SENATE FILE NO. 515—BY ARNEY. JUDICIARY NO. 2.

A BILL

FOR AN ACT TO MAKE UNIFORM THE LAW OF SALES OF GOODS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. (1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

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

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

Sec. 2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

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

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

Sec. 4. (1) A contract to sell or a sale of goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged of his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

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

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

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

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

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

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

Sec. 7. (1) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

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

(a) As avoided, or

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

Sec. 8. (1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As provided, or

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

Sec. 9. (1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

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

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

(4) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Sec. 10. (1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

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

Sec. 11. (1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the non-performance of the condition as a breach of warranty.

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

Sec. 12. Any affirmation of fact or any promise by the seller relating to the goods is an ex-
2 press warranty if the natural tendency of such affirmation or promise is to induce the buyer
3 to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation
4 of the value of the goods, nor any statement of the seller's opinion only shall be construed
5 as a warranty.

Sec. 13. In a contract to sell or a sale, unless a contrary intention appears, there is—
2 (1) An implied warranty of the part of the seller that in case of a sale he has a right to sell
3 the goods, and that in case of a contract to sell he will have a right to sell the goods at the
4 time when the property is to pass;
5 (2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods
6 as against any lawful claims existing at the time of the sale;
7 (3) An implied warranty that the goods shall be free at the time of the sale from any charge
8 or encumbrance in favor of any third person, not declared or known to the buyer before or
9 at the time when the contract or sale is made.
10 (4) This section shall not, however, be held to render liable a sheriff, auctioneer, mort-
11 gagee, or other person professing to sell by virtue of authority in fact or law the goods in which
12 a third person has a legal or equitable interest.

Sec. 14. Where there is a contract to sell or a sale of goods by description, there is an
2 implied warranty that the goods shall correspond with the description and if the contract
3 or sale be by sample, as well as description, it is not sufficient that the bulk of the goods cor-
4 responds with the sample if the goods do not also correspond with the description.

Sec. 15. Subject to the provisions of this act and of any statute in that behalf, there is no
2 implied warranty or condition as to the quality or fitness for any particular purpose of goods
3 supplied under a contract to sell or a sale, except as follows:
4 (1) Where the buyer, expressly or by implication, makes known to the seller the particu-
5 lar purpose for which the goods are required, and it appears that the buyer relies on the sel-
6 ler's skill or judgment (whether he be the grower or manufacturer or not), there is an implied
7 warranty that the goods shall be of merchantable quality.
8 (3) If the buyer has examined the goods, there is no implied warranty as regards defects
9 which such examination ought to have revealed.
10 (4) In the case of a contract to sell or a sale of a specified article under its patent or other
11 trade name, there is no implied warranty as to its fitness for any particular purpose.
12 (5) An implied warranty or condition as to quality or fitness for a particular purpose may
13 be annexed by the usage of trade.
14 (6) An express warranty or condition does not negative a warranty or condition implied
15 under this act unless inconsistent therewith.

Sec. 16. In the case of a contract to sell or a sale by sample:

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

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

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

Sec. 17. Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an individual share of ascertained goods may be transferred as provided in section 6.

Sec. 18. (1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

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

Sec. 19. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

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

Rule 2.—Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

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

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

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

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on

21 the expiration of such time, and if no time has been fixed, on expiration of a reasonable time.
22 What is a reasonable time is a question of fact.

23 Rule 4.—(1) Where there is a contract to sell unascertained or future goods by descrip-
24 tion, and goods of that description and in a deliverable state are unconditionally appropri-
25 ated to the contract, either by the seller with the assent of the buyer, or by the buyer with
26 the assent of the seller, the property in the goods thereupon passes to the buyer. Such as-
27 sent may be expressed or implied, and may be given either before or after the appropriation is
28 made.

29 (2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to
30 a carrier or other bailee (whether named by the buyer or not) for the purpose of transmis-
31 sion to or holding for the buyer, he is presumed to have unconditionally appropriated the
32 goods to the contract, except in the cases provided for in the next rule and in section 20. This
33 presumption is applicable, although by the terms of the contract, the buyer is to pay the price
34 before receiving delivery of the goods, and the goods are marked with the words "collect on
35 delivery" or their equivalents.

36 Rule 5.—If the contract to sell requires the seller to deliver the goods to the buyer, or at a
37 particular place, or to pay the freight or cost of transportation to the buyer, or to a particu-
38 lar place, or to pay the freight or cost of transportation to the buyer, or to a particular
39 place, the property does not pass until the goods have been delivered to the buyer or reached
40 the place agreed upon.

Sec. 20. (1) Where there is a contract to sell specific goods, or where goods are subse-
2 quently appropriated to the contract, the seller may, by the terms of the contract or appro-
3 priation, reserve the right of possession or property in the goods until certain conditions have
4 been fulfilled. The right of possession or property may be thus reserved notwithstanding
5 the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of trans-
6 mission to the buyer.

7 (2) Where the goods are shipped, and by the bill of lading the goods are deliverable to the
8 seller or his agent, or the order of the seller or of his agent, the seller thereby reserves the
9 property in the goods. But if, except for the form of the bill of lading, the property would
10 have passed to the buyer on shipment of the goods, the seller's property in the goods
11 shall be deemed to be only for the purpose of securing performance by the buyer of his
12 obligation under the contract.

13 (3) Where goods are shipped, and by the bill of lading the goods are deliverable to the
14 order of the buyer or of his agent, but possession of the bill of lading is retained by the
15 seller or his agent, the seller thereby reserves a right to the possession of the goods as
16 against the buyer.

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

Sec. 21. In the case of sale by auction—

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

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

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

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

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

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

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

Sec. 23. (1) Subject to the provisions of this act, where goods are sold by a person who is
2 not the owner thereof, and who does not sell them under the authority or with the consent of

the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods, is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this act, however, shall effect—

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

(b) The validity of any contract to sell or a sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Sec. 24. Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

Sec. 25. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owners of the goods to make the same.

Sec. 26. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

Sec. 27. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title.

Sec. 28. A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or

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

Where by the terms of a negotiable document of title the goods are delivered to bearer or where a negotiable document of title has been indorsed in blank or to bearer, and holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

Sec. 29. A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person it may be

4 again negotiated by the indorsement of such person in blank, to bearer or to another specified
5 person. Subsequent negotiation may be made in like manner.

Sec. 30. If a document of title which contains an undertaking by a carrier, warehouseman
2 or other bailee to deliver the goods to the bearer, to a specified person or order, or to the or-
3 der of a specified person, or which contains words of like import, has placed upon it the words
4 "not negotiable," "non-negotiable" or the like, such a document may nevertheless be negotiat-
5 ed by the holder and is a negotiable document of title within the meaning of this act. But
6 nothing in this act contained shall be construed as limiting or defining the effect upon the obli-
7 gations of the carrier, warehouseman, or other bailee issuing a document of title of placing
8 thereon the words "non-negotiable," "not negotiable," or the like.

Sec. 31. A document of title which is not in such form that it can be negotiated by delivery
2 may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable doc-
3 ument cannot be negotiated and the indorsement of such a document gives the transferee no ad-
4 ditional right.

Sec. 32. A negotiable document may be negotiated by any person in possession of the same,
2 however such possession may have been acquired if, by the terms of the document, the bailee
3 issuing it undertakes to deliver the goods to the order of such person, or if at the time of
4 negotiation the document is in such person, or if at the time of negotiating the document is in
5 such form that it may be negotiated by delivery.

Sec. 33. A person to whom a negotiable document of title has been duly negotiated acquires
2 thereby—
3 (a) Such title to the goods as the person negotiating the document to him had or had ability
4 to convey to a purchaser in good faith for value and also such title to the goods as the per-
5 son to whose order the goods were to be delivered by the terms of the document had or had
6 ability to convey to a purchaser in good faith for value, and
7 (b) The direct obligation of the bailee issuing the document to hold possesion of the goods
8 for him according to the terms of the document as fully as if such bailee had contracted di-
9 rectly with him.

Sec. 34. A person to whom a document of title has been transferred, but not negotiated,
2 acquires thereby, as against the transferor, the title to the goods, subject to the terms of any
3 agreement with the transferor.
4 If the document is non-negotiable, such person also acquires the right to notify the bailee
5 who issued the document of the transfer thereof, and thereby to acquire the direct obligation
6 of such bailee to hold possession of the goods for him according to the terms of the document.
7 Prior to the notification of such bailee by the transferor or transferee of a non-negotiable
8 document of title, the title of the transferee to the goods and the right to acquire the obligation

9 of such bailee may be defeated by the levy of an attachment or execution upon the goods by a
10 creditor of the transferor, or by a notification to such bailee by the transferor of a subsequent
11 purchaser from the transferor of a subsequent sale of the goods by the transferor.

Sec. 35. Where a negotiable document of title is transferred for value by delivery, and the
2 indorsement of the transferor is essential for negotiation, the transferee acquires a right
3 against the transferor to compel him to indorse the document unless a contrary intention ap-
4 pears. The negotiation shall take effect as of the time when the indorsement is actually made.

Sec. 36. A person who for value negotiates or transfers a document of title by indorsement
2 or delivery, including one who assigns for value a claim secured by a document of title unless
3 a contrary intention appears, warrants:
4 (a) That the document is genuine;
5 (b) That he has a legal right to negotiate or transfer it;
6 (c) That he has knowledge of no fact which would impair the validity or worth of the docu-
7 ment, and
8 (d) That he has a right to transfer the title to the goods and that the goods are merchant-
9 able or fit for a particular purpose, whenever such warranties would have been implied if the
10 contract of the parties had been to transfer without a document of title the goods represented
11 thereby.

Sec. 37. The indorsement of a document of title shall not make the indorser liable for any
2 failure on the part of the bailee who issued the document or previous indorsers thereof to ful-
3 fill their respective obligations.

Sec. 38. The validity of the negotiation of a negotiable document of title is not impaired by
2 the fact that the negotiation was a breach of duty on the part of the person making the ne-
3 gotiation, or by the fact that the owner of the document was induced by fraud, mistake or
4 duress to entrust the possession or custody thereof to such person, if the person to whom the
5 document was negotiated or person to whom the document was subsequently negotiated paid
6 value therefor, without notice of the breach of duty, or fraud, mistake or duress.

Sec. 39. If goods are delivered to a bailee by the owner or by a person whose act in con-
2 veying the title to them to a purchaser in good faith for value would bind the owner and a nego-
3 tiable document of title is issued for them they cannot thereafter, while in the possession of
4 such bailee, be attached by garnishment, or otherwise or be levied upon under an execution
5 unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee
6 shall in no case be compelled to deliver up the actual possession of the goods until the docu-
7 ment is surrendered to him or impounded by the court.

Sec. 40. A creditor whose debtor is the owner of a negotiable document of title shall be en-
2 titled to such aid from courts of appropriate jurisdiction by injunction and otherwise in at-

3 taching such document or in satisfyng the claim by means thereof as is allowed at law or in
4 equity in regard to property which cannot readily be attached or levied upon by ordinary
5 legal process.

Sec. 41. It is the duty of the seller to deliver the goods, and the buyer to accept and pay for
2 them, in accordance with the terms of the contract to sell or sale.

Sec. 42. Unless otherwise agreed, delivery of the goods and payment of the price are con-
2 current conditions; that is to say, the seller must be ready and willing to give possession of
3 the goods to the buyer in exchange for the price and the buyer must be ready and willing to
4 pay the price in exchange for the possession of the goods.

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

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

10 (3) Where the goods at the time of sale are in the possession of a third person, the seller
11 has not fulfilled his obligation to deliver to the buyer unless and until such third person ack-
12 nowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others
13 than the seller the buyer shall be regarded as having received delivery from the time when
14 such third person first has notice of the sale. Nothing in this section, however, shall effect the
15 operation of the issue or transfer of any document of title to goods.

16 (4) Demand or tender of delivery may be treated as ineffectual unless made at a reason-
17 able hour. What is a reasonable hour is a question of fact.

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

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

7 (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to
8 sell, the buyer may accept the goods included in the contract and reject the rest, or he may

reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

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

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

Sec. 45. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

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

Sec. 46. (1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided in section 19, rule 5, or unless a contrary intent appears.

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

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

Sec. 47. (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

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

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

Sec. 48. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

Sec. 49. In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable threefor.

Sec. 50. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

Sec. 51. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

Sec. 52. (1) The seller of goods is deemed to be an unpaid seller within the meaning of this act—

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

7 (2) In this part of this act the term "seller" includes an agent of the seller to whom the
8 bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly
9 responsible for, the price, or any other person who is in the position of a seller.

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

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

Sec. 55. Where an unpaid seller has made part delivery of the goods, he may exercise his
2 right of lien on the remainder, unless such part delivery has been made under such circum-
3 stances as to show an intent to waive the lien or right of retention.

Sec. 56. (1) The unpaid seller of goods loses his lien thereon—
2 (a) When he delivers the goods to a carrier or other bailee for the purpose of transmission
3 to the buyer without reserving the property in the goods or the right to the possession thereof;
4 (b) When the buyer or his agent lawfully obtains possession of the goods;
5 (c) By waiver thereof;
6 (2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only
7 that he has obtained judgment or decree for the price of the goods.

Sec. 57. Subject to the provisions of this act, when the buyer of goods is or becomes insol-
2 vent, the unpaid seller who has parted with the possession of the goods has the right of stop-
3 ping them in transitu, that is to say, he may resume possession of the goods at any time while
4 they are in transit, and he will then become entitled to the same rights in regard to the goods
5 as he would have had if he had never parted with the possession.

Sec. 58. (1) Goods are in transit within the meaning of section 57—

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

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

7 (2) Goods are no longer in transit within the meaning of sectiin 57—

8 (a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their ar-
9 rival at the appointed destination;

10 (b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee
11 acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in
12 possession of them as bailee for the buyer or his agent; and it is immaterial that a further
13 destination for the goods may have been indicated by the buyer.

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

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

19 (4) If part delivery of the goods has been made to the buyer, or his agent in that behalf,
20 the remainder of the goods may be stopped in transitu, unless such part delivery has been made
21 under such circumstances as show an agreement with the buyer to give up possession of the
22 whole of the goods.

Sec. 59. (1) The unpaid seller may exercise his right of stoppage in transitu either by ob-
2 taining actual possession of the goods or by giving notice of his claim to the carrier or other
3 bailee in whose possession the goods are. Such notice may be given either to the person in
4 actual possession of the goods or to his principal. In the latter case the notice, to be effectual,
5 must be given at such time and under such circumstances that the principal by the exercise of
6 reasonable deligence, may prevent a delivery to the buyer.

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

Sec. 60. (1) Where the goods are of a perishable nature, or where the seller expressly re-
2 serves the right of resale in case the buyer should make default, or where the buyer has been in

default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of contract or sale.

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

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

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

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

Sec. 61. (1) An unpaid seller having a right of lien or having stopped the goods in transitu may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

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

Sec. 62. Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu.

Sec. 63. (1) Where, under a contract to sell or a sale, the property in the goods has passed
2 to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to
3 the terms of the contract or the sale, the seller may maintain an action against him for the
4 price of the goods.
5 (2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespec-
6 tive of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay
7 such price, the seller may maintain an action for the price, although the property in the goods
8 has not passed, and the goods have not been appropriated to the contract. But it shall be a
9 defence to such an action that the seller at any time before judgment in such action has mani-
10 fested an inability to perform the contract or the sale on his part or an intention to perform it.
11 (3) Although the property in the goods has not passed, if they cannot readily be resold for
12 a reasonable price, and if the provisions of section (64(4) are not applicable, the seller may
13 offer to deliver the goods to the buyer, and, if the buyer refuse to receive them, may notify the
14 buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the
15 seller may treat the goods as the buyer's and may maintain an action for the price.

Sec. 64. (1) Where the buyer wrongfully neglects or refuses to accept and pay for the
2 goods, the seller may maintain an action against him for damages for non-acceptance.
3 (2) The measure of damages is the estimated loss directly and naturally resulting, in the
4 ordinary course of events, from the buyer's breach of contract.
5 (3) Where there is an available market for the goods in question, the measure of damages
6 is, in the absence of special circumstances, showing proximate damage of a greater amount,
7 the difference between the contract price and the market or current price at the time or times
8 when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at
9 the time of the refusal to accpt.
10 (4) If, while labor or expense of material amount are necessary on the part of the seller to
11 enable him to fulfill his obligations under the contract or the sale, the buyer repudiates the
12 contract or the sale or notifies the seller to proceed no further therewith the buyer shall be lia-
13 ble to the seller for no greater damages than the seller would have suffered if he did nothing
14 towards carrying out the contract or the sale after receiving notice of the buyer's repudiation
15 or countermand. The profit the seller would have made if the contract of the sale had been
16 fully performed shall be considered in estimating such damages.

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

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

Sec. 67. (1) Where the property in the goods has not passed to the buyer, and the seller
2 wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against
3 the seller for damages for non-delivery.

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

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

Sec. 68. Where the seller has broken a contract to deliver specific or ascertained goods, a
2 court having the powers of a court of equity may, if it thinks fit, on the application of the
3 buyer, by its judgment or decree direct that the contract shall be performed specifically, with-
4 out giving the seller the option of retaining the goods on payment of damages. The judgment
5 or decree may be unconditional, or upon such terms and conditions as to damages, payment of
6 the price and otherwise, as to the court may seem just.

Sec. 69. (1) Where there is a breach of warranty by the seller, the buyer may, at his elec-
2 tion—

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

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

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

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

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

14 (3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he
15 knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller
16 within a reasonable time of the election to rescidn, or if he fails to return or to offer to return
17 the goods to the seller in substantially as good condition as they were in at the time the prop-

18 erty was transferred to the buyer. But if deterioration or injury of the goods is due to the
19 breach of warranty, such deterioration or injury shall not prevent the buyer from returning or
20 offering to return the goods to the seller and rescinding the sale.

21 (4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease
22 to be liable for the price upon returning or offering to return the goods. If the price or any
23 part thereof has already been paid, the seller shall be liable to repay so much thereof as has been
24 paid, concurrently with the return of the goods, or immediately after an offer to return the
25 goods in exchange for repayment of the price.

26 (5) Where the buyer is entitled to rescind the sale and elects to do so if the seller refuses to
27 accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold
28 the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion
29 of the price which has been paid, and with the remedies for the enforcement of such lien al-
30 lowed to an unpaid seller by section 53.

31 (6) The measure of damages for breach of warranty is the loss directly and naturally re-
32 sulting, in the ordinary course of events, from the breach of warranty.

33 (7) In the case of breach of warranty of qualty, such loss, in the absence of special circum-
34 stances showing proximate damage of a greater amount, is the difference between the value
35 of the goods at the time of delivery to the buyer and the value they would have if they had
36 answered to the warranty.

Sec. 70. Nothing in this act shall effect the right of the buyer or the seller to recover in-
2 terest or special damages in any case where by law interest or special damages may be re-
3 covered, or to recover money paid where the consideration for the payment of it has failed.

Sec. 71. Where any right, duty or liability would arise under a contract to sell or a sale by
2 implication of law, it may be negatived or varied by express agreement or by the course of deal-
3 ing between the parties, or by custom, if the custom be such as to bind both parties to the
4 contract or the sale.

Sec. 72. Where any right, duty or liability is declared by this act, it may, unless otherwise
2 by this act provided, be enforced by action.

Sec. 73. In any case not provided for in this act, the rules of law and equity, including the
2 law merchant, and in particular the rules relating to the law of principal and agent and to the
3 effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidat-
4 ing cause, shall continue to apply to contracts to sell and to sales of goods.

Sec. 74. This act shall be so interpreted and construed, as to effectuate its general purpose
2 to make uniform the laws of those states which enact it.

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

Sec. 76. (1) In this act, unless the context or subject matter otherwise requires—

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

3 "Buyer" means a person who buys or agrees to buy goods or any legal successor in interest

4 of such person.

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

6 "Delivery" means voluntary transfer or possession from one person to another.

7 "Divisible contract to sell or sale" means a contract to sell or a sale in which by its terms

8 the price for a portion or portions of the goods less than the whole is fixed or ascertainable

9 by computation.

10 "Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt

11 or order for the delivery of the goods, or any other document used in the ordinary course of

12 business in the sale or transfer of goods, as proof of the possesion or control of the goods, or

13 authorizing or purporting to authorize the possessor of the document to transfer or receive,

14 either by indorsement or by delivery, goods represented by such document.

15 "Fault" means wrongful act or default.

16 "Fungible goods" means goods of which any unit is from its nature or by mercantile usage

17 treated as the equivalent of any other unit.

18 "Future goods" means goods to be manufactured or acquired by the seller after the mak-

19 ing of the contract of the sale.

20 "Goods" include all chattles personal other than things in action and money. The term in-

21 cludes emblements, industrial growing crops, and things attached to or forming part of the land

22 which are agreed to be severed before sale or under the contract of sale.

23 "Order" in sections of this act relating to documents of title means an order by indorse-

24 ment on the document.

25 "Person" includes a corporation or partnership or two or more persons having a joint or

26 common interest.

27 "Plaintiff" includes defendant asserting a right of set-off or counterclaim.

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

29 "Purchaser" includes mortgages and pledges.

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

31 "Quality of Goods" includes their state or condition.

32 "Sale" includes a bargain and sale as well as a sale and delivery.

33 "Seller" means a person who sells or agrees to sell goods, or any legal successor in the

34 interest of such person.

35 "Specific goods" means goods identified and agreed upon at the time a contract to sell or a

36 sale is made.

37 "Value" is any consideration sufficient to support a simple contract. An antecedent or
38 pre-existing claim, whether for money or not, constitutes value where goods or documents of
39 titles are taken either in satisfaction thereof or as security therefor.

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

42 (3) A person is insolvent within the meaning of this act who either has ceased to pay his
43 debts as they become due, whether he has committed an act of bankruptcy or not, and whether
44 he is insolvent within the meaning of the federal bankruptcy law or not.

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

Sec. 76a. None of the provisions of this act shall apply to any sale, or any contract to sell,
2 made prior to the taking effect of this act.

Sec. 76b. Nothing in this act or in any repealing clause thereof shall be construed to repeal
2 or limit any of the provisions of the act to make uniform the law of warhousing receipts, or of
3 the act to make uniform the law of bills of lading.

Sec. 77. All acts or parts of acts inconsistent with this act are hereby repealed except as
2 provided in section 76b.

Sec. 78. This act shall take effect on the.....day of .....one thousand
2 nine hundred and .....

Sec. 79. This act may be cited as the uniform sales act.