

CHAPTER 41UNIFORM COMMERCIAL CODE —
MISCELLANEOUS CHANGES

S.F. 535

AN ACT relating to general provisions of the uniform commercial code relating to the construction and application of its subject matter, and providing for a contingent effective date.

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

DIVISION I
REVISION TO ARTICLE 1
ARTICLE 1
GENERAL PROVISIONS
PART 1
~~SHORT TITLE, CONSTRUCTION, APPLICATION,
AND SUBJECT MATTER OF THE CHAPTER~~
GENERAL PROVISIONS

Section 1. Section 554.1101, Code 2007, is amended to read as follows:
554.1101 ~~SHORT TITLE TITLES.~~

1. This chapter shall be known and may be cited as the Uniform Commercial Code.
2. This Article may be cited as Uniform Commercial Code — General Provisions.

Sec. 2. NEW SECTION. 554.1102A SCOPE OF ARTICLE.

This Article applies to a transaction to the extent that it is governed by another Article of this chapter.

Sec. 3. Section 554.1103, Code 2007, is amended to read as follows:

554.1103 ~~SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE CONSTRUCTION OF THIS CHAPTER TO PROMOTE ITS PURPOSES AND POLICIES — APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.~~

1. This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

- a. to simplify, clarify, and modernize the law governing commercial transactions;
- b. to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- c. to make uniform the law among the various jurisdictions.

2. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or and other validating or invalidating cause shall supplement its provisions.

Sec. 4. Section 554.1104, Code 2007, is amended to read as follows:

554.1104 CONSTRUCTION AGAINST ~~IMPLICIT~~ IMPLIED REPEAL.

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a general act Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. 5. Section 554.1105, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

554.1105 TERRITORIAL APPLICABILITY — PARTIES' POWER TO CHOOSE APPLICABLE LAW.

1. Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

2. In the absence of an agreement effective under subsection 1, and except as provided in subsection 3, this chapter applies to transactions bearing an appropriate relation to this state.

3. If one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- a. Section 554.2402;
- b. Section 554.4102;
- c. Section 554.5116;
- d. Section 554.8110;
- e. Sections 554.9301 through 554.9307;
- f. Section 554.12507;
- g. Sections 554.13105 and 554.13106.

Sec. 6. Section 554.1106, subsection 1, Code 2007, is amended to read as follows:

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

Sec. 7. NEW SECTION. 554.1106A USE OF SINGULAR AND PLURAL — GENDER.

In this chapter, unless the statutory context otherwise requires:

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

Sec. 8. Section 554.1107, Code 2007, is amended to read as follows:

554.1107 WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.

~~Any~~ A claim or right arising out of an alleged breach ~~can~~ may be discharged in whole or in part without consideration by a ~~written waiver or renunciation signed and delivered by agreement of~~ the aggrieved party in an authenticated record.

Sec. 9. Section 554.1108, Code 2007, is amended to read as follows:

554.1108 SEVERABILITY.

If any provision or clause of this chapter or ~~its~~ application ~~thereof~~ to any person or ~~circumstances~~ circumstance is held invalid, ~~such the~~ invalidity ~~shall~~ does not affect other provisions or applications of ~~the~~ this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are ~~declared to be~~ severable.

Sec. 10. NEW SECTION. 554.1108A RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this Article modifies, limits, or supersedes § 7001(c) of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec. 11. Section 554.1201, Code 2007, is amended to read as follows:

554.1201 GENERAL DEFINITIONS.

1. Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of this chapter that apply to particular Articles or Parts thereof, have the meanings stated.

2. Subject to additional definitions contained in the subsequent ~~other~~ Articles of this chapter ~~which are applicable that apply to specific particular~~ Articles or Parts thereof, ~~and unless the context otherwise requires, in this chapter:~~

1. ~~a.~~ "Action" in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceedings in which rights are determined.

2. ~~b.~~ "Aggrieved party" means a party entitled to ~~resort to~~ pursue a remedy.

3. ~~c.~~ "Agreement", ~~as distinguished from "contract",~~ means the bargain of the parties in fact, as found in their language or by implication ~~inferred~~ from other circumstances, including course of performance, course of dealing, or usage of trade or course of performance as provided in this chapter (sections 554.1205 and 554.2208) section 554.1303. Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 554.1103). (Compare "Contract".)

4. ~~d.~~ "Bank" means any ~~a~~ person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

5. ~~e.~~ "Bearer" means ~~the~~ a person in possession of ~~an~~ a negotiable instrument, document of title, or certificated security that is payable to bearer or endorsed indorsed in blank.

6. ~~f.~~ "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, ~~and includes an airbill.~~ "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

7. ~~g.~~ "Branch" includes a separately incorporated foreign branch of a bank.

8. ~~h.~~ "Burden of establishing" a fact means the burden of persuading the ~~triers~~ trier of fact that the existence of the fact is more probable than its nonexistence.

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

10. ~~j.~~ "Conspicuous":—A, with reference to a term, or clause is conspicuous when it is means so written, displayed, or presented that a reasonable person against whom which it is to operate ought to have noticed it. A printed heading in capitals (as:—"Nonnegotiable Bill of Lading") is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for a decision by for the court. Conspicuous terms include the following:

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

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

k. "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

11. ~~l.~~ "Contract", ~~as distinguished from "agreement",~~ means the total legal obligation ~~which that~~ results from the parties' agreement as affected determined by this chapter and as supplemented by any other applicable rules of law laws. (Compare "Agreement".)

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

13. n. "Defendant" includes a person in the position of defendant in a ~~cross-action or counterclaim, cross-claim, or third-party claim.~~

14. o. "Delivery" with respect to ~~instruments~~ an instrument, documents document of title, or chattel paper, or ~~certificated securities~~ means voluntary transfer of possession.

15. p. "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

16. q. "Fault" means a default, breach, or wrongful act, or omission or breach.

17. r. "Fungible" with respect to goods or securities "Fungible goods" means:

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

(2) ~~Goods which goods that by agreement are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents~~ equivalent.

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

19. t. "Good faith", ~~except as otherwise provided in Article 5,~~ means honesty in fact ~~in the conduct or transaction concerned~~ and the observance of reasonable commercial standards of fair dealing.

20. u. "Holder", ~~with respect to a negotiable instrument,~~ means:

(1) the person in possession ~~if the~~ of a negotiable instrument that is payable either to bearer or, ~~in the case of an instrument payable to an identified person, if the identified~~ that is the person is in possession; or

(2) "Holder" with respect to a document of title means the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

21. To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

22. v. "Insolvency proceedings" proceeding includes any assignment for the benefit of creditors or other ~~proceedings~~ proceeding intended to liquidate or rehabilitate the estate of the person involved.

23. w. A person is "insolvent" who either has "Insolvent" means:

(1) having generally ceased to pay that person's debts in the ordinary course of business or cannot pay that person's debts other than as a result of a bona fide dispute;

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

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

24. x. "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government and. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more ~~nations~~ countries.

25. A person has "notice" of a fact when

a. the person has actual knowledge of it; or

b. ~~the person has received a notice or notification of it; or~~

c. ~~from all the facts and circumstances known to the person at the time in question the person has reason to know that it exists. A person "knows" or has "knowledge" of a fact when that person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.~~

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

a. it comes to that person's attention; or
b. it is duly delivered at the place of business through which the contract was made or at any other place held out by that person as the place for receipt of such communications.

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

28. y. "Organization" includes means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any person other legal or commercial entity than an individual.

29. z. "Party", as distinct distinguished from "third party", means a person who that has engaged in a transaction or made an agreement within subject to this chapter.

30. aa. "Person" includes means an individual, or an organization (See section 554.1102) corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

31. "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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

32. ac. "Purchase" means any voluntary transaction creating an interest in property, including taking by sale, lease, discount, negotiation, mortgage, pledge, voluntary lien, security interest, issue, or reissue, or gift, or any other voluntary transaction creating an interest in property.

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

ae. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

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

36. ah. "Rights" "Right" includes remedies remedy.

37. a. ai. "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 554.2401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Except as otherwise provided in section 554.2505,

the right of a seller or lessor of goods under Article 2 or 13 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (~~section 554.2401~~) under section 554.2401 is limited in effect to a reservation of a "security interest". Whether

~~b. Whether a transaction in the form of a lease creates a lease or security interest "security interest" is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and~~

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

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

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

~~(4) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement pursuant to section 554.1203.~~

~~c. A transaction does not create a security interest merely because it provides that~~

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

~~(2) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,~~

~~(3) the lessee has an option to renew the lease or to become the owner of the goods,~~

~~(4) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or~~

~~(5) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~

~~d. For purposes of this subsection:~~

~~(1) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~

~~(2) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and~~

~~(3) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.~~

~~38. aj. "Send" in connection with any a writing, record, or notice means:~~

~~(1) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or~~

~~(2) The receipt of in any writing other way to cause to be received any record or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.~~

~~39. ak. "Signed" includes using any symbol executed or adopted by a party with present intention to authenticate adopt or accept a writing.~~

~~al. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.~~

~~40. am. "Surety" includes a guarantor or other secondary obligor.~~

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

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

~~43. ao. "Unauthorized" signature "Unauthorized signature" means one a signature made without actual, implied, or apparent authority and. The term includes a forgery.~~

~~44. "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 554.3303, 554.4210, and 554.4211) a person gives "value" for rights if the person acquires them~~

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

~~b. as security for or in total or partial satisfaction of a pre-existing claim; or~~

~~c. by accepting delivery pursuant to a pre-existing contract for purchase; or~~

~~d. generally, in return for any consideration sufficient to support a simple contract.~~

~~45. ap. "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.~~

~~46. aq. "Written" or "writing" "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.~~

Sec. 12. Section 554.1202, Code 2007, is amended to read as follows:

554.1202 PRIMA FACIE EVIDENCE BY ~~THIRD PARTY~~ THIRD-PARTY DOCUMENTS.

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

Sec. 13. NEW SECTION. 554.1202A NOTICE — KNOWLEDGE.

1. Subject to subsection 6, a person has "notice" of a fact if the person:

a. has actual knowledge of it;

b. has received a notice or notification of it; or

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

2. "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

3. "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

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

5. Subject to subsection 6, a person "receives" a notice or notification when:

a. it comes to that person's attention; or

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

6. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's

attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Sec. 14. NEW SECTION. 554.1203A LEASE DISTINGUISHED FROM SECURITY INTEREST.

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

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

a. the original term of the lease is equal to or greater than the remaining economic life of the goods;

b. the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

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

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

3. A transaction in the form of a lease does not create a security interest merely because:

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

b. the lessee assumes risk of loss of the goods;

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

d. the lessee has an option to renew the lease or to become the owner of the goods;

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

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

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

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

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

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

Sec. 15. Section 554.1204, Code 2007, is amended to read as follows:

554.1204 ~~TIME~~— REASONABLE TIME — "~~SEASONABLY~~" SEASONABLENESS.

1. ~~Whenever this chapter requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.~~

~~2. What is Whether a reasonable time for taking any an action required by this chapter is reasonable depends on the nature, purpose, and circumstances of such the action.~~

~~3. 2. An action is taken "seasonably" when seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.~~

Sec. 16. NEW SECTION. 554.1204A VALUE.

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

1. in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
2. as security for, or in total or partial satisfaction of, a preexisting claim;
3. by accepting delivery under a preexisting contract for purchase; or
4. in return for any consideration sufficient to support a simple contract.

Sec. 17. Section 554.1205, Code 2007, is amended to read as follows:

554.1205 COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE.

1. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

- a. the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- b. the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

~~1. 2. A course of dealing "course of dealing" is a sequence of previous conduct concerning previous transactions between the parties to a particular transaction which that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.~~

~~2. 3. A usage of trade "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to must be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing record, the interpretation of the writing record is for the court a question of law.~~

~~3. 4. A course of performance or course of dealing between the parties and any or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.~~

~~4. 5. The Except as otherwise provided in subsection 6, the express terms of an agreement and an any applicable course of dealing, or usage of trade shall must be construed wherever reasonable as consistent with each other; but when. If such a construction is unreasonable;~~

~~a. express terms control both prevail over course of performance, course of dealing, and usage of trade;~~

~~b. course of performance prevails over course of dealing and usage of trade; and~~

~~c. course of dealing controls prevails over usage of trade.~~

~~5. 6. An applicable usage of trade in the place where any part Subject to section 554.2209, a course of performance is to occur shall be used in interpreting the agreement as to that part relevant to show a waiver or modification of any term inconsistent with the course of the performance.~~

~~6. 7. Evidence of a relevant usage of trade offered by one party is not admissible unless and~~

until that party has given the other party such notice as that the court finds sufficient to prevent unfair surprise to the ~~latter~~ other party.

Sec. 18. NEW SECTION. 554.1206A PRESUMPTIONS.

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

Sec. 19. Section 554.1207, subsection 1, Code 2007, is amended to read as follows:

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

Sec. 20. Section 554.1208, Code 2007, is amended to read as follows:

554.1208 OPTION TO ACCELERATE AT WILL.

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “~~when when~~ the party ~~deems~~ “deems itself insecure” or in words of similar import ~~shall be construed to mean, means~~ that that party ~~shall have~~ has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against ~~whom~~ which the power has been exercised.

Sec. 21. Section 554.1209, Code 2007, is amended to read as follows:

554.1209 SUBORDINATED OBLIGATIONS.

An obligation may be issued as subordinated to ~~payment performance~~ of another obligation of the person obligated, or a creditor may subordinate ~~the creditor’s its~~ right to ~~payment performance~~ of an obligation by agreement with either the person obligated or another creditor of the person obligated. ~~Such a subordination~~ Subordination does not create a security interest as against either the common debtor or a subordinated creditor. ~~This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.~~

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

Sec. 22. NEW SECTION. 554.1302 VARIATION BY AGREEMENT.

1. Except as otherwise provided in subsection 2 or elsewhere in this chapter, the effect of provisions of this chapter may be varied by agreement.

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

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

DIVISION II

CONFORMING AMENDMENTS TO OTHER ARTICLES

PART A

ARTICLE 2

Sec. 23. Section 554.2103, subsection 1, paragraph b, Code 2007, is amended by striking the paragraph.

Sec. 24. Section 554.2202, subsection a, Code 2007, is amended to read as follows:
 a. by course of performance, course of dealing, or usage of trade (section ~~554.1205~~
~~554.1303~~) or by course of performance (section 554.2208); and

PART B
 ARTICLE 3

Sec. 25. Section 554.3103, subsection 1, paragraph d, Code 2007, is amended by striking the paragraph.

Sec. 26. Code¹ 554.3103, subsection 1, paragraph j, Code 2007, is amended to read as follows:

j. "Prove" with respect to a fact means to meet the burden of establishing the fact (section 554.1201, subsection 8) 2, paragraph "h".

PART C
 ARTICLE 4

Sec. 27. Section 554.4104, subsection 3, Code 2007, is amended to read as follows:

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

"Acceptance"	Section 554.3409
"Alteration"	Section 554.3407
"Cashier's check"	Section 554.3104
"Certificate of deposit"	Section 554.3104
"Certified check"	Section 554.3409
"Check"	Section 554.3104
"Good faith"	Section 554.3103
"Holder in due course"	Section 554.3302
"Instrument"	Section 554.3104
"Notice of dishonor"	Section 554.3503
"Order"	Section 554.3103
"Ordinary care"	Section 554.3103
"Person entitled to enforce"	Section 554.3301
"Presentment"	Section 554.3501
"Promise"	Section 554.3103
"Prove"	Section 554.3103
"Teller's check"	Section 554.3104
"Unauthorized signature"	Section 554.3403

PART D
 ARTICLE 5

Sec. 28. Section 554.5103, subsection 3, Code 2007, is amended to read as follows:

3. With the exception of this subsection, subsections 1 and 4, section 554.5102, subsection 1, paragraphs "i" and "j", section 554.5106, subsection 4, and section 554.5114, subsection 4, and except to the extent prohibited in section ~~554.1102, subsection 3, 554.1302~~ and section 554.5117, subsection 4, the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

PART E
 ARTICLE 8

Sec. 29. Section 554.8102, subsection 1, paragraph j, Code 2007, is amended by striking the paragraph.

¹ The word "Section" probably intended

PART F
ARTICLE 9

Sec. 30. Section 554.9102, subsection 1, paragraph aq, Code 2007, is amended by striking the paragraph.

PART G
ARTICLE 12

Sec. 31. Section 554.12105, subsection 1, paragraph f, Code 2007, is amended by striking the paragraph.

Sec. 32. Section 554.12105, subsection 1, paragraph g, Code 2007, is amended to read as follows:

g. "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in section 554.1201, subsection ~~2~~, paragraph "h".

Sec. 33. Section 554.12106, subsection 1, Code 2007, is amended to read as follows:

1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section ~~554.1201, subsection 2~~ 554.1202. A receiving bank may establish a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders, and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally, or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

Sec. 34. Section 554.12204, subsection 2, Code 2007, is amended to read as follows:

2. Reasonable time under subsection 1 may be fixed by agreement as provided in section ~~554.1204~~ 554.1302, subsection ~~1~~ 2, but the obligation of a receiving bank to refund payment as stated in subsection 1 may not otherwise be varied by agreement.

PART H
ARTICLE 13

Sec. 35. Section 554.13501, subsection 4, Code 2007, is amended to read as follows:

4. Except as otherwise provided in section ~~554.1106~~ 554.1305, subsection 1, of ~~or~~ this Article or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.

Sec. 36. Section 554.13518, subsection 2, Code 2007, is amended to read as follows:

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

Sec. 37. Section 554.13519, subsection 1, Code 2007, is amended to read as follows:

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 554.13518, subsection 2, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

Sec. 38. Section 554.13527, subsection 2, Code 2007, is amended to read as follows:

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

Sec. 39. Section 554.13528, subsection 1, Code 2007, is amended to read as follows:

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 554.13527, subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph "a", or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

PART I PROVISIONS OUTSIDE THE UNIFORM COMMERCIAL CODE

Sec. 40. Section 3.3, Code 2007, is amended to read as follows:

3.3 HEADNOTES AND HISTORICAL REFERENCES.

Proper headnotes may be placed at the beginning of a section of a bill or a Code section, and at the end of a Code section there may be placed a reference to the section number of the Code, or any Iowa Act from which the matter of the Code section was taken. However, except as provided ~~in for~~ the uniform commercial code, pursuant to section ~~554.1109~~ 554.1107, ~~neither said headnotes nor said historical shall not be considered as part of the law as enacted. Historical~~ references shall be considered as a part of the law as enacted.

Sec. 41. Section 537.3603, subsection 6, Code 2007, is amended to read as follows:

6. A lease or agreement which constitutes a security interest as defined in section 554.1201, subsection ~~37~~ 2.

Sec. 42. Section 554D.104, subsection 2, paragraph b, Code 2007, is amended to read as follows:

b. Chapter 554 other than articles 2 and 13 and ~~sections 554.1107 and 554.1206~~ section 554.1306.

DIVISION III CONTINGENT PROVISIONS

Sec. 43. Section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, are amended to read as follows:

5. ~~e.~~ e. "Bearer" means ~~the a person in control of a negotiable electronic document of title or a person in possession of an a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or endorsed~~ indorsed in blank.

6. ~~f.~~ f. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading ~~does for marine or rail transportation, and includes an air consignment note or air waybill. The term does not include a warehouse receipt.~~

14. ~~o.~~ o. "Delivery" ~~with respect to instruments an electronic document of title means voluntary transfer of control and with respect to an instrument, documents a tangible document of title, or chattel paper, or certificated securities means voluntary transfer of possession.~~

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

20. ~~u.~~ u. "Holder", with respect to a negotiable instrument, means:

(1) the person in possession ~~if the of a negotiable instrument that is payable either to bearer or, in the case of an instrument payable to an identified person, if the identified that is the person is in possession;~~

(2) "Holder" with respect to a document of title means the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; ~~or~~

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

45. ~~ap.~~ ap. "Warehouse receipt" means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire.

Sec. 44. CONFLICTING PROVISIONS.

1. If 2007 Iowa Acts, House File 716² is enacted, notwithstanding section 4.1,³ all of the following apply:

a. The amendments to section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as

² Chapter 30 herein

³ See chapter 215, §262 herein

enacted in this division of this Act, prevail over conflicting amendments to section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as enacted in division I of this Act.

b. The amendments to section 554.1201, subsections 25, 26, and 27, as enacted in division I of this Act, prevail over conflicting amendments to section 554.1201, subsections 25, 26, and 27, Code 2007, as enacted in 2007 Iowa Acts, House File 716.⁴

c. The amendments to section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as enacted in this division of this Act, prevail over conflicting amendments to section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as enacted in 2007 Iowa Acts, House File 716.⁵

2. If 2007 Iowa Acts, House File 716⁶ is not enacted, notwithstanding section 4.8, the amendments to section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as enacted in division I of this Act, prevail over conflicting amendments to section 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as enacted in this division of this Act.

DIVISION IV TRANSFERS AND RECODIFICATIONS

Sec. 45. Section 554.1105, Code 2007, is transferred to section 554.1301.

Sec. 46. Section 554.1106, Code 2007, is transferred to section 554.1305.

Sec. 47. Section 554.1107, Code 2007, is transferred to section 554.1306.

Sec. 48. Section 554.1108, Code 2007, is transferred to section 554.1105.

Sec. 49. Section 554.1109, Code 2007, is transferred to section 554.1107.

Sec. 50. Section 554.1202, Code 2007, is transferred to section 554.1307.

Sec. 51. Section 554.1203, Code 2007, is transferred to section 554.1304.

Sec. 52. Section 554.1204, Code 2007, is transferred to section 554.1205.

Sec. 53. Section 554.1205, Code 2007, is transferred to section 554.1303.

Sec. 54. Section 554.1207, Code 2007, is transferred to section 554.1308.

Sec. 55. Section 554.1208, Code 2007, is transferred to section 554.1309.

Sec. 56. Section 554.1209, Code 2007, is transferred to section 554.1310.

Sec. 57. CODIFICATION.

1. The Code editor shall codify the following new Code sections, as enacted in this Act, into the following Code sections, which existed immediately prior to the effective date of this Act and which are repealed or transferred elsewhere by this Act:

- a. Section 554.1102A to section 554.1102 following its repeal in this Act.
 - b. Section 554.1106A to section 554.1106 following its transfer in this Act.
 - c. Section 554.1108A to section 554.1108 following its transfer in this Act.
 - d. Section 554.1202A to section 554.1202 following its transfer in this Act.
 - e. Section 554.1203A to section 554.1203 following its transfer in this Act.
 - f. Section 554.1204A to section 554.1204 following its transfer in this Act.
 - g. Section 554.1206A to section 554.1206 following its transfer in this Act.
2. The Code editor may transfer section 554.1110 to section 554.1110A.

⁴ Chapter 30 herein

⁵ Chapter 30 herein

⁶ Chapter 30 herein

DIVISION V
REPEALS

Sec. 58. Section 554.1102, Code 2007, is repealed.

Sec. 59. Section 554.1206, Code 2007, is repealed.

Sec. 60. Section 554.2208, Code 2007, is repealed.

Sec. 61. Section 554.13207, Code 2007, is repealed.

Approved April 4, 2007

CHAPTER 42
SCHOOL DISTRICT ACCREDITATION
AND FISCAL REVIEW
H.F. 317

AN ACT relating to an on-site fiscal review to be conducted under phase II of the accreditation process upon recommendation by the school budget review committee.

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

Section 1. Section 256.11, subsection 10, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The school budget review committee submits to the department a recommendation for a fiscal review pursuant to section 257.31, subsection 18.

Sec. 2. Section 257.31, Code 2007, is amended by adding the following new subsection:

NEWSUBSECTION. 18. If a school district exceeds its authorized budget or carries a negative unspent balance for two or more consecutive years, the committee may recommend that the department implement a phase II on-site visit to conduct a fiscal review pursuant to section 256.11, subsection 10, paragraph "e".

Approved April 4, 2007