiation or transfer is rightful and fully effective
11 with respect to the title to the document and the goods it represents.

1 SEC. 7508. **Warranties of collecting bank as to documents.** A col-
2 lecting bank or other intermediary known to be entrusted with docu-
3 ments on behalf of another or with collection of a draft or other claim
4 against delivery of documents warrants by such delivery of the docu-
5 ments only its own good faith and authority. This rule applies even
6 though the intermediary has purchased or made advances against the
7 claim or draft to be collected.

1 SEC. 7509. **Receipt or bill: when adequate compliance with com-**
2 **mercial contract.** The question whether a document is adequate to
3 fulfill the obligations of a contract for sale or the conditions of a
4 credit is governed by the Articles on Sales (Article 2) and on Letters
5 of Credit (Article 5).

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

1 SEC. 7601. **Lost and missing documents.**

2 1. If a document has been lost, stolen or destroyed, a court may
3 order delivery of the goods or issuance of a substitute document and
4 the bailee may without liability to any person comply with such
5 order. If the document was negotiable the claimant must post secu-
6 rity approved by the court to indemnify any person who may suffer

7 loss as a result of nonsurrender of the document. If the document was
 8 not negotiable, such security may be required at the discretion of the
 9 court. The court may also in its discretion order payment of the
 10 bailee's reasonable costs and counsel fees.

11 2. A bailee who without court order delivers goods to a person
 12 claiming under a missing negotiable document is liable to any person
 13 injured thereby, and if the delivery is not in good faith becomes liable
 14 for conversion. Delivery in good faith is not conversion if made in
 15 accordance with a filed classification or tariff or, where no classifica-
 16 tion or tariff is filed, if the claimant posts security with the bailee in
 17 an amount at least double the value of the goods at the time of posting
 18 to indemnify any person injured by the delivery who files a notice of
 19 claim within one year after the delivery.

1 SEC. 7602. **Attachment of goods covered by a negotiable docu-**
 2 **ment.** Except where the document was originally issued upon deliv-
 3 ery of the goods by a person who had no power to dispose of them,
 4 no lien attaches by virtue of any judicial process to goods in the pos-
 5 session of a bailee for which a negotiable document of title is out-
 6 standing unless the document be first surrendered to the bailee or its
 7 negotiation enjoined, and the bailee shall not be compelled to deliver
 8 the goods pursuant to process until the document is surrendered to
 9 him or impounded by the court. One who purchases the document
 10 for value without notice of the process or injunction takes free of
 11 the lien imposed by judicial process.

1 SEC. 7603. **Conflicting claims—interpleader.** If more than one
 2 person claims title or possession of the goods, the bailee is excused
 3 from delivery until he has had a reasonable time to ascertain the
 4 validity of the adverse claims or to bring an action to compel all
 5 claimants to interplead and may compel such interpleader, either in
 6 defending an action for nondelivery of the goods, or by original action,
 7 whichever is appropriate.

ARTICLE 8

INVESTMENT SECURITIES

PART 1

SHORT TITLE AND GENERAL MATTERS

1 SEC. 8101. **Short title.** This Article shall be known and may be
 2 cited as Uniform Commercial Code—Investment Securities.

1 SEC. 8102. **Definitions and index of definitions.**

2 1. In this Article unless the context otherwise requires

3 a. A "security" is an instrument which

4 i. is issued in bearer or registered form; and

5 ii. is of a type commonly dealt in upon securities exchanges or mar-
 6 kets or commonly recognized in any area in which it is issued or dealt
 7 in as a medium for investment; and

8 iii. is either one of a class or series or by its terms is divisible into
 9 a class or series of instruments; and

10 iv. evidences a share, participation or other interest in property or
 11 in an enterprise or evidences an obligation of the issuer.

12 *b.* A writing which is a security is governed by this Article and not
 13 by uniform commercial code—commercial paper even though it also
 14 meets the requirements of that Article. This Article does not apply
 15 to money.

16 *c.* A security is in “registered form” when it specifies a person en-
 17 titled to the security or to the rights it evidences and when its trans-
 18 fer may be registered upon books maintained for that purpose by or
 19 on behalf of an issuer or the security so states.

20 *d.* A security is in “bearer form” when it runs to bearer according
 21 to its terms and not by reason of any indorsement.

22 2. A “subsequent purchaser” is a person who takes other than by
 23 original issue.

24 3. A “clearing corporation” is a corporation all of the capital stock
 25 of which is held by or for a national securities exchange or associa-
 26 tion registered under a statute of the United States such as the Secu-
 27 rities Exchange Act of 1934.

28 4. A “custodian bank” is any bank or trust company which is
 29 supervised and examined by state or federal authority having super-
 30 vision over banks and which is acting as custodian for a clearing
 31 corporation.

32 5. Other definitions applying to this Article or to specified Parts
 33 thereof and the sections in which they appear are:

34 “Adverse claim”.	Section 8301.
35 “Bona fide purchaser”.	Section 8302.
36 “Broker”.	Section 8303.
37 “Guarantee of the signature”.	Section 8402.
38 “Intermediary bank”.	Section 4105.
39 “Issuer”.	Section 8201.
40 “Overissue”.	Section 8104.

41 6. In addition Article 1 contains general definitions and principles
 42 of construction and interpretation applicable throughout this Article.

1 SEC. 8103. **Issuer’s lien.** A lien upon a security in favor of an
 2 issuer thereof is valid against a purchaser only if the right of the
 3 issuer to such lien is noted conspicuously on the security.

1 SEC. 8104. **Effect of overissue—“overissue.”**

2 1. The provisions of this Article which validate a security or com-
 3 pel its issue or reissue do not apply to the extent that validation, issue
 4 or reissue would result in overissue; but

5 *a.* if an identical security which does not constitute an overissue is
 6 reasonably available for purchase, the person entitled to issue or
 7 validation may compel the issuer to purchase and deliver such a secu-
 8 rity to him against surrender of the security, if any, which he holds;
 9 or

10 *b.* if a security is not so available for purchase, the person entitled
 11 to issue or validation may recover from the issuer the price he or the
 12 last purchaser for value paid for it with interest from the date of his
 13 demand.

14 2. “Overissue” means the issue of securities in excess of the
 15 amount which the issuer has corporate power to issue.

1 SEC. 8105. **Securities negotiable—presumptions.**

2 1. Securities governed by this Article are negotiable instruments.

- 3 2. In any action on a security
 4 *a.* unless specifically denied in the pleadings, each signature on the
 5 security or in a necessary indorsement is admitted;
 6 *b.* when the effectiveness of a signature is put in issue the burden
 7 of establishing it is on the party claiming under the signature but
 8 the signature is presumed to be genuine or authorized;
 9 *c.* when signatures are admitted or established production of the
 10 instrument entitles a holder to recover on it unless the defendant
 11 establishes a defense or a defect going to the validity of the security;
 12 and
 13 *d.* after it is shown that a defense or defect exists the plaintiff has
 14 the burden of establishing that he or some person under whom he
 15 claims is a person against whom the defense or defect is ineffective
 16 (Section 8202).

1 **SEC. 8106. Applicability.** The validity of a security and the
 2 rights and duties of the issuer with respect to registration of trans-
 3 fer are governed by the law (including the conflict of laws rules) of
 4 the jurisdiction of organization of the issuer.

- 1 **SEC. 8107. Securities deliverable—action for price.**
 2 1. Unless otherwise agreed and subject to any applicable law or
 3 regulation respecting short sales, a person obligated to deliver secu-
 4 rities may deliver any security of the specified issue in bearer form
 5 or registered in the name of the transferee or indorsed to him or in
 6 blank.
 7 2. When the buyer fails to pay the price as it comes due under a
 8 contract of sale the seller may recover the price
 9 *a.* of securities accepted by the buyer; and
 10 *b.* of other securities if efforts at their resale would be unduly bur-
 11 densome or if there is no readily available market for their resale.

PART 2

ISSUE—ISSUER

- 1 **SEC. 8201. "Issuer."**
 2 1. With respect to obligations on or defenses to a security "issuer"
 3 includes a person who
 4 *a.* places or authorizes the placing of his name on a security (other-
 5 wise than as authenticating trustee, registrar, transfer agent or the
 6 like) to evidence that it represents a share, participation or other
 7 interest in his property or in an enterprise or to evidence his duty to
 8 perform an obligation evidenced by the security; or
 9 *b.* directly or indirectly creates fractional interests in his rights or
 10 property which fractional interests are evidenced by securities; or
 11 *c.* becomes responsible for or in place of any other person described
 12 as an issuer in this section.
 13 2. With respect to obligations on or defenses to a security a guar-
 14 antor is an issuer to the extent of his guaranty whether or not his
 15 obligation is noted on the security.
 16 3. With respect to registration of transfer (Part 4 of this Article)
 17 "issuer" means a person on whose behalf transfer books are main-
 18 tained.

1 **SEC. 8202. Issuer's responsibility and defenses—notice of defect**
 2 **or defense.**

3 1. Even against a purchaser for value and without notice, the
 4 terms of a security include those stated on the security and those
 5 made part of the security by reference to another instrument, in-
 6 denture or document or to a constitution, statute, ordinance, rule,
 7 regulation, order or the like to the extent that the terms so referred
 8 to do not conflict with the stated terms. Such a reference does not of
 9 itself charge a purchaser for value with notice of a defect going to
 10 the validity of the security even though the security expressly states
 11 that a person accepting it admits such notice.

12 2. *a.* A security other than one issued by a government or govern-
 13 mental agency or unit even though issued with a defect going to its
 14 validity is valid in the hands of a purchaser for value and without
 15 notice of the particular defect unless the defect involves a violation
 16 of constitutional provisions in which case the security is valid in the
 17 hands of a subsequent purchaser for value and without notice of the
 18 defect.

19 *b.* The rule of subparagraph *a* applies to an issuer which is a
 20 government or governmental agency or unit only if either there has
 21 been substantial compliance with the legal requirements governing
 22 the issue or the issuer has received a substantial consideration for the
 23 issue as a whole or for the particular security and a stated purpose
 24 of the issue is one for which the issuer has power to borrow money
 25 or issue the security.

26 3. Except as otherwise provided in the case of certain unauthorized
 27 signatures on issue (Section 8205), lack of genuineness of a security
 28 is a complete defense even against a purchaser for value and without
 29 notice.

30 4. All other defenses of the issuer including nondelivery and condi-
 31 tional delivery of the security are ineffective against a purchaser for
 32 value who has taken without notice of the particular defense.

33 5. Nothing in this section shall be construed to affect the right of
 34 a party to a "when, as and if issued" or a "when distributed" con-
 35 tract to cancel the contract in the event of a material change in the
 36 character of the security which is the subject of the contract or in
 37 the plan or arrangement pursuant to which such security is to be
 38 issued or distributed.

1 **SEC. 8203. Staleness as notice of defects or defenses.**

2 1. After an act or event which creates a right to immediate per-
 3 performance of the principal obligation evidenced by the security or
 4 which sets a date on or after which the security is to be presented or
 5 surrendered for redemption or exchange, a purchaser is charged with
 6 notice of any defect in its issue or defense of the issuer

7 *a.* if the act or event is one requiring the payment of money or the
 8 delivery of securities or both on presentation or surrender of the
 9 security and such funds or securities are available on the date set for
 10 payment or exchange and he takes the security more than one year
 11 after that date; and

12 *b.* if the act or event is not covered by paragraph *a* and he takes
 13 the security more than two years after the date set for surrender or

14 presentation or the date on which such performance became due.
15 2. A call which has been revoked is not within subsection 1.

1 **SEC. 8204. Effect of issuer's restrictions on transfer.** Unless
2 noted conspicuously on the security a restriction on transfer imposed
3 by the issuer even though otherwise lawful is ineffective except
4 against a person with actual knowledge of it.

1 **SEC. 8205. Effect of unauthorized signature on issue.** An unau-
2 thorized signature placed on a security prior to or in the course of
3 issue is ineffective except that the signature is effective in favor of
4 a purchaser for value and without notice of the lack of authority if
5 the signing has been done by
6 a. an authenticating trustee, registrar, transfer agent or other
7 person entrusted by the issuer with the signing of the security or of
8 similar securities or their immediate preparation for signing; or
9 b. an employee of the issuer or of any of the foregoing entrusted
10 with responsible handling of the security.

1 **SEC. 8206. Completion or alteration of instrument.**
2 1. Where a security contains the signatures necessary to its issue
3 or transfer but is incomplete in any other respect
4 a. any person may complete it by filling in the blanks as author-
5 ized; and
6 b. even though the blanks are incorrectly filled in, the security as
7 completed is enforceable by a purchaser who took it for value and
8 without notice of such incorrectness.
9 2. A complete security which has been improperly altered even
10 though fraudulently remains enforceable but only according to its
11 original terms.

1 **SEC. 8207. Rights of issuer with respect to registered owners.**
2 1. Prior to due presentment for registration of transfer of a secu-
3 rity in registered form the issuer or indenture trustee may treat the
4 registered owner as the person exclusively entitled to vote, to receive
5 notifications and otherwise to exercise all the rights and powers of
6 an owner.
7 2. Nothing in this Article shall be construed to affect the liability
8 of the registered owner of a security for calls, assessments or the
9 like.

1 **SEC. 8208. Effect of signature of authenticating trustee, registrar**
2 **or transfer agent.**
3 1. A person placing his signature upon a security as authenticating
4 trustee, registrar, transfer agent or the like warrants to a purchaser
5 for value without notice of the particular defect that
6 a. the security is genuine; and
7 b. his own participation in the issue of the security is within his
8 capacity and within the scope of the authorization received by him
9 from the issuer; and
10 c. he has reasonable grounds to believe that the security is in the
11 form and within the amount the issuer is authorized to issue.
12 2. Unless otherwise agreed, a person by so placing his signature
13 does not assume responsibility for the validity of the security in other
14 respects.

PART 3

PURCHASE

1 SEC. 8301. **Rights acquired by purchaser—"adverse claim"—title**
 2 **acquired by bona fide purchaser.**

3 1. Upon delivery of a security the purchaser acquires the rights in
 4 the security which his transferor had or had actual authority to con-
 5 vey except that a purchaser who has himself been a party to any
 6 fraud or illegality affecting the security or who as a prior holder had
 7 notice of an adverse claim cannot improve his position by taking from
 8 a later bona fide purchaser. "Adverse claim" includes a claim that a
 9 transfer was or would be wrongful or that a particular adverse person
 10 is the owner of or has an interest in the security.

11 2. A bona fide purchaser in addition to acquiring the rights of a
 12 purchaser also acquires the security free of any adverse claim.

13 3. A purchaser of a limited interest acquires rights only to the
 14 extent of the interest purchased.

1 SEC. 8302. **"Bona fide purchaser."** A "bona fide purchaser" is a
 2 purchaser for value in good faith and without notice of any adverse
 3 claim who takes delivery of a security in bearer form or of one in
 4 registered form issued to him or indorsed to him or in blank.

1 SEC. 8303. **"Broker."** "Broker" means a person engaged for all
 2 or part of his time in the business of buying and selling securities,
 3 who in the transaction concerned acts for, or buys a security from or
 4 sells a security to a customer. Nothing in this Article determines the
 5 capacity in which a person acts for purposes of any other statute or
 6 rule to which such person is subject.

1 SEC. 8304. **Notice to purchaser of adverse claims.**

2 1. A purchaser (including a broker for the seller or buyer but ex-
 3 cluding an intermediary bank) of a security is charged with notice of
 4 adverse claims if

5 a. the security whether in bearer or registered form has been in-
 6 dorsed "for collection" or "for surrender" or for some other purpose
 7 not involving transfer; or

8 b. the security is in bearer form and has on it an unambiguous
 9 statement that it is the property of a person other than the trans-
 10 feror. The mere writing of a name on a security is not such a state-
 11 ment.

12 2. The fact that the purchaser (including a broker for the seller or
 13 buyer) has notice that the security is held for a third person or is
 14 registered in the name of or indorsed by a fiduciary does not create
 15 a duty of inquiry into the rightfulness of the transfer or constitute
 16 notice of adverse claims. If, however, the purchaser (excluding an
 17 intermediary bank) has knowledge that the proceeds are being used
 18 or that the transaction is for the individual benefit of the fiduciary
 19 or otherwise in breach of duty, the purchaser is charged with notice
 20 of adverse claims.

1 SEC. 8305. **Staleness as notice of adverse claims.** An act or event
 2 which creates a right to immediate performance of the principal obli-
 3 gation evidenced by the security or which sets a date on or after

4 which the security is to be presented or surrendered for redemption
 5 or exchange does not of itself constitute any notice of adverse claims
 6 except in the case of a purchase
 7 a. after one year from any date set for such presentment or sur-
 8 render for redemption or exchange; or
 9 b. after six months from any date set for payment of money
 10 against presentation or surrender of the security if funds are avail-
 11 able for payment on that date.

1 **SEC. 8306. Warranties on presentment and transfer.**

2 1. A person who presents a security for registration of transfer
 3 or for payment or exchange warrants to the issuer that he is entitled
 4 to the registration, payment or exchange. But a purchaser for value
 5 without notice of adverse claims who receives a new, reissued or re-
 6 registered security on registration of transfer warrants only that he
 7 has no knowledge of any unauthorized signature (Section 8311) in a
 8 necessary indorsement.

9 2. A person by transferring a security to a purchaser for value
 10 warrants only that

11 a. his transfer is effective and rightful; and
 12 b. the security is genuine and has not been materially altered; and
 13 c. he knows no fact which might impair the validity of the secu-
 14 rity.

15 3. Where a security is delivered by an intermediary known to be
 16 entrusted with delivery of the security on behalf of another or with
 17 collection of a draft or other claim against such delivery, the inter-
 18 mediary by such delivery warrants only his own good faith and au-
 19 thority even though he has purchased or made advances against the
 20 claim to be collected against the delivery.

21 4. A pledgee or other holder for security who redelivers the secu-
 22 rity received, or after payment and on order of the debtor delivers
 23 that security to a third person makes only the warranties of an inter-
 24 mediary under subsection 3.

25 5. A broker gives to his customer and to the issuer and a purchaser
 26 the warranties provided in this section and has the rights and priv-
 27 ileges of a purchaser under this section. The warranties of and in
 28 favor of the broker acting as an agent are in addition to applicable
 29 warranties given by and in favor of his customer.

1 **SEC. 8307. Effect of delivery without indorsement—right to com-
 2 pel indorsement.** Where a security in registered form has been
 3 delivered to a purchaser without a necessary indorsement he may
 4 become a bona fide purchaser only as of the time the indorsement is
 5 supplied, but against the transferor the transfer is complete upon
 6 delivery and the purchaser has a specifically enforceable right to
 7 have any necessary indorsement supplied.

1 **SEC. 8308. Indorsement, how made — special indorsement — in-
 2 dorser not a guarantor—partial assignment.**

3 1. An indorsement of a security in registered form is made when
 4 an appropriate person signs on it or on a separate document an as-
 5 signment or transfer of the security or a power to assign or transfer
 6 it or when the signature of such person is written without more upon
 7 the back of the security.

8 2. An indorsement may be in blank or special. An indorsement
9 in blank includes an indorsement to bearer. A special indorsement
10 specifies the person to whom the security is to be transferred, or who
11 has power to transfer it. A holder may convert a blank indorsement
12 into a special indorsement.

13 3. "An appropriate person" in subsection 1 means

14 a. the person specified by the security or by special indorsement to
15 be entitled to the security; or

16 b. where the person so specified is described as a fiduciary but is
17 no longer serving in the described capacity,—either that person or his
18 successor; or

19 c. where the security or indorsement so specifies more than one per-
20 son as fiduciaries and one or more are no longer serving in the de-
21 scribed capacity,— the remaining fiduciary or fiduciaries, whether or
22 not a successor has been appointed or qualified; or

23 d. where the person so specified is an individual and is without
24 capacity to act by virtue of death, incompetence, infancy or otherwise,
25 —his executor, administrator, guardian or like fiduciary; or

26 e. where the security or indorsement so specifies more than one
27 person as tenants by the entirety or with right of survivorship and
28 by reason of death all cannot sign,—the survivor or survivors; or

29 f. a person having power to sign under applicable law or controlling
30 instrument; or

31 g. to the extent that any of the foregoing persons may act through
32 an agent,—his authorized agent.

33 4. Unless otherwise agreed the indorser by his indorsement as-
34 sumes no obligation that the security will be honored by the issuer.

35 5. An indorsement purporting to be only of part of a security rep-
36 resenting units intended by the issuer to be separately transferable
37 is effective to the extent of the indorsement.

38 6. Whether the person signing is appropriate is determined as of
39 the date of signing and an indorsement by such a person does not
40 become unauthorized for the purposes of this Article by virtue of
41 any subsequent change of circumstances.

42 7. Failure of a fiduciary to comply with a controlling instrument or
43 with the law of the state having jurisdiction of the fiduciary rela-
44 tionship, including any law requiring the fiduciary to obtain court
45 approval of the transfer, does not render his indorsement unauthor-
46 ized for the purposes of this Article.

1 **SEC. 8309. Effect of indorsement without delivery.** An indorse-
2 ment of a security whether special or in blank does not constitute a
3 transfer until delivery of the security on which it appears or if the
4 indorsement is on a separate document until delivery of both the
5 document and the security.

1 **SEC. 8310. Indorsement of security in bearer form.** An indorse-
2 ment of a security in bearer form may give notice of adverse claims
3 (Section 8304) but does not otherwise affect any right to registration
4 the holder may possess.

1 **SEC. 8311. Effect of unauthorized indorsement.** Unless the own-
2 er has ratified an unauthorized indorsement or is otherwise precluded
3 from asserting its ineffectiveness

- 4 *a.* he may assert its ineffectiveness against the issuer or any pur-
 5 chaser other than a purchaser for value and without notice of adverse
 6 claims who has in good faith received a new, reissued or reregistered
 7 security on registration of transfer; and
 8 *b.* an issuer who registers the transfer of a security upon the un-
 9 authorized indorsement is subject to liability for improper registra-
 10 tion (Section 8404).

1 **SEC. 8312. Effect of guaranteeing signature or indorsement.**

- 2 1. Any person guaranteeing a signature of an indorser of a security
 3 warrants that at the time of signing
 4 *a.* the signature was genuine; and
 5 *b.* the signer was an appropriate person to indorse (Section 8308);
 6 and
 7 *c.* the signer had legal capacity to sign.
 8 But the guarantor does not otherwise warrant the rightfulness of the
 9 particular transfer.
 10 2. Any person may guarantee an indorsement of a security and by
 11 so doing warrants not only the signature (subsection 1) but also the
 12 rightfulness of the particular transfer in all respects. But no issuer
 13 may require a guarantee of indorsement as a condition to registration
 14 of transfer.
 15 3. The foregoing warranties are made to any person taking or deal-
 16 ing with the security in reliance on the guarantee and the guarantor
 17 is liable to such person for any loss resulting from breach of the war-
 18 ranties.

1 **SEC. 8313. When delivery to the purchaser occurs—purchaser's**
 2 **broker as holder.**

- 3 1. Delivery to a purchaser occurs when
 4 *a.* he or a person designated by him acquires possession of a secu-
 5 rity; or
 6 *b.* his broker acquires possession of a security specially indorsed
 7 to or issued in the name of the purchaser; or
 8 *c.* his broker sends him confirmation of the purchase and also by
 9 book entry or otherwise identifies a specific security in the broker's
 10 possession as belonging to the purchaser; or
 11 *d.* with respect to an identified security to be delivered while still
 12 in the possession of a third person when that person acknowledges
 13 that he holds for the purchaser; or
 14 *e.* appropriate entries on the books of a clearing corporation are
 15 made under Section 8320.
 16 2. The purchaser is the owner of a security held for him by his
 17 broker, but is not the holder except as specified in subparagraphs *b.*,
 18 *c.* and *e.* of subsection 1. Where a security is part of a fungible bulk
 19 the purchaser is the owner of a proportionate property interest in the
 20 fungible bulk.
 21 3. Notice of an adverse claim received by the broker or by the pur-
 22 chaser after the broker takes delivery as a holder for value is not
 23 effective either as to the broker or as to the purchaser. However, as
 24 between the broker and the purchaser the purchaser may demand
 25 delivery of an equivalent security as to which no notice of an adverse
 26 claim has been received.

1 **SEC. 8314. Duty to deliver, when completed.**

2 1. Unless otherwise agreed where a sale of a security is made on
3 an exchange or otherwise through brokers

4 *a.* the selling customer fulfills his duty to deliver when he places
5 such a security in the possession of the selling broker or of a person
6 designated by the broker or if requested causes an acknowledgment
7 to be made to the selling broker that it is held for him; and

8 *b.* the selling broker including a correspondent broker acting for a
9 selling customer fulfills his duty to deliver by placing the security or
10 a like security in the possession of the buying broker or a person
11 designated by him or by effecting clearance of the sale in accordance
12 with the rules of the exchange on which the transaction took place.

13 2. Except as otherwise provided in this section and unless other-
14 wise agreed, a transferor's duty to deliver a security under a contract
15 of purchase is not fulfilled until he places the security in form to be
16 negotiated by the purchaser in the possession of the purchaser or of
17 a person designated by him or at the purchaser's request causes an
18 acknowledgment to be made to the purchaser that it is held for him.
19 Unless made on an exchange a sale to a broker purchasing for his
20 own account is within this subsection and not within subsection 1.

1 **SEC. 8315. Action against purchaser based upon wrongful trans-**
2 **fer.**

3 1. Any person against whom the transfer of a security is wrongful
4 for any reason, including his incapacity, may against anyone except a
5 bona fide purchaser reclaim possession of the security or obtain pos-
6 session of any new security evidencing all or part of the same rights
7 or have damages.

8 2. If the transfer is wrongful because of an unauthorized indorse-
9 ment, the owner may also reclaim or obtain possession of the security
10 or new security even from a bona fide purchaser if the ineffectiveness
11 of the purported indorsement can be asserted against him under the
12 provisions of this Article on unauthorized indorsements (Section
13 8311).

14 3. The right to obtain or reclaim possession of a security may be
15 specifically enforced and its transfer enjoined and the security im-
16 pounded pending the litigation.

1 **SEC. 8316. Purchaser's right to requisites for registration of**
2 **transfer on books.** Unless otherwise agreed the transferor must on
3 due demand supply his purchaser with any proof of his authority to
4 transfer or with any other requisite which may be necessary to obtain
5 registration of the transfer of the security but if the transfer is not
6 for value a transferor need not do so unless the purchaser furnishes
7 the necessary expenses. Failure to comply with a demand made
8 within a reasonable time gives the purchaser the right to reject or
9 rescind the transfer.

1 **SEC. 8317. Attachment or levy upon security.**

2 1. No attachment or levy upon a security or any share or other
3 interest evidenced thereby which is outstanding shall be valid until
4 the security is actually seized by the officer making the attachment
5 or levy but a security which has been surrendered to the issuer may
6 be attached or levied upon at the source.

7 2. A creditor whose debtor is the owner of a security shall be en-
 8 titled to such aid from courts of appropriate jurisdiction, by injunc-
 9 tion or otherwise, in reaching such security or in satisfying the claim
 10 by means thereof as is allowed at law or in equity in regard to prop-
 11 erty which cannot readily be attached or levied upon by ordinary
 12 legal process.

1 **SEC. 8318. No conversion by good faith delivery.** An agent or
 2 bailee who in good faith (including observance of reasonable com-
 3 mercial standards if he is in the business of buying, selling or other-
 4 wise dealing with securities) has received securities and sold, pledged
 5 or delivered them according to the instructions of his principal is not
 6 liable for conversion or for participation in breach of fiduciary duty
 7 although the principal had no right to dispose of them.

1 **SEC. 8319. Statute of frauds.** A contract for the sale of securi-
 2 ties is not enforceable by way of action or defense unless
 3 *a.* there is some writing signed by the party against whom enforce-
 4 ment is sought or by his authorized agent or broker sufficient to indi-
 5 cate that a contract has been made for sale of a stated quantity of
 6 described securities at a defined or stated price; or
 7 *b.* delivery of the security has been accepted or payment has been
 8 made but the contract is enforceable under this provision only to the
 9 extent of such delivery or payment; or
 10 *c.* within a reasonable time a writing in confirmation of the sale or
 11 purchase and sufficient against the sender under paragraph *a* has
 12 been received by the party against whom enforcement is sought and
 13 he has failed to send written objection to its contents within ten days
 14 after its receipt; or
 15 *d.* the party against whom enforcement is sought admits in his
 16 pleading, testimony or otherwise in court that a contract was made
 17 for sale of a stated quantity of described securities at a defined or
 18 stated price.

1 **SEC. 8320. Transfer or pledge within a central depository system.**
 2 1. If a security
 3 *a.* is in the custody of a clearing corporation or of a custodian bank
 4 or a nominee of either subject to the instructions of the clearing cor-
 5 poration; and
 6 *b.* is in bearer form or indorsed in blank by an appropriate person
 7 or registered in the name of the clearing corporation or custodian
 8 bank or a nominee of either; and
 9 *c.* is shown on the account of a transferor or pledgor on the books
 10 of the clearing corporation;
 11 then, in addition to other methods, a transfer or pledge of the secu-
 12 rity or any interest therein may be effected by the making of appro-
 13 priate entries on the books of the clearing corporation reducing the
 14 account of the transferor or pledgor and increasing the account of the
 15 transferee or pledgee by the amount of the obligation or the number
 16 of shares or rights transferred or pledged.
 17 2. Under this section entries may be with respect to like securities
 18 or interests therein as a part of a fungible bulk and may refer merely
 19 to a quantity of a particular security without reference to the name
 20 of the registered owner, certificate or bond number or the like and,

21 in appropriate cases, may be on a net basis taking into account other
22 transfers or pledges of the same security.

23 3. A transfer or pledge under this section has the effect of a deliv-
24 ery of a security in bearer form or duly indorsed in blank (Section
25 8301) representing the amount of the obligation or the number of
26 shares or rights transferred or pledged. If a pledge or the creation
27 of a security interest is intended, the making of entries has the effect
28 of a taking of delivery by the pledgee or a secured party (Sections
29 9304 and 9305). A transferee or pledgee under this section is a
30 holder.

31 4. A transfer or pledge under this section does not constitute a
32 registration of transfer under Part 4 of this Article.

33 5. That entries made on the books of the clearing corporation as
34 provided in subsection 1 are not appropriate does not affect the valid-
35 ity or effect of the entries nor the liabilities or obligations of the
36 clearing corporation to any person adversely affected thereby.

PART 4

REGISTRATION

1 SEC. 8401. Duty of issuer to register transfer.

2 1. Where a security in registered form is presented to the issuer
3 with a request to register transfer, the issuer is under a duty to
4 register the transfer as requested if

5 a. the security is indorsed by the appropriate person or persons
6 (Section 8308); and

7 b. reasonable assurance is given that those indorsements are gen-
8 uine and effective (Section 8402); and

9 c. the issuer has no duty to inquire into adverse claims or has dis-
10 charged any such duty (Section 8403); and

11 d. any applicable law relating to the collection of taxes has been
12 complied with; and

13 e. the transfer is in fact rightful or is to a bona fide purchaser.

14 2. Where an issuer is under a duty to register a transfer of a secu-
15 rity the issuer is also liable to the person presenting it for registra-
16 tion or his principal for loss resulting from any unreasonable delay in
17 registration or from failure or refusal to register the transfer.

1 SEC. 8402. Assurance that indorsements are effective.

2 1. The issuer may require the following assurance that each neces-
3 sary indorsement (Section 8308) is genuine and effective

4 a. in all cases, a guarantee of the signature (subsection 1 of Sec-
5 tion 8312) of the person indorsing; and

6 b. where the indorsement is by an agent, appropriate assurance of
7 authority to sign;

8 c. where the indorsement is by a fiduciary, appropriate evidence of
9 appointment or incumbency;

10 d. where there is more than one fiduciary, reasonable assurance
11 that all who are required to sign have done so;

12 e. where the indorsement is by a person not covered by any of the
13 foregoing, assurance appropriate to the case corresponding as nearly
14 as may be to the foregoing.

15 2. A "guarantee of the signature" in subsection 1 means a guar-

16 antee signed by or on behalf of a person reasonably believed by the
 17 issuer to be responsible. The issuer may adopt standards with respect
 18 to responsibility provided such standards are not manifestly unrea-
 19 sonable.

20 3. "Appropriate evidence of appointment or incumbency" in sub-
 21 section 1 means

22 *a.* in the case of a fiduciary appointed or qualified by a court, a
 23 certificate issued by or under the direction or supervision of that
 24 court or an officer thereof and dated within sixty days before the date
 25 of presentation for transfer; or

26 *b.* in any other case, a copy of a document showing the appoint-
 27 ment or a certificate issued by or on behalf of a person reasonably
 28 believed by the issuer to be responsible or, in the absence of such a
 29 document or certificate, other evidence reasonably deemed by the is-
 30 suer to be appropriate. The issuer may adopt standards with respect
 31 to such evidence provided such standards are not manifestly unrea-
 32 sonable. The issuer is not charged with notice of the contents of any
 33 document obtained pursuant to this paragraph *b* except to the extent
 34 that the contents relate directly to the appointment or incumbency.

35 4. The issuer may elect to require reasonable assurance beyond
 36 that specified in this section but if it does so and for a purpose other
 37 than that specified in subsection 3 *b* both requires and obtains a copy
 38 of a will, trust, indenture, articles of copartnership, bylaws or other
 39 controlling instrument it is charged with notice of all matters con-
 40 tained therein affecting the transfer.

1 **SEC. 8403. Limited duty of inquiry.**

2 1. An issuer to whom a security is presented for registration is
 3 under a duty to inquire into adverse claims if

4 *a.* a written notification of an adverse claim is received at a time and
 5 in a manner which affords the issuer a reasonable opportunity to act
 6 on it prior to the issuance of a new, reissued or reregistered security
 7 and the notification identifies the claimant, the registered owner and
 8 the issue of which the security is a part and provides an address for
 9 communications directed to the claimant; or

10 *b.* the issuer is charged with notice of an adverse claim from a con-
 11 trolling instrument which it has elected to require under subsection 4
 12 of Section 8402.

13 2. The issuer may discharge any duty of inquiry by any reasonable
 14 means, including notifying an adverse claimant by registered or cer-
 15 tified mail at the address furnished by him or if there be no such
 16 address at his residence or regular place of business that the security
 17 has been presented for registration of transfer by a named person,
 18 and that the transfer will be registered unless within thirty days
 19 from the date of mailing the notification, either

20 *a.* an appropriate restraining order, injunction or other process
 21 issues from a court of competent jurisdiction; or

22 *b.* an indemnity bond sufficient in the issuer's judgment to protect
 23 the issuer and any transfer agent, registrar or other agent of the
 24 issuer involved, from any loss which it or they may suffer by comply-
 25 ing with the adverse claim is filed with the issuer.

26 3. Unless an issuer is charged with notice of an adverse claim from
 27 a controlling instrument which it has elected to require under sub-

28 section 4 of Section 8402 or receives notification of an adverse claim
 29 under subsection 1 of this section, where a security presented for
 30 registration is indorsed by the appropriate person or persons the is-
 31 suer is under no duty to inquire into adverse claims. In particular

32 a. an issuer registering a security in the name of a person who is
 33 a fiduciary or who is described as a fiduciary is not bound to inquire
 34 into the existence, extent, or correct description of the fiduciary rela-
 35 tionship and thereafter the issuer may assume without inquiry that
 36 the newly registered owner continues to be the fiduciary until the
 37 issuer receives written notice that the fiduciary is no longer acting
 38 as such with respect to the particular security;

39 b. an issuer registering transfer on an indorsement by a fiduciary
 40 is not bound to inquire whether the transfer is made in compliance
 41 with a controlling instrument or with the law of the state having
 42 jurisdiction of the fiduciary relationship, including any law requiring
 43 the fiduciary to obtain court approval of the transfer; and

44 c. the issuer is not charged with notice of the contents of any court
 45 record or file or other recorded or unrecorded document even though
 46 the document is in its possession and even though the transfer is
 47 made on the indorsement of a fiduciary to the fiduciary himself or to
 48 his nominee.

1 **SEC. 8404. Liability and nonliability for registration.**

2 1. Except as otherwise provided in any law relating to the collec-
 3 tion of taxes, the issuer is not liable to the owner or any other person
 4 suffering loss as a result of the registration of a transfer of a secu-
 5 rity if

6 a. there were on or with the security the necessary indorsements
 7 (Section 8308); and

8 b. the issuer had no duty to inquire into adverse claims or has dis-
 9 charged any such duty (Section 8403).

10 2. Where an issuer has registered a transfer of a security to a
 11 person not entitled to it the issuer on demand must deliver a like
 12 security to the true owner unless

13 a. the registration was pursuant to subsection 1; or

14 b. the owner is precluded from asserting any claim for registering
 15 the transfer under subsection 1 of the following section; or

16 c. such delivery would result in overissue, in which case the issuer's
 17 liability is governed by Section 8104.

1 **SEC. 8405. Lost, destroyed and stolen securities.**

2 1. Where a security has been lost, apparently destroyed or wrong-
 3 fully taken and the owner fails to notify the issuer of that fact within
 4 a reasonable time after he has notice of it and the issuer registers a
 5 transfer of the security before receiving such a notification, the owner
 6 is precluded from asserting against the issuer any claim for register-
 7 ing the transfer under the preceding section or any claim to a new
 8 security under this section.

9 2. Where the owner of a security claims that the security has been
 10 lost, destroyed or wrongfully taken, the issuer must issue a new secu-
 11 rity in place of the original security if the owner

12 a. so requests before the issuer has notice that the security has
 13 been acquired by a bona fide purchaser; and

14 *b.* files with the issuer a sufficient indemnity bond; and
 15 *c.* satisfies any other reasonable requirements imposed by the is-
 16 suer.

17 3. If, after the issue of the new security, a bona fide purchaser of
 18 the original security presents it for registration of transfer, the
 19 issuer must register the transfer unless registration would result in
 20 overissue, in which event the issuer's liability is governed by Section
 21 8104. In addition to any rights on the indemnity bond, the issuer
 22 may recover the new security from the person to whom it was issued
 23 or any person taking under him except a bona fide purchaser.

1 **SEC. 8406. Duty of authenticating trustee, transfer agent or reg-**
 2 **istrar.**

3 1. Where a person acts as authenticating trustee, transfer agent,
 4 registrar, or other agent for an issuer in the registration of transfers
 5 of its securities or in the issue of new securities or in the cancellation
 6 of surrendered securities

7 *a.* he is under a duty to the issuer to exercise good faith and due
 8 diligence in performing his functions; and

9 *b.* he has with regard to the particular functions he performs the
 10 same obligation to the holder or owner of the security and has the
 11 same rights and privileges as the issuer has in regard to those func-
 12 tions.

13 2. Notice to an authenticating trustee, transfer agent, registrar or
 14 other such agent is notice to the issuer with respect to the functions
 15 performed by the agent.

ARTICLE 9

**SECURED TRANSACTIONS—SALES OF ACCOUNTS,
 CONTRACT RIGHTS AND CHATTEL PAPER**

PART 1

SHORT TITLE, APPLICABILITY AND DEFINITIONS

1 **SEC. 9101. Short title.** This Article shall be known and may be
 2 cited as Uniform Commercial Code—Secured Transactions.

1 **SEC. 9102. Policy and scope of Article.**

2 1. Except as otherwise provided in Section 9103 on multiple state
 3 transactions and in Section 9104 on excluded transactions, this Article
 4 applies so far as concerns any personal property and fixtures within
 5 the jurisdiction of this state

6 *a.* to any transaction (regardless of its form) which is intended to
 7 create a security interest in personal property or fixtures including
 8 goods, documents, instruments, general intangibles, chattel paper,
 9 accounts or contract rights; and also

10 *b.* to any sale of accounts, contract rights or chattel paper.

11 2. This Article applies to security interests created by contract in-
 12 cluding pledge, assignment, chattel mortgage, chattel trust, trust
 13 deed, factor's lien, equipment trust, conditional sale, trust receipt,
 14 bailment, other lien or title retention contract and lease or consign-
 15 ment intended as security. This Article does not apply to statutory
 16 liens except as provided in Section 9310.

17 3. The application of this Article to a security interest in a secured
18 obligation is not affected by the fact that the obligation is itself
19 secured by a transaction or interest to which this Article does not
20 apply.

1 **SEC. 9103. Accounts, contract rights, general intangibles and**
2 **equipment relating to another jurisdiction—and incoming goods al-**
3 **ready subject to a security interest.**

4 1. If the office where the assignor of accounts or contract rights
5 keeps his records concerning them is in this state, the validity and
6 perfection of a security interest therein and the possibility and effect
7 of proper filing is governed by this Article; otherwise by the law
8 (including the conflict of laws rules) of the jurisdiction where such
9 office is located.

10 2. If the chief place of business of a debtor is in this state, this
11 Article governs the validity and perfection of a security interest and
12 the possibility and effect of proper filing with regard to general in-
13 tangibles or with regard to goods of a type which are normally used
14 in more than one jurisdiction (such as automotive equipment, rolling
15 stock, airplanes, road building equipment, commercial harvesting
16 equipment, construction machinery and the like) if such goods are
17 classified as equipment or classified as inventory by reason of their
18 being leased by the debtor to others. Otherwise, the law (including
19 the conflict of laws rules) of the jurisdiction where such chief place of
20 business is located shall govern. If the chief place of business is
21 located in a jurisdiction which does not provide for perfection of the
22 security interest by filing or recording in that jurisdiction, then the
23 security interest may be perfected by filing in this state. For the
24 purpose of determining the validity and perfection of a security in-
25 terest in an airplane, the chief place of business of a debtor who is a
26 foreign air carrier under the Federal Aviation Act of 1958, as
27 amended, is the designated office of the agent upon whom service of
28 process may be made on behalf of the debtor.

29 3. If personal property other than that governed by subsections 1
30 and 2 is already subject to a security interest when it is brought into
31 this state, the validity of the security interest in this state is to be
32 determined by the law (including the conflict of laws rules) of the
33 jurisdiction where the property was when the security interest at-
34 tached. However, if the parties to the transaction understood at the
35 time that the security interest attached that the property would be
36 kept in this state and it was brought into this state within thirty
37 days after the security interest attached for purposes other than
38 transportation through this state, then the validity of the security
39 interest in this state is to be determined by the law of this state. If
40 the security interest was already perfected under the law of the juris-
41 diction where the property was when the security interest attached
42 and before being brought into this state, the security interest con-
43 tinues perfected in this state for four months and also thereafter if
44 within the four month period it is perfected in this state. The secu-
45 rity interest may also be perfected in this state after the expiration
46 of the four month period; in such case perfection dates from the time
47 of perfection in this state. If the security interest was not perfected
48 under the law of the jurisdiction where the property was when the

49 security interest attached and before being brought into this state,
50 it may be perfected in this state; in such case perfection dates from
51 the time of perfection in this state.

52 4. Notwithstanding subsections 2 and 3, if personal property is
53 covered by a certificate of title issued under a statute of this state or
54 any other jurisdiction which requires indication on a certificate of
55 title of any security interest in the property as a condition of perfec-
56 tion, then the perfection is governed by the law of the jurisdiction
57 which issued the certificate.

58 5. Notwithstanding subsection 1 and Section 9302, if the office
59 where the assignor of accounts or contract rights keeps his records
60 concerning them is not located in a jurisdiction which is a part of the
61 United States, its territories or possessions, and the accounts or con-
62 tract rights are within the jurisdiction of this state or the transac-
63 tion which creates the security interest otherwise bears an appro-
64 priate relation to this state, this Article governs the validity and
65 perfection of the security interest and the security interest may only
66 be perfected by notification to the account debtor.

1 SEC. 9104. **Transactions excluded from Article.** This Article
2 does not apply

3 a. to a security interest subject to any statute of the United States
4 such as the Ship Mortgage Act, 1920, to the extent that such statute
5 governs the rights of parties to and third parties affected by transac-
6 tions in particular types of property; or

7 b. to a landlord's lien; or

8 c. to a lien given by statute or other rule of law for services or
9 materials except as provided in Section 9310 on priority of such liens;
10 or

11 d. to a transfer of a claim for wages, salary or other compensation
12 of an employee; or

13 e. to an equipment trust covering railway rolling stock; or

14 f. to a sale of accounts, contract rights or chattel paper as part of
15 a sale of the business out of which they arose, or an assignment of
16 accounts, contract rights or chattel paper which is for the purpose of
17 collection only, or a transfer of a contract right to an assignee who is
18 also to do the performance under the contract; or

19 g. to a transfer of an interest or claim in or under any policy of
20 insurance; or

21 h. to a right represented by a judgment; or

22 i. to any right of setoff; or

23 j. except to the extent that provision is made for fixtures in Sec-
24 tion 9313, to the creation or transfer of an interest in or lien on real
25 estate, including a lease or rents thereunder; or

26 k. to a transfer in whole or in part of any of the following: any
27 claim arising out of tort; any deposit, savings, passbook or like ac-
28 count maintained with a bank, savings and loan association, credit
29 union or like organization.

1 SEC. 9105. **Definitions and index of definitions.**

2 1. In this Article unless the context otherwise requires:

3 a. "Account debtor" means the person who is obligated on an ac-
4 count, chattel paper, contract right or general intangible;

5 *b.* "Chattel paper" means a writing or writings which evidence
6 both a monetary obligation and a security interest in or a lease of
7 specific goods. When a transaction is evidenced both by such a secu-
8 rity agreement or a lease and by an instrument or a series of instru-
9 ments, the group of writings taken together constitutes chattel paper;

10 *c.* "Collateral" means the property subject to a security interest,
11 and includes accounts, contract rights and chattel paper which have
12 been sold;

13 *d.* "Debtor" means the person who owes payment or other per-
14 formance of the obligation secured, whether or not he owns or has
15 rights in the collateral, and includes the seller of accounts, contract
16 rights or chattel paper. Where the debtor and the owner of the col-
17 lateral are not the same person, the term "debtor" means the owner
18 of the collateral in any provision of the Article dealing with the col-
19 lateral, the obligor in any provision dealing with the obligation, and
20 may include both where the context so requires;

21 *e.* "Document" means document of title as defined in the general
22 definitions of Article 1 (Section 1201);

23 *f.* "Goods" includes all things which are movable at the time the
24 security interest attaches or which are fixtures (Section 9313), but
25 does not include money, documents, instruments, accounts, chattel
26 paper, general intangibles, contract rights and other things in action.
27 "Goods" also include the unborn young of animals and growing crops;

28 *g.* "Instrument" means a negotiable instrument (defined in Section
29 3104), or a security (defined in Section 8102) or any other writing
30 which evidences a right to the payment of money and is not itself a
31 security agreement or lease and is of a type which is in ordinary
32 course of business transferred by delivery with any necessary in-
33 dorsement or assignment;

34 *h.* "Security agreement" means an agreement which creates or
35 provides for a security interest;

36 *i.* "Secured party" means a lender, seller or other person in whose
37 favor there is a security interest, including a person to whom ac-
38 counts, contract rights or chattel paper have been sold. When the
39 holders of obligations issued under an indenture of trust, equipment
40 trust agreement or the like are represented by a trustee or other per-
41 son, the representative is the secured party.

42 2. Other definitions applying to this Article and the sections in
43 which they appear are:

44 "Account".	Section 9106.
45 "Consumer goods".	Section 9109. sub. 1.
46 "Contract right".	Section 9106.
47 "Equipment".	Section 9109. sub. 2.
48 "Farm products".	Section 9109. sub. 3.
49 "General intangibles".	Section 9106.
50 "Inventory".	Section 9109. sub. 4.
51 "Lien creditor".	Section 9301. sub. 3.
52 "Proceeds".	Section 9306. sub. 1.
53 "Purchase money security interest".	Section 9107.

54 3. The following definitions in other Articles apply to this Article:

55 "Check".	Section 3104.
56 "Contract for sale".	Section 2106.

- 57 "Holder in due course". Section 3302.
 58 "Note". Section 3104.
 59 "Sale". Section 2106.
 60 4. In addition Article 1 contains general definitions and principles
 61 of construction and interpretation applicable throughout this Article.

1 SEC. 9106. **Definitions: "Account"—"contract right"—"general**
 2 **intangibles"**. "Account" means any right to payment for goods sold
 3 or leased or for services rendered which is not evidenced by an instru-
 4 ment or chattel paper. "Contract right" means any right to payment
 5 under a contract not yet earned by performance and not evidenced by
 6 an instrument or chattel paper. "General intangibles" means any
 7 personal property (including things in action) other than goods,
 8 accounts, contract rights, chattel paper, documents and instruments.

1 SEC. 9107. **Definitions: "Purchase money security interest"**. A
 2 security interest is a "purchase money security interest" to the extent
 3 that it is
 4 a. taken or retained by the seller of the collateral to secure all or
 5 part of its price; or
 6 b. taken by a person who by making advances or incurring an obli-
 7 gation gives value to enable the debtor to acquire rights in or the use
 8 of collateral if such value is in fact so used.

1 SEC. 9108. **When after-acquired collateral not security for ante-**
 2 **cedent debt**. Where a secured party makes an advance, incurs an
 3 obligation, releases a perfected security interest, or otherwise gives
 4 new value which is to be secured in whole or in part by after-acquired
 5 property his security interest in the after-acquired collateral shall be
 6 deemed to be taken for new value and not as security for an ante-
 7 cedent debt if the debtor acquires his rights in such collateral either
 8 in the ordinary course of his business or under a contract of purchase
 9 made pursuant to the security agreement within a reasonable time
 10 after new value is given.

1 SEC. 9109. **Classification of goods — "consumer goods" — "equip-**
 2 **ment"—"farm products"—"inventory"**. Goods are
 3 1. "consumer goods" if they are used or bought for use primarily
 4 for personal, family or household purposes;
 5 2. "equipment" if they are used or bought for use primarily in
 6 business (including farming or a profession) or by a debtor who is a
 7 nonprofit organization or a governmental subdivision or agency or if
 8 the goods are not included in the definitions of inventory, farm prod-
 9 ucts or consumer goods;
 10 3. "farm products" if they are crops or livestock or supplies used
 11 or produced in farming operations or if they are products of crops or
 12 livestock in their unmanufactured states (such as ginned cotton, wool
 13 clip, maple syrup, milk and eggs), and if they are in the possession
 14 of a debtor engaged in raising, fattening, grazing or other farming
 15 operations. If goods are farm products they are neither equipment
 16 nor inventory;
 17 4. "inventory" if they are held by a person who holds them for sale
 18 or lease or to be furnished under contracts of service or if he has so
 19 furnished them, or if they are raw materials, work in process or mate-

20 rials used or consumed in a business. Inventory of a person is not to
21 be classified as his equipment.

1 SEC. 9110. **Sufficiency of description.** For the purposes of this
2 Article any description of personal property or real estate is sufficient
3 whether or not it is specific if it reasonably identifies what is de-
4 scribed.

1 SEC. 9111. **Applicability of bulk transfer laws.** The creation of
2 a security interest is not a bulk transfer under Article 6 (see Section
3 6103).

1 SEC. 9112. **Where collateral is not owned by debtor.** Unless
2 otherwise agreed, when a secured party knows that collateral is
3 owned by a person who is not the debtor, the owner of the collateral
4 is entitled to receive from the secured party any surplus under Sec-
5 tion 9502 subsection 2 or under Section 9504 subsection 1, and is not
6 liable for the debt or for any deficiency after resale, and he has the
7 same right as the debtor

8 a. to receive statements under Section 9208;

9 b. to receive notice of and to object to a secured party's proposal to
10 retain the collateral in satisfaction of the indebtedness under Section
11 9505;

12 c. to redeem the collateral under Section 9506;

13 d. to obtain injunctive or other relief under Section 9507 subsection
14 1; and

15 e. to recover losses caused to him under Section 9208 subsection 2.

1 SEC. 9113. **Security interests arising under Article on sales.** A
2 security interest arising solely under the Article on Sales (Article 2)
3 is subject to the provisions of this Article except that to the extent
4 that and so long as the debtor does not have or does not lawfully
5 obtain possession of the goods

6 a. no security agreement is necessary to make the security interest
7 enforceable; and

8 b. no filing is required to perfect the security interest; and

9 c. the rights of the secured party on default by the debtor are gov-
10 erned by the Article on Sales (Article 2).

PART 2

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

1 SEC. 9201. **General validity of security agreement.** Except as
2 otherwise provided by this Act a security agreement is effective
3 according to its terms between the parties, against purchasers of the
4 collateral and against creditors. Nothing in this Article validates any
5 charge or practice illegal under any statute or regulation thereunder
6 governing usury, small loans, retail installment sales, or the like,
7 or extends the application of any such statute or regulation to any
8 transaction not otherwise subject thereto.

1 SEC. 9202. **Title to collateral immaterial.** Each provision of this
2 Article with regard to rights, obligations and remedies applies
3 whether title to collateral is in the secured party or in the debtor.

1 **SEC. 9203. Enforceability of security interest—proceeds, formal**
 2 **requisites.**

3 1. Subject to the provisions of Section 4208 on the security interest
 4 of a collecting bank and Section 9113 on a security interest arising
 5 under the Article on Sales, a security interest is not enforceable
 6 against the debtor or third parties unless

7 *a.* the collateral is in the possession of the secured party; or

8 *b.* the debtor has signed a security agreement which contains a
 9 description of the collateral and in addition, when the security inter-
 10 est covers crops or oil, gas or minerals to be extracted or timber to be
 11 cut, a description of the land concerned. In describing collateral, the
 12 word "proceeds" is sufficient without further description to cover
 13 proceeds of any character.

14 2. A transaction, although subject to this Article, is also subject
 15 to chapters three hundred twenty-two (322), five hundred twenty-
 16 nine (529), five hundred thirty-five (535) and five hundred thirty-six
 17 (536) of the Code and in the case of conflict between the provisions
 18 of this Article and any such statute, the provisions of such statute
 19 control. Failure to comply with any applicable statute has only the
 20 effect which is specified therein.

1 **SEC. 9204. When security interest attaches—after-acquired prop-**
 2 **erty—future advances.**

3 1. A security interest cannot attach until there is agreement (sub-
 4 section 3 of Section 1201) that it attach and value is given and the
 5 debtor has rights in the collateral. It attaches as soon as all of the
 6 events in the preceding sentence have taken place unless explicit
 7 agreement postpones the time of attaching.

8 2. For the purposes of this section the debtor has no rights

9 *a.* in crops until they are planted or otherwise become growing
 10 crops, in the young of livestock until they are conceived;

11 *b.* in fish until caught, in oil, gas or minerals until they are ex-
 12 tracted, in timber until it is cut;

13 *c.* in a contract right until the contract has been made;

14 *d.* in an account until it comes into existence.

15 3. Except as provided in subsection 4 a security agreement may
 16 provide that collateral, whenever acquired, shall secure all obligations
 17 covered by the security agreement.

18 4. No security interest attaches under an after-acquired property
 19 clause to consumer goods other than accessions (Section 9314) when
 20 given as additional security unless the debtor acquires rights in them
 21 within ten days after the secured party gives value.

22 5. Obligations covered by a security agreement may include future
 23 advances or other value whether or not the advances or value are
 24 given pursuant to commitment.

1 **SEC. 9205. Use or disposition of collateral without accounting per-**
 2 **missible.** A security interest is not invalid or fraudulent against
 3 creditors by reason of liberty in the debtor to use, commingle or dis-
 4 pose of all or part of the collateral (including returned or repossessed
 5 goods) or to collect or compromise accounts, contract rights or chat-
 6 tel paper, or to accept the return of goods or make repossessions, or
 7 to use, commingle or dispose of proceeds, or by reason of the failure

8 of the secured party to require the debtor to account for proceeds or
9 replace collateral. This section does not relax the requirements of
10 possession where perfection of a security interest depends upon pos-
11 session of the collateral by the secured party or by a bailee.

1 **SEC. 9206. Agreement not to assert defenses against assignee—**
2 **modification of sales warranties where security agreement exists.**

3 1. Subject to any statute or decision which establishes a different
4 rule for buyers or lessees of consumer goods, an agreement by a buyer
5 or lessee that he will not assert against an assignee any claim or de-
6 fense which he may have against the seller or lessor is enforceable
7 by an assignee who takes his assignment for value, in good faith and
8 without notice of a claim or defense, except as to defenses of a type
9 which may be asserted against a holder in due course of a negotiable
10 instrument under the Article on Commercial Paper (Article 3). A
11 buyer who as part of one transaction signs both a negotiable instru-
12 ment and a security agreement makes such an agreement.

13 2. When a seller retains a purchase money security interest in
14 goods the Article on Sales (Article 2) governs the sale and any dis-
15 claimer, limitation or modification of the seller's warranties.

1 **SEC. 9207. Rights and duties when collateral is in secured party's**
2 **possession.**

3 1. A secured party must use reasonable care in the custody and
4 preservation of collateral in his possession. In the case of an instru-
5 ment or chattel paper reasonable care includes taking necessary steps
6 to preserve rights against prior parties unless otherwise agreed.

7 2. Unless otherwise agreed, when collateral is in the secured party's
8 possession

9 *a.* reasonable expenses (including the cost of any insurance and
10 payment of taxes or other charges) incurred in the custody, preser-
11 vation, use or operation of the collateral are chargeable to the debtor
12 and are secured by the collateral;

13 *b.* the risk of accidental loss or damage is on the debtor to the
14 extent of any deficiency in any effective insurance coverage;

15 *c.* the secured party may hold as additional security any increase
16 or profits (except money) received from the collateral, but money so
17 received, unless remitted to the debtor, shall be applied in reduction
18 of the secured obligation;

19 *d.* the secured party must keep the collateral identifiable but fun-
20 gible collateral may be commingled;

21 *e.* the secured party may repledge the collateral upon terms which
22 do not impair the debtor's right to redeem it.

23 3. A secured party is liable for any loss caused by his failure to
24 meet any obligation imposed by the preceding subsections but does
25 not lose his security interest.

26 4. A secured party may use or operate the collateral for the pur-
27 pose of preserving the collateral or its value or pursuant to the order
28 of a court of appropriate jurisdiction or, except in the case of con-
29 sumer goods, in the manner and to the extent provided in the security
30 agreement.

1 **SEC. 9208. Request for statement of account or list of collateral.**

2 1. A debtor may sign a statement indicating what he believes to be

3 the aggregate amount of unpaid indebtedness as of a specified date
 4 and may send it to the secured party with a request that the state-
 5 ment be approved or corrected and returned to the debtor. When the
 6 security agreement or any other record kept by the secured party
 7 identifies the collateral a debtor may similarly request the secured
 8 party to approve or correct a list of the collateral.

9 2. The secured party must comply with such a request within two
 10 weeks after receipt by sending a written correction or approval. If
 11 the secured party claims a security interest in all of a particular type
 12 of collateral owned by the debtor he may indicate that fact in his
 13 reply and need not approve or correct an itemized list of such col-
 14 lateral. If the secured party without reasonable excuse fails to com-
 15 ply he is liable for any loss caused to the debtor thereby; and if the
 16 debtor has properly included in his request a good faith statement of
 17 the obligation or a list of the collateral or both the secured party may
 18 claim a security interest only as shown in the statement against per-
 19 sons misled by his failure to comply. If he no longer has an interest
 20 in the obligation or collateral at the time the request is received he
 21 must disclose the name and address of any successor in interest
 22 known to him and he is liable for any loss caused to the debtor as a
 23 result of failure to disclose. A successor in interest is not subject to
 24 this section until a request is received by him.

25 3. A debtor is entitled to such a statement once every six months
 26 without charge. The secured party may require payment of a charge
 27 not exceeding ten dollars for each additional statement furnished.

PART 3

RIGHTS OF THIRD PARTIES—PERFECTED AND UNPERFECTED SECURITY INTERESTS—RULES OF PRIORITY

1 **SEC. 9301. Persons who take priority over unperfected security**
 2 **interests—"lien creditor".**

3 1. Except as otherwise provided in subsection 2, an unperfected
 4 security interest is subordinate to the rights of

5 a. persons entitled to priority under Section 9312;

6 b. a person who becomes a lien creditor without knowledge of the
 7 security interest and before it is perfected;

8 c. in the case of goods, instruments, documents, and chattel paper,
 9 a person who is not a secured party and who is a transferee in bulk or
 10 other buyer not in ordinary course of business to the extent that he
 11 gives value and receives delivery of the collateral without knowledge
 12 of the security interest and before it is perfected;

13 d. in the case of accounts, contract rights, and general intangibles,
 14 a person who is not a secured party and who is a transferee to the
 15 extent that he gives value without knowledge of the security interest
 16 and before it is perfected.

17 2. If the secured party files with respect to a purchase money secu-
 18 rity interest before or within ten days after the collateral comes into
 19 possession of the debtor, he takes priority over the rights of a trans-
 20 feree in bulk or of a lien creditor which arise between the time secu-
 21 rity interest attaches and the time of filing.

22 3. A "lien creditor" means a creditor who has acquired a lien on the

23 property involved by attachment, levy or the like and includes an
 24 assignee for benefit of creditors from the time of assignment, and a
 25 trustee in bankruptcy from the date of the filing of the petition or a
 26 receiver in equity from the time of appointment. Unless all the cred-
 27 itors represented had knowledge of the security interest such a repre-
 28 sentative of creditors is a lien creditor without knowledge even
 29 though he personally has knowledge of the security interest.

1 **SEC. 9302. When filing is required to perfect security interest—**
 2 **security interests to which filing provisions of this Article do not**
 3 **apply.**

4 1. A financing statement must be filed to perfect all security inter-
 5 ests except the following:

6 a. a security interest in collateral in possession of the secured party
 7 under Section 9305;

8 b. a security interest temporarily perfected in instruments or docu-
 9 ments without delivery under Section 9304 or in proceeds for a ten-
 10 day period under Section 9306;

11 c. a purchase money security interest in farm equipment having a
 12 purchase price not in excess of one thousand dollars; but filing is
 13 required for a fixture or for a motor vehicle required to be li-
 14 censed;

15 d. a purchase money security interest in consumer goods; but fil-
 16 ing is required for a fixture or for a motor vehicle required to be
 17 licensed;

18 e. an assignment of accounts or contract rights which does not
 19 alone or in conjunction with other assignments to the same assignee
 20 transfer a significant part of the outstanding accounts or contract
 21 rights of the assignor;

22 f. a security interest of a collecting bank (Section 4208) or arising
 23 under the Article on Sales (see Section 9113) or covered in subsection
 24 3 of this section.

25 2. If a secured party assigns a perfected security interest, no filing
 26 under this Article is required in order to continue the perfected status
 27 of the security interest against creditors of and transferees from the
 28 original debtor.

29 3. The filing provisions of this Article do not apply to a security
 30 interest in property subject to a statute

31 a. of the United States which provides for a national registration
 32 or filing of all security interests in such property; or

33 b. of this state which provides for central filing of security inter-
 34 ests in such property, or in a motor vehicle which is not inventory
 35 held for sale for which a certificate of title is required under the
 36 statutes of this state if a notation of such a security interest can be
 37 indicated by a public official on a certificate or a duplicate thereof.

38 4. A security interest in property covered by a statute described in
 39 subsection 3 can be perfected only by registration or filing under that
 40 statute or by indication of the security interest on a certificate of title
 41 or a duplicate thereof by a public official.

1 **SEC. 9303. When security interest is perfected—continuity of**
 2 **perfection.**

3 1. A security interest is perfected when it has attached and when

4 all of the applicable steps required for perfection have been taken.
5 Such steps are specified in Sections 9302, 9304, 9305 and 9306. If
6 such steps are taken before the security interest attaches, it is per-
7 fected at the time when it attaches.

8 2. If a security interest is originally perfected in any way per-
9 mitted under this Article and is subsequently perfected in some other
10 way under this Article, without an intermediate period when it was
11 unperfected, the security interest shall be deemed to be perfected
12 continuously for the purposes of this Article.

1 **SEC. 9304. Perfection of security interest in instruments, docu-**
2 **ments, and goods covered by documents—perfection by permissive**
3 **filing—temporary perfection without filing or transfer of possession.**

4 1. A security interest in chattel paper or negotiable documents may
5 be perfected by filing. A security interest in instruments (other than
6 instruments which constitute part of chattel paper) can be perfected
7 only by the secured party's taking possession, except as provided in
8 subsections 4 and 5.

9 2. During the period that goods are in the possession of the issuer
10 of a negotiable document therefor, a security interest in the goods is
11 perfected by perfecting a security interest in the document, and any
12 security interest in the goods otherwise perfected during such period
13 is subject thereto.

14 3. A security interest in goods in the possession of a bailee other
15 than one who has issued a negotiable document therefor is perfected
16 by issuance of a document in the name of the secured party or by the
17 bailee's receipt of notification of the secured party's interest or by
18 filing as to the goods.

19 4. A security interest in instruments or negotiable documents is
20 perfected without filing or the taking of possession for a period of
21 twenty-one days from the time it attaches to the extent that it arises
22 for new value given under a written security agreement.

23 5. A security interest remains perfected for a period of twenty-one
24 days without filing where a secured party having a perfected security
25 interest in an instrument, a negotiable document or goods in posses-
26 sion of a bailee other than one who has issued a negotiable document
27 therefor

28 *a.* makes available to the debtor the goods or documents represent-
29 ing the goods for the purpose of ultimate sale or exchange or for the
30 purpose of loading, unloading, storing, shipping, transshipping, manu-
31 facturing, processing or otherwise dealing with them in a manner
32 preliminary to their sale or exchange; or

33 *b.* delivers the instrument to the debtor for the purpose of ultimate
34 sale or exchange or of presentation, collection, renewal or registration
35 of transfer.

36 6. After the twenty-one day period in subsections 4 and 5 perfec-
37 tion depends upon compliance with applicable provisions of this
38 Article.

1 **SEC. 9305. When possession by secured party perfects security**
2 **interest without filing.** A security interest in letters of credit and
3 advices of credit (subsection 2 *a* of Section 5116), goods, instruments,
4 negotiable documents or chattel paper may be perfected by the se-

5 cured party's taking possession of the collateral. If such collateral
 6 other than goods covered by a negotiable document is held by a bailee,
 7 the secured party is deemed to have possession from the time the
 8 bailee receives notification of the secured party's interest. A security
 9 interest is perfected by possession from the time possession is taken
 10 without relation back and continues only so long as possession is re-
 11 tained, unless otherwise specified in this Article. The security interest
 12 may be otherwise perfected as provided in this Article before or after
 13 the period of possession by the secured party.

1 SEC. 9306. "Proceeds"—secured party's rights on disposition of
 2 collateral.

3 1. "Proceeds" includes whatever is received when collateral or pro-
 4 ceeds is sold, exchanged, collected or otherwise disposed of. The term
 5 also includes the account arising when the right to payment is earned
 6 under a contract right. Money, checks and the like are "cash pro-
 7 ceeds". All other proceeds are "noncash proceeds".

8 2. Except where this Article otherwise provides, a security interest
 9 continues in collateral notwithstanding sale, exchange or other dis-
 10 position thereof by the debtor unless his action was authorized by the
 11 secured party in the security agreement or otherwise, and also con-
 12 tinues in any identifiable proceeds including collections received by
 13 the debtor.

14 3. The security interest in proceeds is a continuously perfected
 15 security interest if the interest in the original collateral was perfected
 16 but it ceases to be a perfected security interest and becomes unper-
 17 fected ten days after receipt of the proceeds by the debtor unless

18 a. a filed financing statement covering the original collateral also
 19 covers proceeds; or

20 b. the security interest in the proceeds is perfected before the ex-
 21 piration of the ten-day period.

22 4. In the event of insolvency proceedings instituted by or against a
 23 debtor, a secured party with a perfected security interest in proceeds
 24 has a perfected security interest

25 a. in identifiable noncash proceeds;

26 b. in identifiable cash proceeds in the form of money which is not
 27 commingled with other money or deposited in a bank account prior to
 28 the insolvency proceedings;

29 c. in identifiable cash proceeds in the form of checks and the like
 30 which are not deposited in a bank account prior to the insolvency
 31 proceedings; and

32 d. in all cash and bank accounts of the debtor, if other cash pro-
 33 ceeds have been commingled or deposited in a bank account, but the
 34 perfected security interest under this paragraph *d* is

35 i. subject to any right of setoff; and

36 ii. limited to an amount not greater than the amount of any cash
 37 proceeds received by the debtor within ten days before the institution
 38 of the insolvency proceedings and commingled or deposited in a bank
 39 account prior to the insolvency proceedings less the amount of cash
 40 proceeds received by the debtor and paid over to the secured party
 41 during the ten-day period.

42 5. If a sale of goods results in an account or chattel paper which is
 43 transferred by the seller to a secured party, and if the goods are re-

44 turned to or are repossessed by the seller or the secured party, the
45 following rules determine priorities:

46 *a.* If the goods were collateral at the time of sale for an indebted-
47 ness of the seller which is still unpaid, the original security interest
48 attaches again to the goods and continues as a perfected security
49 interest if it was perfected at the time when the goods were sold. If
50 the security interest was originally perfected by a filing which is still
51 effective, nothing further is required to continue the perfected status;
52 in any other case, the secured party must take possession of the re-
53 turned or repossessed goods or must file.

54 *b.* An unpaid transferee of the chattel paper has a security interest
55 in the goods against the transferor. Such security interest is prior to
56 a security interest asserted under paragraph *a* to the extent that the
57 transferee of the chattel paper was entitled to priority under Section
58 9308.

59 *c.* An unpaid transferee of the account has a security interest in
60 the goods against the transferor. Such security interest is subordi-
61 nate to a security interest asserted under paragraph *a*.

62 *d.* A security interest of an unpaid transferee asserted under para-
63 graph *b* or *c* must be perfected for protection against creditors of the
64 transferor and purchasers of the returned or repossessed goods.

1 **SEC. 9307. Protection of buyers of goods.**

2 1. A buyer in ordinary course of business (subsection 9 of Section
3 1201) other than a person buying farm products subject to a perfected
4 security interest from a person engaged in farming operations takes
5 free of a security interest created by his seller even though the secu-
6 rity interest is perfected and even though the buyer knows of its
7 existence.

8 2. In the case of consumer goods and in the case of farm equipment
9 having an original purchase price not in excess of one thousand dollars
10 (other than fixtures), a buyer takes free of a security interest even
11 though perfected if he buys without knowledge of the security inter-
12 est, for value and for his own personal, family or household purposes
13 or his own farming operations unless prior to the purchase the se-
14 cured party has filed a financing statement covering such goods.

1 **SEC. 9308. Purchase of chattel paper and nonnegotiable instru-**
2 **ments.** A purchaser of chattel paper or a nonnegotiable instrument
3 who gives new value and takes possession of it in the ordinary course
4 of his business and without knowledge that the specific paper or in-
5 strument is subject to a security interest has priority over a security
6 interest which is perfected under Section 9304 (permissive filing and
7 temporary perfection). A purchaser of chattel paper who gives new
8 value and takes possession of it in the ordinary course of his business
9 has priority over a security interest in chattel paper which is claimed
10 merely as proceeds of inventory subject to a security interest (Section
11 9306), even though he knows that the specific paper is subject to the
12 security interest.

1 **SEC. 9309. Protection of purchasers of instruments and docu-**
2 **ments.** Nothing in this Article limits the rights of a holder in due
3 course of a negotiable instrument (Section 3302) or a holder to whom
4 a negotiable document of title has been duly negotiated (Section

5 7501) or a bona fide purchaser of a security (Section 8301) and such
 6 holders or purchasers take priority over an earlier security interest
 7 even though perfected. Filing under this Article does not constitute
 8 notice of the security interest to such holders or purchasers.

1 **SEC. 9310. Priority of certain liens arising by operation of law.**
 2 When a person in the ordinary course of his business furnishes serv-
 3 ices or materials with respect to goods subject to a security interest,
 4 a lien upon goods in the possession of such person given by statute or
 5 rule of law for such materials or services takes priority over a per-
 6 fected security interest unless the lien is statutory and the statute
 7 expressly provides otherwise.

1 **SEC. 9311. Alienability of debtor's rights: judicial process.** The
 2 debtor's rights in collateral may be voluntarily or involuntarily trans-
 3 ferred (by way of sale, creation of a security interest, attachment,
 4 levy, garnishment or other judicial process) notwithstanding a pro-
 5 vision in the security agreement prohibiting any transfer or making
 6 the transfer constitute a default.

1 **SEC. 9312. Priorities among conflicting security interests in the**
 2 **same collateral.**

3 1. The rules of priority stated in the following sections shall govern
 4 where applicable: Section 4208 with respect to the security interest
 5 of collecting banks in items being collected, accompanying documents
 6 and proceeds; Section 9301 on certain priorities; Section 9304 on
 7 goods covered by documents; Section 9306 on proceeds and reposses-
 8 sion; Section 9307 on buyers of goods; Section 9308 on possessory
 9 against nonpossessory interests in chattel paper or nonnegotiable
 10 instruments; Section 9309 on security interests in negotiable instru-
 11 ments, documents or securities; Section 9310 on priorities between
 12 perfected security interests and liens by operation of law; Section
 13 9313 on security interests in fixtures as against interests in real
 14 estate; Section 9314 on security interests in accessions as against
 15 interest in goods; Section 9315 on conflicting security interests where
 16 goods lose their identity or become part of a product; and Section
 17 9316 on contractual subordination.

18 2. A perfected security interest in crops for new value given to
 19 enable the debtor to produce the crops during the production season
 20 and given not more than three months before the crops become grow-
 21 ing crops by planting or otherwise takes priority over an earlier per-
 22 fected security interest to the extent that such earlier interest secures
 23 obligations due more than six months before the crops become grow-
 24 ing crops by planting or otherwise, even though the person giving
 25 new value had knowledge of the earlier security interest.

26 3. A purchase money security interest in inventory collateral has
 27 priority over a conflicting security interest in the same collateral if

28 a. the purchase money security interest is perfected at the time
 29 the debtor receives possession of the collateral; and

30 b. any secured party whose security interest is known to the holder
 31 of the purchase money security interest or who, prior to the date of
 32 the filing made by the holder of the purchase money security interest,
 33 had filed a financing statement covering the same items or type of
 34 inventory, has received notification of the purchase money security

35 interest before the debtor receives possession of the collateral covered
36 by the purchase money security interest; and

37 c. such notification states that the person giving the notice has or
38 expects to acquire a purchase money security interest in inventory of
39 the debtor, describing such inventory by item or type.

40 4. A purchase money security interest in collateral other than in-
41 ventory has priority over a conflicting security interest in the same
42 collateral if the purchase money security interest is perfected at the
43 time the debtor receives possession of the collateral or within ten days
44 thereafter.

45 5. In all cases not governed by other rules stated in this section
46 (including cases of purchase money security interests which do not
47 qualify for the special priorities set forth in subsections 3 and 4 of
48 this section), priority between conflicting security interests in the
49 same collateral shall be determined as follows:

50 a. in the order of filing if both are perfected by filing, regardless of
51 which security interest attached first under Section 9204 subsection 1
52 and whether it attached before or after filing;

53 b. in the order of perfection unless both are perfected by filing,
54 regardless of which security interest attached first under Section
55 9204 subsection 1 and, in the case of a filed security interest, whether
56 it attached before or after filing; and

57 c. in the order of attachment under Section 9204 subsection 1 so
58 long as neither is perfected.

59 6. For the purpose of the priority rules of the immediately preced-
60 ing subsection, a continuously perfected security interest shall be
61 treated at all times as if perfected by filing if it was originally so
62 perfected and it shall be treated at all times as if perfected otherwise
63 than by filing if it was originally perfected otherwise than by filing.

1 **SEC. 9313. Priority of security interests in fixtures.**

2 Nothing in this Act governs the priority between a security interest
3 in goods which are or are to become fixtures and the claims of any
4 person who has an interest in the real estate.

1 **SEC. 9314. Accessions.**

2 1. A security interest in goods which attaches before they are
3 installed in or affixed to other goods takes priority as to the goods
4 installed or affixed (called in this section "accessions") over the
5 claims of all persons to the whole except as stated in subsection 3
6 and subject to Section 9315 subsection 1.

7 2. A security interest which attaches to goods after they become
8 part of a whole is valid against all persons subsequently acquiring
9 interests in the whole except as stated in subsection 3 but is invalid
10 against any person with an interest in the whole at the time the
11 security interest attaches to the goods who has not in writing con-
12 sented to the security interest or disclaimed an interest in the goods
13 as part of the whole.

14 3. The security interests described in subsections 1 and 2 do not
15 take priority over

16 a. a subsequent purchaser for value of any interest in the whole;
17 or

18 *b.* a creditor with a lien on the whole subsequently obtained by
19 judicial proceedings; or

20 *c.* a creditor with a prior perfected security interest in the whole
21 to the extent that he makes subsequent advances; if the subsequent
22 purchase is made, the lien by judicial proceedings obtained or the
23 subsequent advance under the prior perfected security interest is
24 made or contracted for without knowledge of the security interest
25 and before it is perfected. A purchaser of the whole at a foreclosure
26 sale other than the holder of a perfected security interest purchasing
27 at his own foreclosure sale is a subsequent purchaser within this
28 section.

29 4. When under subsections 1 or 2 and 3 a secured party has an
30 interest in accessions which has priority over the claims of all per-
31 sons who have interests in the whole, he may on default subject to
32 the provisions of Part 5 remove his collateral from the whole but he
33 must reimburse any encumbrancer or owner of the whole who is not
34 the debtor and who has not otherwise agreed for the cost of repair
35 of any physical injury but not for any diminution in value of the
36 whole caused by the absence of the goods removed or by any neces-
37 sity for replacing them. A person entitled to reimbursement may
38 refuse permission to remove until the secured party gives adequate
39 security for the performance of this obligation.

1 **SEC. 9315. Priority when goods are commingled or processed.**

2 1. If a security interest in goods was perfected and subsequently
3 the goods or a part thereof have become part of a product or mass, the
4 security interest continues in the product or mass if

5 *a.* the goods are so manufactured, processed, assembled or com-
6 mingled that their identity is lost in the product or mass; or

7 *b.* a financing statement covering the original goods also covers the
8 product into which the goods have been manufactured, processed or
9 assembled.

10 In a case to which paragraph *b* applies, no separate security interest
11 in that part of the original goods which has been manufactured, proc-
12 essed or assembled into the product may be claimed under Section
13 9314.

14 2. When under subsection 1 more than one security interest at-
15 taches to the product or mass, they rank equally according to the
16 ratio that the cost of the goods to which each interest originally
17 attached bears to the cost of the total product or mass.

1 **SEC. 9316. Priority subject to subordination.** Nothing in this
2 Article prevents subordination by agreement by any person entitled
3 to priority.

1 **SEC. 9317. Secured party not obligated on contract of debtor.**

2 The mere existence of a security interest or authority given to the
3 debtor to dispose of or use collateral does not impose contract or tort
4 liability upon the secured party for the debtor's acts or omissions.

1 **SEC. 9318. Defenses against assignee—modification of contract
2 after notification of assignment—term prohibiting assignment in-
3 effective—identification and proof of assignment.**

4 1. Unless an account debtor has made an enforceable agreement

- 5 not to assert defenses or claims arising out of a sale as provided in
6 Section 9206 the rights of an assignee are subject to
- 7 a. all the terms of the contract between the account debtor and
8 assignor and any defense or claim arising therefrom; and
- 9 b. any other defense or claim of the account debtor against the as-
10 signor which accrues before the account debtor receives notification
11 of the assignment.
- 12 2. So far as the right to payment under an assigned contract right
13 has not already become an account, and notwithstanding notification
14 of the assignment, any modification of or substitution for the con-
15 tract made in good faith and in accordance with reasonable commer-
16 cial standards is effective against an assignee unless the account
17 debtor has otherwise agreed but the assignee acquires corresponding
18 rights under the modified or substituted contract. The assignment
19 may provide that such modification or substitution is a breach by the
20 assignor.
- 21 3. The account debtor is authorized to pay the assignor until the
22 account debtor receives notification that the account has been as-
23 signed and that payment is to be made to the assignee. A notification
24 which does not reasonably identify the rights assigned is ineffective.
25 If requested by the account debtor, the assignee must seasonably
26 furnish reasonable proof that the assignment has been made and
27 unless he does so the account debtor may pay the assignor.
- 28 4. A term in any contract between an account debtor and an as-
29 signor which prohibits assignment of an account or contract right to
30 which they are parties is ineffective.

PART 4

FILING

- 1 **SEC. 9401. Place of filing—erroneous filing—removal of collateral.**
- 2 1. The proper place to file in order to perfect a security interest is as
3 follows:
- 4 a. when the collateral is equipment used in farming operations, or
5 farm products, or accounts, contract rights or general intangibles
6 arising from or relating to the sale of farm products by a farmer, or
7 consumer goods, then in the office of the Recorder in the county of
8 the debtor's residence or if the debtor is not a resident of this state
9 then in the office of the Recorder in the county where the goods are
10 kept, and in addition when the collateral is crops in the office of the
11 Recorder in the county where the land on which the crops are growing
12 or to be grown is located;
- 13 b. when the collateral is goods which at the time the security in-
14 terest attaches are or are to become fixtures, then in the office where
15 a mortgage on the real estate concerned would be filed or recorded;
- 16 c. in all other cases, in the office of the Secretary of State.
- 17 2. A filing which is made in good faith in an improper place or not
18 in all of the places required by this section is nevertheless effective
19 with regard to any collateral as to which the filing complied with the
20 requirements of this Article and is also effective with regard to col-
21 lateral covered by the financing statement against any person who
22 has knowledge of the contents of such financing statement.

23 3. A filing which is made in the proper place in this state continues
 24 effective even though the debtor's residence or place of business or
 25 the location of the collateral or its use, whichever controlled the
 26 original filing, is thereafter changed.

27 4. If collateral is brought into this state from another jurisdiction,
 28 the rules stated in Section 9103 determine whether filing is necessary
 29 in this state.

1 **SEC. 9402. Formal requisites of financing statement — amend-**
 2 **ments.**

3 1. A financing statement is sufficient if it is signed by the debtor
 4 and the secured party, gives an address of the secured party from
 5 which information concerning the security interest may be obtained,
 6 gives a mailing address of the debtor, contains a statement indicating
 7 the types, or describing the items, of collateral. A financing statement
 8 may be filed before a security agreement is made or a security interest
 9 otherwise attaches. When the financing statement covers crops grow-
 10 ing or to be grown or goods which are or are to become fixtures, the
 11 statement must also contain a description of the real estate concerned.
 12 A copy of the security agreement is sufficient as a financing statement
 13 if it contains the above information and is signed by both parties.

14 2. A financing statement which otherwise complies with subsection
 15 1 is sufficient although it is signed only by the secured party when it
 16 is filed to perfect a security interest in

17 *a.* collateral already subject to a security interest in another juris-
 18 diction when it is brought into this state. Such a financing statement
 19 must state that the collateral was brought into this state under such
 20 circumstances.

21 *b.* proceeds under Section 9306 if the security interest in the origi-
 22 nal collateral was perfected. Such a financing statement must de-
 23 scribe the original collateral.

24 3. A form substantially as follows is sufficient to comply with sub-
 25 section 1:

26 Name of debtor (or assignor).....
 27 Address
 28 Name of secured party (or assignee).....
 29 Address

30 (1) This financing statement covers the following types (or items)
 31 of property:

32 (Describe)

33 (2) (If collateral is crops) The above described crops are growing
 34 or are to be grown on:

35 (Describe Real Estate)

36 (3) (If collateral is goods which are or are to become fixtures) The
 37 above described goods are affixed or to be affixed to:

38 (Describe Real Estate)

39 (4) (If proceeds or products of collateral are claimed) Proceeds—
 40 Products of the collateral are also covered.

41 Signature of Debtor (or Assignor).....

42 Signature of Secured Party (or Assignee).....

43 4. The term "financing statement" as used in this Article means
 44 the original financing statement and any amendments but if any

45 amendment adds collateral, it is effective as to the added collateral
46 only from the filing date of the amendment.

47 5. A financing statement substantially complying with the require-
48 ments of this section is effective even though it contains minor errors
49 which are not seriously misleading.

1 **SEC. 9403. What constitutes filing—duration of filing—effect of**
2 **lapsed filing—duties of filing officer.**

3 1. Presentation for filing of a financing statement and tender of the
4 filing fee or acceptance of the statement by the filing officer consti-
5 tutes filing under this Article.

6 2. A filed financing statement which states a maturity date of the
7 obligation secured of five years or less is effective until such maturity
8 date and thereafter for a period of sixty days. Any other filed financ-
9 ing statement is effective for a period of five years from the date of
10 filing. The effectiveness of a filed financing statement lapses on the
11 expiration of such sixty day period after a stated maturity date or
12 on the expiration of such five-year period, as the case may be, unless
13 a continuation statement is filed prior to the lapse. Upon such lapse
14 the security interest becomes unperfected. A filed financing state-
15 ment which states that the obligation secured is payable on demand
16 is effective for five years from the date of filing.

17 3. A continuation statement may be filed by the secured party (i)
18 within six months before and sixty days after a stated maturity date
19 of five years or less, and (ii) otherwise within six months prior to the
20 expiration of the five-year period specified in subsection 2. Any such
21 continuation statement must be signed by the secured party, identify
22 the original statement by file number and state that the original
23 statement is still effective. Upon timely filing of the continuation
24 statement, the effectiveness of the original statement is continued
25 for five years after the last date to which the filing was effective
26 whereupon it lapses in the same manner as provided in subsection 2
27 unless another continuation statement is filed prior to such lapse.
28 Succeeding continuation statements may be filed in the same manner
29 to continue the effectiveness of the original statement. Unless a stat-
30 ute on disposition of public records provides otherwise, the filing
31 officer may remove a lapsed statement from the files and destroy it.

32 4. A filing officer shall mark each statement with a consecutive
33 file number and with the date and hour of filing and shall hold the
34 statement for public inspection. In addition the filing officer shall
35 index the statements according to the name of the debtor and shall
36 note in the index the file number and the address of the debtor given
37 in the statement.

38 5. The uniform fee for filing, indexing and furnishing data for an
39 original or a continuation statement shall be one dollar.

1 **SEC. 9404. Termination statement.**

2 1. Whenever there is no outstanding secured obligation and no
3 commitment to make advances, incur obligations or otherwise give
4 value, the secured party must on written demand by the debtor send
5 the debtor a statement that he no longer claims a security interest

6 under the financing statement, which shall be identified by file num-
 7 ber. A termination statement signed by a person other than the
 8 secured party of record must include or be accompanied by the assign-
 9 ment or a statement by the secured party of record that he has as-
 10 signed the security interest to the signer of the termination state-
 11 ment. The uniform fee for filing and indexing such an assignment or
 12 statement thereof shall be one dollar. If the affected secured party
 13 fails to send such a termination statement within ten days after
 14 proper demand therefor he shall be liable to the debtor for one hun-
 15 dred dollars, and in addition for any loss caused to the debtor by such
 16 failure.

17 2. On presentation to the filing officer of such a termination state-
 18 ment he must note it in the index. The filing officer shall remove from
 19 the files, mark "terminated" and send or deliver to the secured party
 20 the financing statement and any continuation statement, statement of
 21 assignment or statement of release pertaining thereto.

22 3. The uniform fee for filing and indexing a termination statement
 23 including sending or delivering the financing statement shall be one
 24 dollar.

1 **SEC. 9405. Assignment of security interest—duties of filing offi-
 2 cer—fees.**

3 1. A financing statement may disclose an assignment of a security
 4 interest in the collateral described in the statement by indication in
 5 the statement of the name and address of the assignee or by an
 6 assignment itself or a copy thereof on the face or back of the state-
 7 ment. Either the original secured party or the assignee may sign
 8 this statement as the secured party. On presentation to the filing
 9 officer of such a financing statement the filing officer shall mark the
 10 same as provided in Section 9403 subsection 4. The uniform fee for
 11 filing, indexing and furnishing filing data for a financing statement
 12 so indicating an assignment shall be one dollar.

13 2. A secured party may assign of record all or a part of his rights
 14 under a financing statement by the filing of a separate written state-
 15 ment of assignment signed by the secured party of record and setting
 16 forth the name of the secured party of record and the debtor, the file
 17 number and the date of filing of the financing statement and the
 18 name and address of the assignee and containing a description of the
 19 collateral assigned. A copy of the assignment is sufficient as a sepa-
 20 rate statement if it complies with the preceding sentence. On presen-
 21 tation to the filing officer of such a separate statement, the filing officer
 22 shall mark such separate statement with the date and hour of the
 23 filing. He shall note the assignment on the index of the financing
 24 statement. The uniform fee for filing, indexing and furnishing filing
 25 data about such a separate statement of assignment shall be one
 26 dollar.

27 3. After the disclosure or filing of an assignment under this sec-
 28 tion, the assignee is the secured party of record.

1 **SEC. 9406. Release of collateral—duties of filing officer—fees.** A
 2 secured party of record may by his signed statement release all or a
 3 part of any collateral described in a filed financing statement. The
 4 statement of release is sufficient if it contains a description of the

5 collateral being released, the name and address of the debtor, the
6 name and address of the secured party, and the file number of the
7 financing statement. Upon presentation of such a statement to the
8 filing officer he shall mark the statement with the hour and date of
9 filing and shall note the same upon the margin of the index of the
10 filing of the financing statement. The uniform fee for filing and not-
11 ing such a statement of release shall be one dollar.

1 **SEC. 9407. Information from filing officer.**

2 1. If the person filing any financing statement, termination state-
3 ment, statement of assignment, or statement of release, furnishes the
4 filing officer a copy thereof, the filing officer shall upon request note
5 upon the copy the file number and date and hour of the filing of the
6 original and deliver or send the copy to such person.

7 2. Upon request of any person, the filing officer shall issue his cer-
8 tificate showing whether there is on file on the date and hour stated
9 therein, any presently effective financing statement naming a partic-
10 ular debtor and any statement of assignment thereof and if there
11 is, giving the date and hour of filing of each such statement and the
12 names and addresses of each secured party therein. The uniform fee
13 for such a certificate shall be one dollar plus fifty cents for each
14 financing statement and for each statement of assignment reported
15 therein. Upon request the filing officer shall furnish a certified copy
16 of any filed financing statement or statement of assignment for a
17 uniform fee of one dollar per page.

PART 5

DEFAULT

1 **SEC. 9501. Default—procedure when security agreement covers**
2 **both real and personal property.**

3 1. When a debtor is in default under a security agreement, a se-
4 cured party has the rights and remedies provided in this Part and
5 except as limited by subsection 3 those provided in the security agree-
6 ment. He may reduce his claim to judgment, foreclose or otherwise
7 enforce the security interest by any available judicial procedure. If
8 the collateral is documents the secured party may proceed either as
9 to the documents or as to the goods covered thereby. A secured party
10 in possession has the rights, remedies and duties provided in Section
11 9207. The rights and remedies referred to in this subsection are
12 cumulative.

13 2. After default, the debtor has the rights and remedies provided
14 in this Part, those provided in the security agreement and those pro-
15 vided in Section 9207.

16 3. To the extent that they give rights to the debtor and impose
17 duties on the secured party, the rules stated in the subsections re-
18 ferred to below may not be waived or varied except as provided with
19 respect to compulsory disposition of collateral (subsection 1 of Sec-
20 tion 9505) and with respect to redemption of collateral (Section 9506)
21 but the parties may by agreement determine the standards by which
22 the fulfillment of these rights and duties is to be measured if such
23 standards are not manifestly unreasonable:

24 a. subsection 2 of Section 9502 and subsection 2 of Section 9504

25 insofar as they require accounting for surplus proceeds of collateral;
 26 b. subsection 3 of Section 9504 and subsection 1 of Section 9505
 27 which deal with disposition of collateral;
 28 c. subsection 2 of Section 9505 which deals with acceptance of col-
 29 lateral as discharge of obligation;
 30 d. Section 9506 which deals with redemption of collateral; and
 31 e. subsection 1 of Section 9507 which deals with the secured party's
 32 liability for failure to comply with this Part.
 33 4. If the security agreement covers both real and personal prop-
 34 erty, the secured party may proceed under this Part as to the per-
 35 sonal property or he may proceed as to both the real and the personal
 36 property in accordance with his rights and remedies in respect of the
 37 real property in which case the provisions of this Part do not apply.
 38 5. When a secured party has reduced his claim to judgment the
 39 lien of any levy which may be made upon his collateral by virtue of
 40 any execution based upon the judgment shall relate back to the date
 41 of the perfection of the security interest in such collateral. A judicial
 42 sale, pursuant to such execution, is a foreclosure of the security in-
 43 terest by judicial procedure within the meaning of this section, and
 44 the secured party may purchase at the sale and thereafter hold the
 45 collateral free of any other requirements of this Article.

1 **SEC. 9502. Collection rights of secured party.**

2 1. When so agreed and in any event on default the secured party is
 3 entitled to notify an account debtor or the obligor on an instrument
 4 to make payment to him whether or not the assignor was theretofore
 5 making collections on the collateral, and also to take control of any
 6 proceeds to which he is entitled under Section 9306.
 7 2. A secured party who by agreement is entitled to charge back
 8 uncollected collateral or otherwise to full or limited recourse against
 9 the debtor and who undertakes to collect from the account debtors
 10 or obligors must proceed in a commercially reasonable manner and
 11 may deduct his reasonable expenses of realization from the collec-
 12 tions. If the security agreement secures an indebtedness, the secured
 13 party must account to the debtor for any surplus, and unless other-
 14 wise agreed, the debtor is liable for any deficiency. But, if the under-
 15 lying transaction was a sale of accounts, contract rights, or chattel
 16 paper, the debtor is entitled to any surplus or is liable for any defi-
 17 ciency only if the security agreement so provides.

1 **SEC. 9503. Secured party's right to take possession after default.**

2 Unless otherwise agreed a secured party has on default the right to
 3 take possession of the collateral. In taking possession a secured party
 4 may proceed without judicial process if this can be done without
 5 breach of the peace or may proceed by action. If the security agree-
 6 ment so provides the secured party may require the debtor to as-
 7 semble the collateral and make it available to the secured party at a
 8 place to be designated by the secured party which is reasonably con-
 9 venient to both parties. Without removal a secured party may render
 10 equipment unusable, and may dispose of collateral on the debtor's
 11 premises under Section 9504.

1 **SEC. 9504. Secured party's right to dispose of collateral after**
2 **default—effect of disposition.**

3 1. A secured party after default may sell, lease or otherwise dis-
4 pose of any or all of the collateral in its then condition or following
5 any commercially reasonable preparation or processing. Any sale of
6 goods is subject to the Article on Sales (Article 2). The proceeds of
7 disposition shall be applied in the order following to

8 a. the reasonable expenses of retaking, holding, preparing for sale,
9 selling and the like and, to the extent provided for in the agreement
10 and not prohibited by law, the reasonable attorneys' fees and legal
11 expenses incurred by the secured party;

12 b. the satisfaction of indebtedness secured by the security interest
13 under which the disposition is made;

14 c. the satisfaction of indebtedness secured by any subordinate
15 security interest in the collateral if written notification of demand
16 therefor is received before distribution of the proceeds is completed.
17 If requested by the secured party, the holder of a subordinate secu-
18 rity interest must seasonably furnish reasonable proof of his interest,
19 and unless he does so, the secured party need not comply with his
20 demand.

21 2. If the security interest secures an indebtedness, the secured
22 party must account to the debtor for any surplus, and, unless other-
23 wise agreed, the debtor is liable for any deficiency. But if the under-
24 lying transaction was a sale of accounts, contract rights, or chattel
25 paper, the debtor is entitled to any surplus or is liable for any de-
26 ficiency only if the security agreement so provides.

27 3. Disposition of the collateral may be by public or private proceed-
28 ings and may be made by way of one or more contracts. Sale or other
29 disposition may be as a unit or in parcels and at any time and place
30 and on any terms but every aspect of the disposition including the
31 method, manner, time, place and terms must be commercially reason-
32 able. Unless collateral is perishable or threatens to decline speedily
33 in value or is of a type customarily sold on a recognized market,
34 reasonable notification of the time and place of any public sale or
35 reasonable notification of the time after which any private sale or
36 other intended disposition is to be made shall be sent by the secured
37 party to the debtor, and except in the case of consumer goods to any
38 other person who has a security interest in the collateral and who has
39 duly filed a financing statement indexed in the name of the debtor in
40 this state or who is known by the secured party to have a security
41 interest in the collateral. The secured party may buy at any public
42 sale and if the collateral is of a type customarily sold in a recognized
43 market or is of a type which is the subject of widely distributed
44 standard price quotations he may buy at private sale.

45 4. When collateral is disposed of by a secured party after default,
46 the disposition transfers to a purchaser for value all of the debtor's
47 rights therein, discharges the security interest under which it is
48 made and any security interest or lien subordinate thereto. The pur-
49 chaser takes free of all such rights and interests even though the
50 secured party fails to comply with the requirements of this Part or
51 of any judicial proceedings

52 a. in the case of a public sale, if the purchaser has no knowledge of

53 any defects in the sale and if he does not buy in collusion with the
 54 secured party, other bidders or the person conducting the sale; or
 55 b. in any other case, if the purchaser acts in good faith.
 56 5. A person who is liable to a secured party under a guaranty, in-
 57 dorsement, repurchase agreement or the like and who receives a
 58 transfer of collateral from the secured party or is subrogated to his
 59 rights has thereafter the rights and duties of the secured party.
 60 Such a transfer of collateral is not a sale or disposition of the col-
 61 lateral under this Article.

1 **SEC. 9505. Compulsory disposition of collateral—acceptance of**
 2 **the collateral as discharge of obligation.**

3 1. If the debtor has paid sixty per cent of the cash price in the case
 4 of a purchase money security interest in consumer goods or sixty per
 5 cent of the loan in the case of another security interest in consumer
 6 goods, and has not signed after default a statement renouncing or
 7 modifying his rights under this Part a secured party who has taken
 8 possession of collateral must dispose of it under Section 9504 and if
 9 he fails to do so within ninety days after he takes possession the
 10 debtor at his option may recover in conversion or under Section 9507
 11 subsection 1 on secured party's liability.

12 2. In any other case involving consumer goods or any other col-
 13 lateral a secured party in possession may, after default, propose to
 14 retain the collateral in satisfaction of the obligation. Written notice
 15 of such proposal shall be sent to the debtor and except in the case of
 16 consumer goods to any other secured party who has a security interest
 17 in the collateral and who has duly filed a financing statement
 18 indexed in the name of the debtor in this state or is known by the
 19 secured party in possession to have a security interest in it. If the
 20 debtor or other person entitled to receive notification objects in writ-
 21 ing within thirty days from the receipt of the notification or if any
 22 other secured party objects in writing within thirty days after the
 23 secured party obtains possession the secured party must dispose of
 24 the collateral under Section 9504. In the absence of such written
 25 objection the secured party may retain the collateral in satisfaction
 26 of the debtor's obligation.

1 **SEC. 9506. Debtor's right to redeem collateral.** At any time be-
 2 fore the secured party has disposed of collateral or entered into a
 3 contract for its disposition under Section 9504 or before the obligation
 4 has been discharged under Section 9505 subsection 2 the debtor or
 5 any other secured party may unless otherwise agreed in writing after
 6 default redeem the collateral by tendering fulfillment of all obliga-
 7 tions secured by the collateral as well as the expenses reasonably
 8 incurred by the secured party in retaking, holding and preparing the
 9 collateral for disposition, in arranging for the sale, and to the extent
 10 provided in the agreement and not prohibited by law, his reasonable
 11 attorneys' fees and legal expenses.

1 **SEC. 9507. Secured party's liability for failure to comply with**
 2 **this Part.**

3 1. If it is established that the secured party is not proceeding in
 4 accordance with the provisions of this Part disposition may be or-

5 dered or restrained on appropriate terms and conditions. If the dis-
 6 position has occurred the debtor or any person entitled to notification
 7 or whose security interest has been made known to the secured party
 8 prior to the disposition has a right to recover from the secured party
 9 any loss caused by a failure to comply with the provisions of this
 10 Part. If the collateral is consumer goods, the debtor has a right to
 11 recover in any event an amount not less than the credit service charge
 12 plus ten per cent of the principal amount of the debt or the time price
 13 differential plus ten per cent of the cash price.

14 2. The fact that a better price could have been obtained by a sale
 15 at a different time or in a different method from that selected by the
 16 secured party is not of itself sufficient to establish that the sale was
 17 not made in a commercially reasonable manner. If the secured party
 18 either sells the collateral in the usual manner in any recognized mar-
 19 ket therefor or if he sells at the price current in such market at the
 20 time of his sale or if he has otherwise sold in conformity with reason-
 21 able commercial practices among dealers in the type of property sold
 22 he has sold in a commercially reasonable manner. The principles
 23 stated in the two preceding sentences with respect to sales also apply
 24 as may be appropriate to other types of disposition. A disposition
 25 which has been approved in any judicial proceeding or by any bona
 26 fide creditors' committee or representative of creditors shall conclu-
 27 sively be deemed to be commercially reasonable, but this sentence
 28 does not indicate that any such approval must be obtained in any case
 29 nor does it indicate that any disposition not so approved is not com-
 30 mercially reasonable.

ARTICLE 10

EFFECTIVE DATE AND REPEALER

1 SEC. 10101. **Effective date.** This Act shall take effect and be in
 2 force on and after July 4, 1966. It applies to transactions entered into
 3 and events occurring after that date.

1 SEC. 10102. **Specific repealer—provision for transition.**

2 1. The following chapters of the 1962 Code are hereby repealed:
 3 Chapter four hundred eighty-seven (487);
 4 Chapter four hundred ninety-three A (493A);
 5 Chapter five hundred forty-two (542);
 6 Chapter five hundred fifty-four (554);
 7 Chapter five hundred fifty-five (555);
 8 Chapter five hundred fifty-six (556);
 9 Chapter five hundred seventy-five (575);
 10 Chapter six hundred fifty-two (652); and
 11 Chapter six hundred fifty-three (653).
 12 The following sections of the 1962 Code are hereby repealed:
 13 Section four hundred ninety-one point forty-nine (491.49);
 14 Section four hundred ninety-one point fifty-one (491.51);
 15 Section four hundred ninety-one point fifty-two (491.52);
 16 Section four hundred ninety-one point fifty-three (491.53);
 17 Section five hundred twenty-eight point sixty-one (528.61);
 18 Section five hundred twenty-eight point sixty-two (528.62);

19 Sections five hundred thirty-nine point seven (539.7) to five hun-
 20 dred thirty-nine point fifteen (539.15), inclusive;
 21 Sections five hundred forty-one point one (541.1) to five hundred
 22 forty-one point two hundred one (541.201), inclusive;
 23 Section five hundred forty-three point twenty (543.20);
 24 Section five hundred forty-three point twenty-one (543.21);
 25 Sections five hundred forty-three point twenty-three (543.23) to
 26 five hundred forty-three point twenty-six (543.26), inclusive;
 27 Section five hundred forty-three point twenty-nine (543.29);
 28 Section five hundred forty-three point thirty-seven (543.37);
 29 Section five hundred forty-three point thirty-eight (543.38);
 30 Sections six hundred thirteen point three (613.3) to six hundred
 31 thirteen point six (613.6), inclusive;
 32 Section six hundred twenty-two point thirty-one (622.31); and Sec-
 33 tion six hundred thirty-nine point twenty-two (639.22).
 34 2. Transactions validly entered into before the effective date speci-
 35 fied in section 10101 and the rights, duties and interests flowing from
 36 them remain valid thereafter and may be terminated, completed, con-
 37 summated or enforced as required or permitted by any statute or
 38 other law amended or repealed by this Act as though such repeal or
 39 amendment had not occurred.

1 **SEC. 10103. General repealer.** Except as provided in the follow-
 2 ing section, all acts and parts of acts inconsistent with this Act are
 3 hereby repealed.

1 **SEC. 10104 Laws not repealed.**

2 1. The Article on Documents of Title (Article 7) does not repeal or
 3 modify any laws prescribing the form or contents of documents of
 4 title or the services or facilities to be afforded by bailees, or otherwise
 5 regulating bailees' businesses in respects not specifically dealt with
 6 herein; but the fact that such laws are violated does not affect the
 7 status of a document of title which otherwise complies with the defi-
 8 nition of a document of title (Section 1201).

9 2. This Act does not repeal sections one hundred thirty (130) to
 10 one hundred thirty-eight (138), inclusive, chapter three hundred
 11 twenty-six (326), 60th General Assembly, and if in any respect there
 12 is any inconsistency between that Act and the Article of this Act on
 13 investment securities (Article 8) the provisions of the former Act
 14 shall control.

1 **SEC. 10105.** Section three point three (3.3), Code 1962, is amend-
 2 ed by striking the word "but" in line six (6) and inserting in lieu
 3 thereof the words "but, except as provided in the Uniform Commer-
 4 cial Code, section 1109,".

1 **SEC. 10106.** Section one hundred eleven point six (111.6), Code
 2 1962, is amended by striking the words "chattel mortgages in chap-
 3 ter 652." in line nine (9) and inserting in lieu thereof the words
 4 "security interests in Uniform Commercial Code, Article 9, Part 5."

1 **SEC. 10107.** Section three hundred twenty-one point one (321.1),
 2 Code 1962, is amended by striking all of subsection thirty-six (36)
 3 and inserting in lieu thereof the following:

4 " 'Owner' means a person who holds the legal title of a vehicle, or

5 in the event a vehicle is the subject of a security agreement with an
6 immediate right of possession vested in the debtor, then such debtor
7 shall be deemed the owner for the purpose of this chapter."

1 SEC. 10108. Section three hundred twenty-one point forty-five
2 (321.45), Code 1962, is amended by striking all of subsection two (2)
3 and inserting in lieu thereof the words "No person shall acquire any
4 right, title, claim or interest in or to any vehicle subject to registra-
5 tion under this chapter from the owner thereof except by virtue of a
6 certificate of title issued or assigned to him for such vehicle or by
7 virtue of a manufacturer's or importer's certificate delivered to him
8 for such vehicle; nor shall any waiver or estoppel operate in favor of
9 any person claiming title to or interest in any vehicle against a person
10 having possession of the certificate of title or manufacturer's or im-
11 porter's certificate for such vehicle for a valuable consideration except
12 in case of

13 1. the perfection of a lien or security interest by notation on the
14 certificate of title as provided in section three hundred twenty-one
15 point fifty (321.50), of the Code, or

16 2. the perfection of a security interest in new or used vehicles held
17 as inventory for sale as provided in Uniform Commercial Code, Article
18 9, or

19 3. a dispute between a buyer and the selling dealer who has failed
20 to deliver or procure the certificate of title as promised, or

21 4. except for the purposes of section three hundred twenty-one
22 point four hundred ninety-three (321.493), of the Code. Except in
23 the above enumerated cases, no court in any case at law or equity
24 shall recognize the right, title, claim or interest of any person in or
25 to any vehicle subject to registration sold or disposed of, or mort-
26 gaged or encumbered, unless evidenced by a certificate of title or
27 manufacturer's or importer's certificate duly issued or assigned in
28 accordance with the provisions of this chapter."

1 SEC. 10109. Section three hundred twenty-one point forty-seven
2 (321.47), Code 1962, is amended by striking the words "chattel mort-
3 gage, trust receipt, conditional sales contract or other like agree-
4 ment," in lines thirteen (13) to fifteen (15), inclusive, and inserting
5 in lieu thereof the words "security agreement," and by striking the
6 remainder of the section commencing with the words "chattel mort-
7 gage" in line fifty-six (56) and inserting in lieu thereof the words
8 "security interest was foreclosed as provided in Uniform Commercial
9 Code, Article 9, Part 5."

1 SEC. 10110. Section three hundred twenty-one point fifty
2 (321.50), Code 1962, is amended by repealing the entire section and
3 inserting in lieu thereof the following:

4 "1. A security interest in a vehicle subject to registration under
5 the laws of this state, except trailers whose empty weight is two
6 thousand pounds or less, and wagon box trailers subject to a regis-
7 tration fee of five dollars or less, and new or used vehicles held by a
8 dealer or manufacturer as inventory for sale, is perfected by the de-
9 livery to the county treasurer of the county where the certificate of
10 title was issued or, in the case of a new certificate, to the county
11 treasurer where the certificate will be issued of an application for

12 certificate of title which lists such security interest, or an application
13 for notation of security interest signed by the owner, or a certificate
14 of title from another jurisdiction which shows such security interest,
15 and a fee of one dollar for each security interest shown. If the owner
16 or secured party is in possession of the certificate of title, it must also
17 be delivered at this time in order to perfect the security interest. If
18 a vehicle is subject to a security interest when brought into this state,
19 the validity of the security interest and the date of perfection is
20 determined by the Uniform Commercial Code, Section 9103.

21 2. Upon receipt of the application and the required fee, the county
22 treasurer shall notify the holder of the certificate of title to deliver
23 to the county treasurer, within five days from the receipt of notice,
24 the certificate of title to permit notation of the security interest. If
25 the holder of the certificate of title shall fail to deliver it within the
26 said five days, he shall be liable to anyone harmed by his failure.

27 3. Upon receipt of the application, the certificate of title, if any,
28 and the required fee, the county treasurer shall note such security
29 interest, and the date thereof, on the certificate over the signature of
30 such officer or deputy and the seal of office. He shall also note such
31 security interest and the date thereof on the duplicate of same on file.
32 On that day he shall notify the department on forms provided by the
33 department, which shall note such security interests on the duplicate
34 title in its file. The county treasurer shall then mail the certificate
35 of title to the first secured party as shown thereon.

36 4. When a security interest is discharged, the holder thereof shall
37 execute a release within fifteen days after payment is received, such
38 release to contain the certificate of title number, the date of the nota-
39 tion thereof, and the name and address of the person to whom the title
40 shall be delivered when such delivery is requested as hereinafter pro-
41 vided. The holder shall also note a cancellation of same on the face
42 of the certificate of title over his, her or its signature, and deliver the
43 release and certificate of title to the county treasurer where title was
44 issued. The county treasurer shall immediately note the cancellation
45 of said security interest on the face of the certificate of title and on
46 the duplicate of same on file in his office. On the same day he shall
47 notify the department, which shall note such release on the duplicate
48 title in its file. The county treasurer shall on the same day deliver
49 the certificate of title to the then first secured party or, if there is no
50 such person, to the person as directed on the lien release or, if there
51 is no such person designated, then to the owner. Said cancellation of
52 the security interest shall be noted on the certificate of title by the
53 county treasurer without charge. The holder of a lien discharged by
54 payment who fails to release such lien as herein provided within fif-
55 teen days after being requested in writing to do so shall forfeit to the
56 person making such payment the sum of twenty-five dollars. Such
57 request shall be on the release form as prescribed by the department
58 and shall contain a statement signed by the owner setting forth the
59 name and address of the person to whom the title shall be delivered.

60 5. The Uniform Commercial Code, Article 9, shall apply to all trans-
61 actions intended to create a security in vehicles except as provided in
62 this chapter."

1 SEC. 10111. Section three hundred twenty-one point one hundred
2 nine (321.109), Code 1962, is amended by striking the last sentence
3 beginning at line forty-three (43).

1 SEC. 10112. Section three hundred twenty-one A point one
2 (321A.1), Code 1962, is amended by striking paragraph eight (8) and
3 inserting in lieu thereof the following:

4 "Owner. A person who holds the legal title of a motor vehicle, or
5 in the event a motor vehicle is the subject of a security agreement
6 with a right of possession in the debtor, then such debtor shall be
7 deemed the owner for the purpose of this chapter."

1 SEC. 10113. Section three hundred twenty-one A point thirty
2 (321A.30), Code 1962, is amended by striking the words "conditional
3 vendor, chattel mortgagee," in line ten (10) and inserting in lieu
4 thereof the words "secured party".

1 SEC. 10114. Section five hundred twenty-eight point nine (528.9),
2 Code 1962, is amended by striking the words "to loans against the
3 stock which the bank has acknowledged by written notice" in lines
4 sixteen (16) to eighteen (18), inclusive, and inserting in lieu thereof
5 the words "to security interests in the stock which have been per-
6 fected."

1 SEC. 10115. Section five hundred twenty-eight point thirty-four
2 (528.34), Code 1962, is amended by striking the words "Any draft
3 drawn and issued by any bank or trust company prior to its failure
4 or closing and given in payment of clearings and" in lines one (1)
5 to three (3), inclusive.

1 SEC. 10116. Section five hundred thirty-two point nineteen
2 (532.19), Code 1962, is amended by striking the words "and 528.81
3 to 528.85, inclusive," in lines eleven (11) and twelve (12) and insert-
4 ing in lieu thereof the words "528.81 to 528.85, inclusive, and Uniform
5 Commercial Code, Article 4".

1 SEC. 10117. Section five hundred thirty-six point fourteen
2 (536.14), Code 1962, is amended by striking the words "mortgage,
3 restore any pledge," in lines twenty-seven (27) and twenty-eight (28)
4 and inserting in lieu thereof the words "security interest, restore any
5 collateral,".

1 SEC. 10118. Section five hundred thirty-six point seventeen
2 (536.17), Code 1962, is amended by striking the words "chattel mort-
3 gage or other lien" in lines twenty-five (25) and twenty-six (26) and
4 inserting in lieu thereof the words "security agreement".

1 SEC. 10119. Section five hundred thirty-seven point three (537.3),
2 Code 1962, is amended by striking the words "negotiable instruments
3 law." in line five (5) and inserting in lieu thereof the words "Uniform
4 Commercial Code."

1 SEC. 10120. Section five hundred thirty-eight point five (538.5),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "Tender when holder absent from state. When an instrument for
4 the payment of money is due and the holder is absent from the state

5 or his identity or whereabouts are unknown and the instrument does
 6 not provide for a place of payment, the maker may tender payment
 7 at the last known residence or place of business of the last known
 8 holder, and if there be no person there authorized to receive payment
 9 and give proper credit therefor, the maker shall be deemed to have
 10 tendered payment and interest shall cease on the date of deposit if:

11 1. the maker deposits the amount due with the clerk of the district
 12 court in the county where the maker resided at the time of the mak-
 13 ing of the instrument, if he was then a resident of the state of Iowa,
 14 or if the maker was a nonresident of the state of Iowa at the time of
 15 making, with the clerk of the district court of Polk County, and

16 2. *a.* the maker files an affidavit with the clerk of the court that
 17 the identity or address of the holder is unknown and that he has made
 18 diligent inquiry to ascertain it, or

19 *b.* the maker within three days gives notice of such deposit by ordi-
 20 nary mail to the holder, if his identity and address are known.

21 Upon presentment of the instrument by the holder to the clerk, the
 22 clerk shall pay the holder of such instrument the funds in his hands.
 23 If such deposit is in full payment of the instrument the clerk shall
 24 deliver the instrument to the maker. If such deposit is a partial pay-
 25 ment thereof the clerk shall endorse such payment thereon and return
 26 the instrument to the holder."

1 SEC. 10121. Section five hundred thirty-nine point one (539.1),
 2 Code 1962, is amended by adding thereto the words "In case of con-
 3 flict between this section and Uniform Commercial Code, sections
 4 3805, 5116 or 9318, those sections control."

1 SEC. 10122. Section five hundred thirty-nine point two (539.2),
 2 Code 1962, is amended by adding thereto the words "In case of con-
 3 flict between this section and Uniform Commercial Code, sections
 4 3805, 5116 or 9318, those sections control."

1 SEC. 10123. Section five hundred thirty-nine point three (539.3),
 2 Code 1962, is amended by adding thereto the following: "In case of
 3 conflict Uniform Commercial Code, section 9318, controls."

1 SEC. 10124. Section five hundred forty-three point eighteen
 2 (543.18), Code 1962, is amended by striking the words "sections
 3 542.2 and 542.3," in lines seven (7) and eight (8) and inserting in
 4 lieu thereof the words "Uniform Commercial Code, sections 7202 and
 5 7204," and by further striking the words "section 542.2" in lines ten
 6 (10) and eleven (11) and inserting in lieu thereof the words "Uni-
 7 form Commercial Code, section 7202".

1 SEC. 10125. Section five hundred forty-three point nineteen
 2 (543.19), Code 1962, is repealed and the following words are enacted
 3 in lieu thereof: "Insofar as not inconsistent with the provisions of
 4 this chapter, original or duplicate receipts issued by licensed ware-
 5 housemen shall be deemed to have been issued under the provisions
 6 of Uniform Commercial Code, Article 7."

1 SEC. 10126. Section five hundred forty-three point twenty-two
 2 (543.22), Code 1962, is repealed and the following words are enacted
 3 in lieu thereof:

4 "When requested by the depositor of other than fungible agricul-
5 tural products, a nonnegotiable receipt may be issued omitting the
6 information specified in subsection 2 of section five hundred forty-
7 three point eighteen (543.18), of the Code."

1 SEC. 10127. Section five hundred forty-six point three (546.3),
2 Code 1962, is amended by striking the words "of any chattel mort-
3 gage," in lines three (3) and four (4) and inserting in lieu thereof
4 the words "the Uniform Commercial Code, section 9504, or of any".

1 SEC. 10128. Section five hundred seventy-one point two (571.2),
2 Code 1962, is amended by striking the words "mortgage lien" in line
3 three (3) and inserting in lieu thereof the words "security interest".

1 SEC. 10129. Section five hundred seventy-one point five (571.5),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "Said lien may be foreclosed in the manner provided in Uniform
4 Commercial Code, Article 9, Part 5."

1 SEC. 10130. Section five hundred seventy-six point two (576.2),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "Said lien may be foreclosed in the manner provided in the Uniform
4 Commercial Code, section 7308."

1 SEC. 10131. Section five hundred seventy-seven point two (577.2),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "Said lien may be foreclosed in the manner provided in the Uniform
4 Commercial Code, section 7308."

1 SEC. 10132. Section five hundred seventy-eight point two (578.2),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "Said lien may be foreclosed in the manner provided in the Uniform
4 Commercial Code, section 7308."

1 SEC. 10133. Section six hundred twenty-six point twenty-five
2 (626.25), Code 1962, is amended by striking the words "Stock or
3 interest" in line one (1) and inserting in lieu thereof the words "Any
4 interest which is not represented by a security as defined in the Uni-
5 form Commercial Code, section 8102".

1 SEC. 10134. Section six hundred twenty-six point thirty-four
2 (626.34), Code 1962, is repealed and inserted in lieu thereof is the fol-
3 lowing:
4 "Personal property subject to a security interest not exempt from
5 execution may be taken on attachment or execution issued against
6 the debtor, if the officer, or the attachment or execution creditor,
7 within ten days after such levy, shall pay to the secured party the
8 amount of the secured debt and interest accrued, or deposit the same
9 with the clerk of the district court of the county from which the
10 attachment or execution issued, for the use of the secured party, or
11 secure the same as in this chapter provided."

1 SEC. 10135. Section six hundred twenty-six point thirty-five
2 (626.35), Code 1962, is repealed and inserted in lieu thereof is the
3 following: "When the secured debt is not due as shown by the secu-
4 rity agreement, the officer or the attachment or execution creditor,

5 must also pay or deposit with the clerk interest on the principal sum
6 at the rate specified in the security agreement for the term of sixty
7 days from the date of the deposit, unless the debt secured falls due
8 in a less time, in which case interest shall be deposited for such
9 shorter period."

1 SEC. 10136. Section six hundred twenty-six point thirty-six
2 (626.36), Code 1962, is amended by striking the words "holder of the
3 mortgage" in lines seven (7) and eight (8) and inserting in lieu
4 thereof the words "secured party".

1 SEC. 10137. Section six hundred twenty-six point thirty-seven
2 (626.37), Code 1962, is amended by striking the words "holder of the
3 mortgage" in line two (2) and inserting in lieu thereof the words
4 "secured party" and by striking the words "mortgaged property" in
5 line six (6) and inserting in lieu thereof the word "collateral".

1 SEC. 10138. Section six hundred twenty-six point thirty-eight
2 (626.38), Code 1962, is repealed and inserted in lieu thereof is the
3 following: "If, for any reason, the levy upon the collateral is dis-
4 charged or released without a sale thereof, the attachment or execu-
5 tion creditor who has paid or deposited the amount of the secured
6 debt shall have all the rights under such security agreement pos-
7 sessed by the secured party at the time of the levy. If the secured
8 party thereof desires to be reinstated in his rights thereunder, he
9 may repay the money received by him, with interest thereon at the
10 rate borne by the secured debt for the time it has been held by him,
11 and demand the return of the security agreement, whereupon his
12 rights thereunder shall revest in him, and the attachment or execu-
13 tion creditor shall be entitled to the deposit made, or any part thereof
14 remaining in the hands of the clerk, or any money returned to the
15 clerk by the secured party."

1 SEC. 10139. Section six hundred twenty-six point thirty-nine
2 (626.39), Code 1962, is repealed and inserted in lieu thereof is the
3 following: "The secured party, before receiving the money tendered
4 to him by the attaching or execution creditor or which was deposited
5 with the clerk, shall state by a signed memorandum the amount due
6 or to become due and deliver the same along with the security agree-
7 ment, unless it has been filed as the financing statement, to the person
8 paying the said amount or the clerk with whom the deposit is made,
9 and the secured party shall only receive the amount so stated to be
10 due, and the surplus, if any, shall be returned to the person making
11 the deposit."

1 SEC. 10140. Section six hundred twenty-six point forty (626.40),
2 Code 1962, is amended by striking the word "mortgage" in lines three
3 (3) and six (6) and inserting in lieu thereof the words "security
4 agreement".

1 SEC. 10141. Section six hundred twenty-six point forty-one
2 (626.41), Code 1962, is repealed and inserted in lieu thereof is the
3 following: "If under execution sale the collateral does not sell for
4 enough to pay the secured debt, interest, and costs of sale, the judg-
5 ment creditor shall be liable for all costs thus made, but if a greater

6 sum is realized, the officer conducting the sale shall at once pay to the
7 secured party the amount due thereunder, and apply the surplus on
8 the execution."

1 SEC. 10142. Section six hundred twenty-six point forty-two
2 (626.42), Code 1962, is amended by striking the words "mortgage
3 debt" in lines six (6) and seven (7) and inserting in lieu thereof the
4 words "secured debt".

1 SEC. 10143. Section six hundred twenty-six point forty-three
2 (626.43), Code 1962, is amended by striking the word "mortgagee"
3 in line two (2) and inserting in lieu thereof the words "secured party"
4 and by striking the word "mortgage" in lines nine (9) and twelve
5 (12) and inserting in lieu thereof the words "security interest".

1 SEC. 10144. Section six hundred twenty-six point forty-four
2 (626.44), Code 1962, is amended by striking the word "mortgagee"
3 in line one (1) and inserting in lieu thereof the words "secured
4 party".

1 SEC. 10145. Section six hundred twenty-six point forty-five
2 (626.45), Code 1962, is amended by striking the word "mortgage" in
3 line three (3) and inserting in lieu thereof the words "security agree-
4 ment".

1 SEC. 10146. Section six hundred twenty-six point forty-six
2 (626.46), Code 1962, is amended by striking the word "mortgages"
3 in lines two (2) and six (6) and inserting in lieu thereof the words
4 "security agreements".

1 SEC. 10147. Section six hundred twenty-six point forty-seven
2 (626.47), Code 1962, is amended by striking the word "mortgage" in
3 line five (5) and inserting in lieu thereof the words "security agree-
4 ment".

1 SEC. 10148. Section six hundred twenty-six point forty-eight
2 (626.48), Code 1962, is amended by striking the words "lien of the
3 mortgage" in line four (4) and inserting in lieu thereof the words
4 "priority of the security interest".

1 SEC. 10149. Section six hundred twenty-six point forty-nine
2 (626.49), Code 1962, is repealed and inserted in lieu thereof is the
3 following: "If the secured party, before the levy of a writ of attach-
4 ment or execution, has been garnished at the suit of a creditor of a
5 debtor, a creditor desiring to seize the collateral under a writ of at-
6 tachment or execution shall pay to the secured party, or deposit with
7 the clerk, in addition to the secured debt, the sum claimed under the
8 garnishment, and the provisions of this chapter, so far as applicable,
9 in all respects shall govern proceedings relating thereto."

1 SEC. 10150. Section six hundred thirty-nine point forty (639.40),
2 Code 1962, is amended by striking the words "Mortgaged personal
3 property" in lines one (1) and two (2) and inserting in lieu thereof
4 the words "Personal property subject to a security interest".

1 SEC. 10151. Section six hundred forty point one (640.1), Code
2 1962, is amended by striking the words "mortgage of" in line two (2)
3 and inserting in lieu thereof the words "security interest in".

1 SEC. 10152. Section six hundred forty-two point seventeen
2 (642.17), Code 1962, is amended by inserting after the words "nego-
3 tiable paper" in line three (3) the words "other than negotiable
4 documents of title, or securities as defined in Uniform Commercial
5 Code, section 8102,".

1 SEC. 10153. Section seven hundred ten point twelve (710.12),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "If any debtor who has given a security interest in collateral willfully
4 and with intent to defraud, destroys, conceals, sells, or in any manner
5 disposes of the collateral while the security interest remains unsatis-
6 fied and without the written consent of the secured party, he shall be
7 guilty of larceny and punished accordingly."

1 SEC. 10154. Section seven hundred ten point thirteen (710.13),
2 Code 1962, is repealed and inserted in lieu thereof is the following:
3 "Failure to produce the property specifically described in such secu-
4 rity agreement and existing and owned by the debtor at the time it
5 was executed in accordance with the terms thereof, shall be prima
6 facie evidence that the property described in such security agreement
7 has been destroyed, concealed, sold, or otherwise disposed of by the
8 debtor. Nothing herein contained shall relieve the debtor from mak-
9 ing demand for satisfaction or return of the collateral."

1 SEC. 10155. Notwithstanding any other provision of the 1962
2 Code of Iowa, this Act shall, insofar as possible, be included in the
3 Code of Iowa as chapter five hundred fifty-four (554) with the section
4 numbers of this Act as the section numbers of chapter five hundred
5 fifty-four (554), and the Articles, Parts and descriptive word titles to
6 be retained as in this Act.

Approved April 22, 1965.

CHAPTER 414

COMMERCIAL CODE AMENDMENT

S. F. 597

AN ACT to amend and correct an Act known as the Uniform Commercial Code.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Senate File two hundred twenty-seven (227), Acts,
2 61st General Assembly is amended as follows:

3 1. In section four thousand three hundred one (4301), line twelve
4 (12), by inserting a semicolon after the word "return";

5 2. In section four thousand five hundred one (4501), line seven (7),
6 by striking the word "brought" and inserting in lieu thereof the word
7 "bought";