

Senate File 535 - Enrolled

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SENATE FILE 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to be impliedly repealed by subsequent legislation if such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:

- 3 4 a. Section 554.2402;
3 5 b. Section 554.4102;
3 6 c. Section 554.5116;
3 7 d. Section 554.8110;
3 8 e. Sections 554.9301 through 554.9307;
3 9 f. Section 554.12507;
3 10 g. Sections 554.13105 and 554.13106.

3 11 Sec. 6. Section 554.1106, subsection 1, Code 2007, is
3 12 amended to read as follows:

3 13 1. The remedies provided by this chapter ~~shall~~ must be
3 14 liberally administered to the end that the aggrieved party may
3 15 be put in as good a position as if the other party had fully
3 16 performed but neither consequential or special damages nor
3 17 penal damages may be had except as specifically provided in
3 18 this chapter or by other rule of law.

3 19 Sec. 7. NEW SECTION. 554.1106A USE OF SINGULAR AND
3 20 PLURAL == GENDER.

3 21 In this chapter, unless the statutory context otherwise
3 22 requires:

3 23 1. words in the singular number include the plural, and
3 24 those in the plural include the singular; and

3 25 2. words of any gender also refer to any other gender.

3 26 Sec. 8. Section 554.1107, Code 2007, is amended to read as
3 27 follows:

3 28 554.1107 WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER
3 29 BREACH.

3 30 ~~Any~~ A claim or right arising out of an alleged breach ~~can~~
3 31 may be discharged in whole or in part without consideration by
3 32 ~~a written waiver or renunciation signed and delivered by~~
3 33 agreement of the aggrieved party in an authenticated record.

3 34 Sec. 9. Section 554.1108, Code 2007, is amended to read as
3 35 follows:

4 1 554.1108 SEVERABILITY.

4 2 If any provision or clause of this chapter or its
4 3 application ~~thereof~~ to any person or circumstances
4 4 circumstance is held invalid, such the invalidity shall does
4 5 not affect other provisions or applications of the this
4 6 chapter which can be given effect without the invalid
4 7 provision or application, and to this end the provisions of
4 8 this chapter are ~~declared to be~~ severable.

4 9 Sec. 10. NEW SECTION. 554.1108A RELATION TO ELECTRONIC
4 10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

4 11 This Article modifies, limits, and supersedes the federal
4 12 Electronic Signatures in Global and National Commerce Act, 15
4 13 U.S.C. } 7001 et seq., except that nothing in this Article
4 14 modifies, limits, or supersedes } 7001(c) of that Act or
4 15 authorizes electronic delivery of any of the notices described
4 16 in } 7003(b) of that Act.

4 17 PART 2

4 18 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

4 19 Sec. 11. Section 554.1201, Code 2007, is amended to read
4 20 as follows:

4 21 554.1201 GENERAL DEFINITIONS.

4 22 1. Unless the context otherwise requires, words or phrases
4 23 defined in this section, or in the additional definitions
4 24 contained in other Articles of this chapter that apply to
4 25 particular Articles or Parts thereof, have the meanings
4 26 stated.

4 27 2. Subject to additional definitions contained in the
4 28 subsequent other Articles of this chapter which are applicable
4 29 that apply to specific particular Articles or Parts thereof,
4 30 and unless the context otherwise requires, in this chapter:

4 31 1- a. "Action" in the sense of a judicial proceeding,
4 32 includes recoupment, counterclaim, setoff, suit in equity, and
4 33 any other proceedings in which rights are determined.

4 34 2- b. "Aggrieved party" means a party entitled to ~~resort~~
4 35 to pursue a remedy.

5 1 3- c. "Agreement", as distinguished from "contract",
5 2 means the bargain of the parties in fact, as found in their
5 3 language or by implication inferred from other circumstances,
5 4 including course of performance, course of dealing, or usage
5 5 of trade or course of performance as provided in this chapter
5 6 (sections 554.1205 and 554.2208) section 554.1303. ~~Whether an~~
5 7 agreement has legal consequences is determined by the
5 8 provisions of this chapter, if applicable; otherwise by the
5 9 law of contracts (section 554.1103). (Compare "Contract".)

5 10 4- d. "Bank" means ~~any~~ a person engaged in the business
5 11 of banking and includes a savings bank, savings and loan
5 12 association, credit union, and trust company.

5 13 5- e. "Bearer" means ~~the~~ a person in possession of ~~an~~ a
5 14 negotiable instrument, document of title, or certificated

5 15 security that is payable to bearer or ~~endorsed~~ indorsed in
5 16 blank.

5 17 ~~6. f.~~ "Bill of lading" means a document evidencing the
5 18 receipt of goods for shipment issued by a person engaged in
5 19 the business of transporting or forwarding goods, ~~and includes~~
~~5 20 an airbill. "Airbill" means a document serving for air~~
~~5 21 transportation as a bill of lading does for marine or rail~~
~~5 22 transportation, and includes an air consignment note or air~~
~~5 23 waybill.~~

5 24 ~~7. g.~~ "Branch" includes a separately incorporated foreign
5 25 branch of a bank.

5 26 ~~8. h.~~ "Burden of establishing" a fact means the burden of
5 27 persuading the ~~triers~~ trier of fact that the existence of the
5 28 fact is more probable than its nonexistence.

5 29 ~~9. i.~~ "Buyer in ordinary course of business" means a
5 30 person that buys goods in good faith, without knowledge that
5 31 the sale violates the rights of another person in the goods,
5 32 and in the ordinary course from a person, other than a
5 33 pawnbroker, in the business of selling goods of that kind. A
5 34 person buys goods in the ordinary course if the sale to the
5 35 person comports with the usual or customary practices in the
6 1 kind of business in which the seller is engaged or with the
6 2 seller's own usual or customary practices. A person that
6 3 sells oil, gas, or other minerals at the wellhead or minehead
6 4 is a person in the business of selling goods of that kind. A
6 5 buyer in ordinary course of business may buy for cash, by
6 6 exchange of other property, or on secured or unsecured credit,
6 7 and may acquire goods or documents of title under a
6 8 ~~pre-existing~~ preexisting contract for sale. Only a buyer that
6 9 takes possession of the goods or has a right to recover the
6 10 goods from the seller under Article 2 may be a buyer in
6 11 ordinary course of business. A "Buyer in ordinary course of
6 12 business" does not include a person that acquires goods in a
6 13 transfer in bulk or as security for or in total or partial
6 14 satisfaction of a money debt ~~is not a buyer in ordinary course~~
~~6 15 of business.~~

6 16 ~~10. j.~~ "Conspicuous" means, with reference to a term, or
~~6 17 clause is conspicuous when it is~~ means so written, displayed,
6 18 or presented that a reasonable person against whom which it is
6 19 to operate ought to have noticed it. A printed heading in
~~6 20 capitals (as: "Nonnegotiable Bill of Lading") is conspicuous.~~
6 21 Language in the body of a form is "conspicuous" if it is in
6 22 larger or other contrasting type or color. But in a telegram
~~6 23 any stated term is "conspicuous". Whether a term or clause is~~
6 24 "conspicuous" or not is for a decision by for the court.
6 25 Conspicuous terms include the following:

6 26 (1) a heading in capitals equal to or greater in size than
6 27 the surrounding text, or in contrasting type, font, or color
6 28 to the surrounding text of the same or lesser size; and
6 29 (2) language in the body of a record or display in larger
6 30 type than the surrounding text, or in contrasting type, font,
6 31 or color to the surrounding text of the same size, or set off
6 32 from surrounding text of the same size by symbols or other
6 33 marks that call attention to the language.

6 34 k. "Consumer" means an individual who enters into a
6 35 transaction primarily for personal, family, or household
7 1 purposes.

7 2 ~~11. l.~~ "Contract", as distinguished from "agreement",
7 3 means the total legal obligation which that results from the
7 4 parties' agreement as affected determined by this chapter and
7 5 as supplemented by any other applicable rules of law laws.
7 6 ~~(Compare "Agreement".)~~

7 7 ~~12. m.~~ "Creditor" includes a general creditor, a secured
7 8 creditor, a lien creditor, and any representative of
7 9 creditors, including an assignee for the benefit of creditors,
7 10 a trustee in bankruptcy, a receiver in equity, and an executor
7 11 or administrator of an insolvent debtor's or assignor's
7 12 estate.

7 13 ~~13. n.~~ "Defendant" includes a person in the position of
7 14 defendant in a cross-action or counterclaim, cross-claim, or
7 15 third-party claim.

7 16 ~~14. o.~~ "Delivery", with respect to instruments an
7 17 instrument, documents document of title, or chattel paper, or
7 18 certificated securities means voluntary transfer of
7 19 possession.

7 20 ~~15. p.~~ "Document of title" includes bill of lading, dock
7 21 warrant, dock receipt, warehouse receipt or order for the
7 22 delivery of goods, and also any other document which in the
7 23 regular course of business or financing is treated as
7 24 adequately evidencing that the person in possession of it is
7 25 entitled to receive, hold, and dispose of the document and the

7 26 goods it covers. To be a document of title, a document must
7 27 purport to be issued by or addressed to a bailee and purport
7 28 to cover goods in the bailee's possession which are either
7 29 identified or are fungible portions of an identified mass.
7 30 ~~16. g. "Fault" means a default, breach, or wrongful act,~~
7 31 ~~or omission or breach.~~
7 32 ~~17. r. "Fungible" with respect to goods or securities~~
7 33 ~~"Fungible goods" means:~~
7 34 ~~(1) goods or securities of which any unit is, by nature or~~
7 35 ~~usage of trade, is the equivalent of any other like unit; or~~
8 1 ~~(2) Goods which goods that by agreement are not fungible~~
8 2 ~~shall be deemed fungible for the purposes of this chapter to~~
8 3 ~~the extent that under a particular agreement or document~~
8 4 ~~unlike units are treated as equivalents equivalent.~~
8 5 ~~18. s. "Genuine" means free of forgery or counterfeiting.~~
8 6 ~~19. t. "Good faith", except as otherwise provided in~~
8 7 ~~Article 5, means honesty in fact in the conduct or transaction~~
8 8 ~~concerned and the observance of reasonable commercial~~
8 9 ~~standards of fair dealing.~~
8 10 ~~20. u. "Holder", with respect to a negotiable instrument,~~
8 11 ~~means:~~
8 12 ~~(1) the person in possession if the of a negotiable~~
8 13 ~~instrument that is payable either to bearer or, in the case of~~
8 14 ~~an instrument payable to an identified person, if the~~
8 15 ~~identified that is the person is in possession; or~~
8 16 ~~(2) "Holder" with respect to a document of title means the~~
8 17 ~~person in possession of a document of title if the goods are~~
8 18 ~~deliverable either to bearer or to the order of the person in~~
8 19 ~~possession.~~
8 20 ~~21. To "honor" is to pay or to accept and pay, or where a~~
8 21 ~~credit so engages to purchase or discount a draft complying~~
8 22 ~~with the terms of the credit.~~
8 23 ~~22. v. "Insolvency proceedings" proceeding" includes any~~
8 24 ~~assignment for the benefit of creditors or other proceedings~~
8 25 ~~proceeding intended to liquidate or rehabilitate the estate of~~
8 26 ~~the person involved.~~
8 27 ~~23. w. A person is "insolvent" who either has "Insolvent"~~
8 28 ~~means:~~
8 29 ~~(1) having generally ceased to pay that person's debts in~~
8 30 ~~the ordinary course of business or cannot pay that person's~~
8 31 ~~debts other than as a result of a bona fide dispute;~~
8 32 ~~(2) being unable to pay debts as they become due; or~~
8 33 ~~(3) is being insolvent within the meaning of the federal~~
8 34 ~~bankruptcy law.~~
8 35 ~~24. x. "Money" means a medium of exchange currently~~
9 1 ~~authorized or adopted by a domestic or foreign government and,~~
9 2 ~~The term includes a monetary unit of account established by an~~
9 3 ~~intergovernmental organization or by agreement between two or~~
9 4 ~~more nations countries.~~
9 5 ~~25. A person has "notice" of a fact when~~
9 6 ~~a. the person has actual knowledge of it; or~~
9 7 ~~b. the person has received a notice or notification of it;~~
9 8 ~~or~~
9 9 ~~c. from all the facts and circumstances known to the~~
9 10 ~~person at the time in question the person has reason to know~~
9 11 ~~that it exists. A person "knows" or has "knowledge" of a fact~~
9 12 ~~when that person has actual knowledge of it. "Discover" or~~
9 13 ~~"learn" or a word or phrase of similar import refers to~~
9 14 ~~knowledge rather than to reason to know. The time and~~
9 15 ~~circumstances under which a notice or notification may cease~~
9 16 ~~to be effective are not determined by this chapter.~~
9 17 ~~26. A person "notifies" or "gives" a notice or~~
9 18 ~~notification to another by taking such steps as may be~~
9 19 ~~reasonably required to inform the other in ordinary course~~
9 20 ~~whether or not such other actually comes to know of it. A~~
9 21 ~~person "receives" a notice or notification when~~
9 22 ~~a. it comes to that person's attention; or~~
9 23 ~~b. it is duly delivered at the place of business through~~
9 24 ~~which the contract was made or at any other place held out by~~
9 25 ~~that person as the place for receipt of such communications.~~
9 26 ~~27. Notice, knowledge or a notice or notification received~~
9 27 ~~by an organization is effective for a particular transaction~~
9 28 ~~from the time when it is brought to the attention of the~~
9 29 ~~individual conducting that transaction, and in any event from~~
9 30 ~~the time when it would have been brought to that individual's~~
9 31 ~~attention if the organization had exercised due diligence. An~~
9 32 ~~organization exercises due diligence if it maintains~~
9 33 ~~reasonable routines for communicating significant information~~
9 34 ~~to the person conducting the transaction and there is~~
9 35 ~~reasonable compliance with the routines. Due diligence does~~
10 1 ~~not require an individual acting for the organization to~~

~~10 2 communicate information unless such communication is part of~~
~~10 3 that individual's regular duties or unless the individual has~~
~~10 4 reason to know of the transaction and that the transaction~~
~~10 5 would be materially affected by the information.~~

10 6 28. y. "Organization" includes means a corporation,
~~10 7 government or governmental subdivision or agency, business~~
~~10 8 trust, estate, trust, partnership or association, two or more~~
~~10 9 persons having a joint or common interest, or any person other~~
~~10 10 legal or commercial entity than an individual.~~

10 11 29. z. "Party", as distinct distinguished from "third
~~10 12 party", means a person who that has engaged in a transaction~~
~~10 13 or made an agreement within subject to this chapter.~~

10 14 30. aa. "Person" includes means an individual, or an
~~10 15 organization (See section 554.1102) corporation, business~~
~~10 16 trust, estate, trust, partnership, limited liability company,~~
~~10 17 association, joint venture, government, governmental~~
~~10 18 subdivision, agency, or instrumentality, public corporation,~~
~~10 19 or any other legal or commercial entity.~~

10 20 31. ~~"Presumption" or "presumed" means that the trier of~~
~~10 21 fact must find the existence of the fact presumed unless and~~
~~10 22 until evidence is introduced which would support a finding of~~
~~10 23 its nonexistence.~~

10 24 ab. "Present value" means the amount as of a date certain
~~10 25 of one or more sums payable in the future, discounted to the~~
~~10 26 date certain by use of either an interest rate specified by~~
~~10 27 the parties if that rate is not manifestly unreasonable at the~~
~~10 28 time the transaction is entered into or, if an interest rate~~
~~10 29 is not so specified, a commercially reasonable rate that takes~~
~~10 30 into account the facts and circumstances at the time the~~
~~10 31 transaction is entered into.~~

10 32 32. ac. "Purchase" means any voluntary transaction
~~10 33 creating an interest in property, including taking by sale,~~
~~10 34 lease, discount, negotiation, mortgage, pledge, voluntary~~
~~10 35 lien, security interest, issue, or reissue, or gift, or any~~
~~11 1 other voluntary transaction creating an interest in property.~~

11 2 33. ad. "Purchaser" means a person who takes by purchase.

11 3 ae. "Record" means information that is inscribed on a
~~11 4 tangible medium or that is stored in an electronic or other~~
~~11 5 medium and is retrievable in perceivable form.~~

11 6 34. af. "Remedy" means any remedial right to which an
~~11 7 aggrieved party is entitled with or without resort to a~~
~~11 8 tribunal.~~

11 9 35. ag. "Representative" includes means a person
~~11 10 empowered to act for another, including an agent, an officer~~
~~11 11 of a corporation or association, and a trustee, executor, or~~
~~11 12 administrator of an estate, or any other person empowered to~~
~~11 13 act for another.~~

11 14 36. ah. "Rights" "Right" includes remedies remedy.

11 15 37. a. ai. "Security interest" means an interest in
~~11 16 personal property or fixtures which secures payment or~~
~~11 17 performance of an obligation. The term also "Security~~
~~11 18 interest" includes any interest of a consignor and a buyer of~~
~~11 19 accounts, chattel paper, a payment intangible, or a promissory~~
~~11 20 note in a transaction that is subject to Article 9. The~~
~~11 21 "Security interest" does not include the special property~~
~~11 22 interest of a buyer of goods on identification of those goods~~
~~11 23 to a contract for sale under section 554.2401 is not a~~
~~11 24 "security interest", but a buyer may also acquire a "security~~
~~11 25 interest" by complying with Article 9. Except as otherwise~~
~~11 26 provided in section 554.2505, the right of a seller or lessor~~
~~11 27 of goods under Article 2 or 13 to retain or acquire possession~~
~~11 28 of the goods is not a "security interest", but a seller or~~
~~11 29 lessor may also acquire a "security interest" by complying~~
~~11 30 with Article 9. The retention or reservation of title by a~~
~~11 31 seller of goods notwithstanding shipment or delivery to the~~
~~11 32 buyer (section 554.2401) under section 554.2401 is limited in~~
~~11 33 effect to a reservation of a "security interest". Whether~~

11 34 b. Whether a transaction in the form of a lease creates a
~~11 35 lease or security interest "security interest" is determined~~
~~12 1 by the facts of each case; however, a transaction creates a~~
~~12 2 security interest if the consideration the lessee is to pay~~
~~12 3 the lessor for the right to possession and use of the goods is~~
~~12 4 an obligation for the term of the lease not subject to~~
~~12 5 termination by the lessee, and~~

12 6 (1) the original term of the lease is equal to or greater
~~12 7 than the remaining economic life of the goods,~~

12 8 (2) the lessee is bound to renew the lease for the
~~12 9 remaining economic life of the goods or is bound to become the~~
~~12 10 owner of the goods,~~

12 11 (3) the lessee has an option to renew the lease for the
~~12 12 remaining economic life of the goods for no additional~~

~~12 13 consideration or nominal additional consideration upon
12 14 compliance with the lease agreement, or~~

~~12 15 (4) the lessee has an option to become the owner of the
12 16 goods for no additional consideration or nominal additional
12 17 consideration upon compliance with the lease agreement
12 18 pursuant to section 554.1203.~~

~~12 19 c. A transaction does not create a security interest
12 20 merely because it provides that~~

~~12 21 (1) the present value of the consideration the lessee is
12 22 obligated to pay the lessor for the right to possession and
12 23 use of the goods is substantially equal to or is greater than
12 24 the fair market value of the goods at the time the lease is
12 25 entered into,~~

~~12 26 (2) the lessee assumes risk of loss of the goods, or
12 27 agrees to pay taxes, insurance, filing, recording, or
12 28 registration fees, or service or maintenance costs with
12 29 respect to the goods,~~

~~12 30 (3) the lessee has an option to renew the lease or to
12 31 become the owner of the goods,~~

~~12 32 (4) the lessee has an option to renew the lease for a
12 33 fixed rent that is equal to or greater than the reasonably
12 34 predictable fair market rent for the use of the goods for the
12 35 term of the renewal at the time the option is to be performed,~~

~~13 1 or
13 2 (5) the lessee has an option to become the owner of the
13 3 goods for a fixed price that is equal to or greater than the
13 4 reasonably predictable fair market value of the goods at the
13 5 time the option is to be performed.~~

~~13 6 d. For purposes of this subsection:~~

~~13 7 (1) Additional consideration is not nominal if (i) when
13 8 the option to renew the lease is granted to the lessee the
13 9 rent is stated to be the fair market rent for the use of the
13 10 goods for the term of the renewal determined at the time the
13 11 option is to be performed, or (ii) when the option to become
13 12 the owner of the goods is granted to the lessee the price is
13 13 stated to be the fair market value of the goods determined at
13 14 the time the option is to be performed. Additional
13 15 consideration is nominal if it is less than the lessee's
13 16 reasonably predictable cost of performing under the lease
13 17 agreement if the option is not exercised;~~

~~13 18 (2) "Reasonably predictable" and "remaining economic life
13 19 of the goods" are to be determined with reference to the facts
13 20 and circumstances at the time the transaction is entered into;
13 21 and~~

~~13 22 (3) "Present value" means the amount as of a date certain
13 23 of one or more sums payable in the future, discounted to the
13 24 date certain. The discount is determined by the interest rate
13 25 specified by the parties if the rate is not manifestly
13 26 unreasonable at the time the transaction is entered into;
13 27 otherwise, the discount is determined by a commercially
13 28 reasonable rate that takes into account the facts and
13 29 circumstances of each case at the time the transaction was
13 30 entered into.~~

~~13 31 38. aj. "Send" in connection with any a writing, record,
13 32 or notice means:~~

~~13 33 (1) to deposit in the mail or deliver for transmission by
13 34 any other usual means of communication with postage or cost of
13 35 transmission provided for and properly addressed and, in the
14 1 case of an instrument, to an address specified thereon or
14 2 otherwise agreed, or if there be none to any address
14 3 reasonable under the circumstances; or~~

~~14 4 (2) The receipt of in any writing other way to cause to be
14 5 received any record or notice within the time at which it
14 6 would have arrived if properly sent has the effect of a proper
14 7 sending.~~

~~14 8 39. ak. "Signed" includes using any symbol executed or
14 9 adopted by a party with present intention to authenticate
14 10 adopt or accept a writing.~~

~~14 11 al. "State" means a state of the United States, the
14 12 District of Columbia, Puerto Rico, the United States Virgin
14 13 Islands, or any territory or insular possession subject to the
14 14 jurisdiction of the United States.~~

~~14 15 40. am. "Surety" includes a guarantor or other secondary
14 16 obligor.~~

~~14 17 41. "Telegram" includes a message transmitted by radio,
14 18 teletype, cable, any mechanical method of transmission, or the
14 19 like.~~

~~14 20 42. an. "Term" means that portion of an agreement which
14 21 that relates to a particular matter.~~

~~14 22 43. ao. "Unauthorized" signature "Unauthorized signature"
14 23 means one a signature made without actual, implied, or~~

14 24 apparent authority and. The term includes a forgery.
14 25 44. "Value". Except as otherwise provided with respect to
14 26 negotiable instruments and bank collections (sections
14 27 554.3303, 554.4210, and 554.4211) a person gives "value" for
14 28 rights if the person acquires them
14 29 a. in return for a binding commitment to extend credit or
14 30 for the extension of immediately available credit whether or
14 31 not drawn upon and whether or not a charge-back is provided
14 32 for in the event of difficulties in collection; or
14 33 b. as security for or in total or partial satisfaction of
14 34 a pre-existing claim; or
14 35 c. by accepting delivery pursuant to a pre-existing
15 1 contract for purchase; or
15 2 d. generally, in return for any consideration sufficient
15 3 to support a simple contract.

15 4 45. ap. "Warehouse receipt" means a receipt issued by a
15 5 person engaged in the business of storing goods for hire.
15 6 46. aq. "Written" or "writing" "Writing" includes
15 7 printing, typewriting, or any other intentional reduction to
15 8 tangible form. "Written" has a corresponding meaning.

15 9 Sec. 12. Section 554.1202, Code 2007, is amended to read
15 10 as follows:
15 11 554.1202 PRIMA FACIE EVIDENCE BY ~~THIRD PARTY~~ THIRD=PARTY
15 12 DOCUMENTS.
15 13 A document in due form purporting to be a bill of lading,
15 14 policy or certificate of insurance, official weigher's or
15 15 inspector's certificate, consular invoice, or any other
15 16 document authorized or required by the contract to be issued
15 17 by a third party ~~shall be~~ is prima facie evidence of its own
15 18 authenticity and genuineness and of the facts stated in the
15 19 document by the third party.

15 20 Sec. 13. NEW SECTION. 554.1202A NOTICE == KNOWLEDGE.
15 21 1. Subject to subsection 6, a person has "notice" of a
15 22 fact if the person:
15 23 a. has actual knowledge of it;
15 24 b. has received a notice or notification of it; or
15 25 c. from all the facts and circumstances known to the
15 26 person at the time in question, has reason to know that it
15 27 exists.

15 28 2. "Knowledge" means actual knowledge. "Knows" has a
15 29 corresponding meaning.

15 30 3. "Discover", "learn", or words of similar import refer
15 31 to knowledge rather than to reason to know.

15 32 4. A person "notifies" or "gives" a notice or notification
15 33 to another person by taking such steps as may be reasonably
15 34 required to inform the other person in ordinary course,
15 35 whether or not the other person actually comes to know of it.

16 1 5. Subject to subsection 6, a person "receives" a notice
16 2 or notification when:
16 3 a. it comes to that person's attention; or
16 4 b. it is duly delivered in a form reasonable under the
16 5 circumstances at the place of business through which the
16 6 contract was made or at another location held out by that
16 7 person as the place for receipt of such communications.

16 8 6. Notice, knowledge, or a notice or notification received
16 9 by an organization is effective for a particular transaction
16 10 from the time it is brought to the attention of the individual
16 11 conducting that transaction and, in any event, from the time
16 12 it would have been brought to the individual's attention if
16 13 the organization had exercised due diligence. An organization
16 14 exercises due diligence if it maintains reasonable routines
16 15 for communicating significant information to the person
16 16 conducting the transaction and there is reasonable compliance
16 17 with the routines. Due diligence does not require an
16 18 individual acting for the organization to communicate
16 19 information unless the communication is part of the
16 20 individual's regular duties or the individual has reason to
16 21 know of the transaction and that the transaction would be
16 22 materially affected by the information.

16 23 Sec. 14. NEW SECTION. 554.1203A LEASE DISTINGUISHED FROM
16 24 SECURITY INTEREST.
16 25 1. Whether a transaction in the form of a lease creates a
16 26 lease or security interest is determined by the facts of each
16 27 case.
16 28 2. A transaction in the form of a lease creates a security
16 29 interest if the consideration that the lessee is to pay the
16 30 lessor for the right to possession and use of the goods is an
16 31 obligation for the term of the lease and is not subject to
16 32 termination by the lessee, and:
16 33 a. the original term of the lease is equal to or greater
16 34 than the remaining economic life of the goods;

16 35 b. the lessee is bound to renew the lease for the
17 1 remaining economic life of the goods or is bound to become the
17 2 owner of the goods;
17 3 c. the lessee has an option to renew the lease for the
17 4 remaining economic life of the goods for no additional
17 5 consideration or for nominal additional consideration upon
17 6 compliance with the lease agreement; or
17 7 d. the lessee has an option to become the owner of the
17 8 goods for no additional consideration or for nominal
17 9 additional consideration upon compliance with the lease
17 10 agreement.

17 11 3. A transaction in the form of a lease does not create a
17 12 security interest merely because:

17 13 a. the present value of the consideration the lessee is
17 14 obligated to pay the lessor for the right to possession and
17 15 use of the goods is substantially equal to or is greater than
17 16 the fair market value of the goods at the time the lease is
17 17 entered into;

17 18 b. the lessee assumes risk of loss of the goods;

17 19 c. the lessee agrees to pay, with respect to the goods,
17 20 taxes, insurance, filing, recording, or registration fees, or
17 21 service or maintenance costs;

17 22 d. the lessee has an option to renew the lease or to
17 23 become the owner of the goods;

17 24 e. the lessee has an option to renew the lease for a fixed
17 25 rent that is equal to or greater than the reasonably
17 26 predictable fair market rent for the use of the goods for the
17 27 term of the renewal at the time the option is to be performed;
17 28 or

17 29 f. the lessee has an option to become the owner of the
17 30 goods for a fixed price that is equal to or greater than the
17 31 reasonably predictable fair market value of the goods at the
17 32 time the option is to be performed.

17 33 4. Additional consideration is nominal if it is less than
17 34 the lessee's reasonably predictable cost of performing under
17 35 the lease agreement if the option is not exercised.

18 1 Additional consideration is not nominal if:

18 2 a. when the option to renew the lease is granted to the
18 3 lessee, the rent is stated to be the fair market rent for the
18 4 use of the goods for the term of the renewal determined at the
18 5 time the option is to be performed; or

18 6 b. when the option to become the owner of the goods is
18 7 granted to the lessee, the price is stated to be the fair
18 8 market value of the goods determined at the time the option is
18 9 to be performed.

18 10 5. The "remaining economic life of the goods" and
18 11 "reasonably predictable" fair market rent, fair market value,
18 12 or cost of performing under the lease agreement must be
18 13 determined with reference to the facts and circumstances at
18 14 the time the transaction is entered into.

18 15 Sec. 15. Section 554.1204, Code 2007, is amended to read
18 16 as follows:

18 17 554.1204 ~~TIME~~ == REASONABLE TIME == "~~SEASONABLY~~"
18 18 SEASONABLENESS.

~~18 19 1. Whenever this chapter requires any action to be taken
18 20 within a reasonable time, any time which is not manifestly
18 21 unreasonable may be fixed by agreement.~~

~~18 22 2. What is Whether a reasonable time for taking any an
18 23 action required by this chapter is reasonable depends on the
18 24 nature, purpose, and circumstances of such the action.~~

~~18 25 3- 2. An action is taken "seasonably" when seasonably if
18 26 it is taken at or within the time agreed or, if no time is
18 27 agreed, at or within a reasonable time.~~

18 28 Sec. 16. NEW SECTION. 554.1204A VALUE.

18 29 Except as otherwise provided in Articles 3, 4, and 5, a
18 30 person gives value for rights if the person acquires them:

18 31 1. in return for a binding commitment to extend credit or
18 32 for the extension of immediately available credit, whether or
18 33 not drawn upon and whether or not a charge-back is provided
18 34 for in the event of difficulties in collection;

18 35 2. as security for, or in total or partial satisfaction
19 1 of, a preexisting claim;

19 2 3. by accepting delivery under a preexisting contract for
19 3 purchase; or

19 4 4. in return for any consideration sufficient to support a
19 5 simple contract.

19 6 Sec. 17. Section 554.1205, Code 2007, is amended to read
19 7 as follows:

19 8 554.1205 COURSE OF PERFORMANCE, COURSE OF DEALING, AND
19 9 USAGE OF TRADE.

19 10 1. A "course of performance" is a sequence of conduct

19 11 between the parties to a particular transaction that exists
19 12 if:

19 13 a. the agreement of the parties with respect to the
19 14 transaction involves repeated occasions for performance by a
19 15 party; and

19 16 b. the other party, with knowledge of the nature of the
19 17 performance and opportunity for objection to it, accepts the
19 18 performance or acquiesces in it without objection.

19 19 ~~1-~~ 2. A course of dealing "course of dealing" is a
19 20 sequence of ~~previous~~ conduct concerning previous transactions
19 21 between the parties to a particular transaction ~~which that is~~
19 22 fairly to be regarded as establishing a common basis of
19 23 understanding for interpreting their expressions and other
19 24 conduct.

19 25 ~~2-~~ 3. A ~~usage of trade~~ "usage of trade" is any practice
19 26 or method of dealing having such regularity of observance in a
19 27 place, vocation, or trade as to justify an expectation that it
19 28 will be observed with respect to the transaction in question.
19 29 The existence and scope of such a usage ~~are to~~ must be proved
19 30 as facts. If it is established that such a usage is embodied
19 31 in a ~~written~~ trade code or similar ~~writing~~ record, the
19 32 interpretation of the ~~writing~~ record is ~~for the court~~ a
19 33 question of law.

19 34 ~~3-~~ 4. A ~~course of performance~~ or course of dealing
19 35 between ~~the parties and any or~~ usage of trade in the vocation
20 1 or trade in which they are engaged or of which they are or
20 2 should be aware ~~give particular meaning to and supplement or~~
20 3 ~~qualify terms of an~~ is relevant in ascertaining the meaning of
20 4 the parties' agreement, ~~may give particular meaning to~~
20 5 specific terms of the agreement, and ~~may supplement or qualify~~
20 6 the terms of the agreement. A usage of trade applicable in
20 7 the place in which part of the performance under the agreement
20 8 is to occur may be so utilized as to that part of the
20 9 performance.

20 10 ~~4-~~ 5. ~~The~~ Except as otherwise provided in subsection 6,
20 11 the express terms of an agreement and ~~an~~ any applicable course
20 12 of dealing, or usage of trade ~~shall~~ must be construed wherever
20 13 reasonable as consistent with each other, ~~but when.~~ If such a
20 14 construction is unreasonable:

20 15 a. express terms ~~control both~~ prevail over course of
20 16 performance, course of dealing, and usage of trade;

20 17 b. course of performance prevails over course of dealing
20 18 and usage of trade; and

20 19 c. course of dealing ~~controls~~ prevails over usage of
20 20 trade.

20 21 ~~5-~~ 6. An applicable usage of trade in the place where any
20 22 part ~~subject to section 554.2209,~~ a course of performance is
20 23 to occur ~~shall be used in interpreting the agreement as to~~
20 24 that part relevant to show a waiver or modification of any
20 25 term inconsistent with the course of the performance.

20 26 ~~6-~~ 7. Evidence of a relevant usage of trade offered by
20 27 one party is not admissible unless ~~and until~~ that party has
20 28 given the other party ~~such~~ notice ~~as that~~ the court finds
20 29 sufficient to prevent unfair surprise to the ~~latter~~ other
20 30 party.

20 31 Sec. 18. ~~NEW SECTION.~~ 554.1206A PRESUMPTIONS.
20 32 Whenever this chapter creates a "presumption" with respect
20 33 to a fact, or provides that a fact is "presumed", the trier of
20 34 fact must find the existence of the fact unless and until
20 35 evidence is introduced that supports a finding of its
21 1 nonexistence.

21 2 Sec. 19. Section 554.1207, subsection 1, Code 2007, is
21 3 amended to read as follows:

21 4 1. A party ~~who,~~ that with explicit reservation of rights,
21 5 performs or promises performance or assents to performance in
21 6 a manner demanded or offered by the other party does not
21 7 thereby prejudice the rights reserved. Such words as "without
21 8 prejudice", "under protest", or the like are sufficient.

21 9 Sec. 20. Section 554.1208, Code 2007, is amended to read
21 10 as follows:

21 11 554.1208 OPTION TO ACCELERATE AT WILL.

21 12 A term providing that one party or that party's successor
21 13 in interest may accelerate payment or performance or require
21 14 collateral or additional collateral "at will" or ~~"when when~~
21 15 the party ~~deems~~ deems itself insecure" or ~~in~~ words of similar
21 16 import ~~shall be construed to mean,~~ means that that party ~~shall~~
21 17 have ~~has~~ power to do so only if that party in good faith
21 18 believes that the prospect of payment or performance is
21 19 impaired. The burden of establishing lack of good faith is on
21 20 the party against ~~whom~~ which the power has been exercised.

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

21 22 as follows:
21 23 554.1209 SUBORDINATED OBLIGATIONS.
21 24 An obligation may be issued as subordinated to ~~payment~~
21 25 ~~performance~~ of another obligation of the person obligated, or
21 26 a creditor may subordinate ~~the creditor's~~ its right to ~~payment~~
21 27 ~~performance~~ of an obligation by agreement with either the
21 28 person obligated or another creditor of the person obligated.
21 29 ~~Such a subordination Subordination~~ does not create a security
21 30 interest as against either the common debtor or a subordinated
21 31 creditor. ~~This section shall be construed as declaring the~~
~~21 32 law as it existed prior to the enactment of this section and~~
~~21 33 not as modifying it.~~

21 34 PART 3

21 35 TERRITORIAL APPLICABILITY AND GENERAL RULES

22 1 Sec. 22. NEW SECTION. 554.1302 VARIATION BY AGREEMENT.

22 2 1. Except as otherwise provided in subsection 2 or
22 3 elsewhere in this chapter, the effect of provisions of this
22 4 chapter may be varied by agreement.

22 5 2. The obligations of good faith, diligence,
22 6 reasonableness, and care prescribed by this chapter may not be
22 7 disclaimed by agreement. The parties, by agreement, may
22 8 determine the standards by which the performance of those
22 9 obligations is to be measured if those standards are not
22 10 manifestly unreasonable. Whenever this chapter requires an
22 11 action to be taken within a reasonable time, a time that is
22 12 not manifestly unreasonable may be fixed by agreement.

22 13 3. The presence in certain provisions of this chapter of
22 14 the phrase "unless otherwise agreed", or words of similar
22 15 import, does not imply that the effect of other provisions may
22 16 not be varied by agreement under this section.

22 17 DIVISION II

22 18 CONFORMING AMENDMENTS TO OTHER ARTICLES

22 19 PART A

22 20 ARTICLE 2

22 21 Sec. 23. Section 554.2103, subsection 1, paragraph b, Code
22 22 2007, is amended by striking the paragraph.

22 23 Sec. 24. Section 554.2202, subsection a, Code 2007, is
22 24 amended to read as follows:

22 25 a. by course of performance, course of dealing, or usage
22 26 of trade (section ~~554.1205~~ 554.1303) ~~or by course of~~
~~22 27 performance (section 554.2208); and~~

22 28 PART B

22 29 ARTICLE 3

22 30 Sec. 25. Section 554.3103, subsection 1, paragraph d, Code
22 31 2007, is amended by striking the paragraph.

22 32 Sec. 26. Code 554.3103, subsection 1, paragraph j, Code
22 33 2007, is amended to read as follows:

22 34 j. "Prove" with respect to a fact means to meet the burden
22 35 of establishing the fact (section 554.1201, subsection ~~g~~ 2,
23 1 paragraph "h").

23 2 PART C

23 3 ARTICLE 4

23 4 Sec. 27. Section 554.4104, subsection 3, Code 2007, is
23 5 amended to read as follows:

23 6 3. The following definitions in other Articles apply to
23 7 this Article:

23 8	"Acceptance"	Section 554.3409
23 9	"Alteration"	Section 554.3407
23 10	"Cashier's check"	Section 554.3104
23 11	"Certificate of deposit"	Section 554.3104
23 12	"Certified check"	Section 554.3409
23 13	"Check"	Section 554.3104
23 14	"Good faith"	Section 554.3103
23 15	"Holder in due course"	Section 554.3302
23 16	"Instrument"	Section 554.3104
23 17	"Notice of dishonor"	Section 554.3503
23 18	"Order"	Section 554.3103
23 19	"Ordinary care"	Section 554.3103
23 20	"Person entitled	
23 21	to enforce"	Section 554.3301
23 22	"Presentment"	Section 554.3501
23 23	"Promise"	Section 554.3103
23 24	"Prove"	Section 554.3103
23 25	"Teller's check"	Section 554.3104
23 26	"Unauthorized signature"	Section 554.3403

23 27 PART D

23 28 ARTICLE 5

23 29 Sec. 28. Section 554.5103, subsection 3, Code 2007, is
23 30 amended to read as follows:

23 31 3. With the exception of this subsection, subsections 1
23 32 and 4, section 554.5102, subsection 1, paragraphs "i" and "j",

23 33 section 554.5106, subsection 4, and section 554.5114,
23 34 subsection 4, and except to the extent prohibited in section
23 35 ~~554.1102, subsection 3, 554.1302~~ and section 554.5117,
24 1 subsection 4, the effect of this Article may be varied by
24 2 agreement or by a provision stated or incorporated by
24 3 reference in an undertaking. A term in an agreement or
24 4 undertaking generally excusing liability or generally limiting
24 5 remedies for failure to perform obligations is not sufficient
24 6 to vary obligations prescribed by this Article.

24 7 PART E

24 8 ARTICLE 8

24 9 Sec. 29. Section 554.8102, subsection 1, paragraph j, Code
24 10 2007, is amended by striking the paragraph.

24 11 PART F

24 12 ARTICLE 9

24 13 Sec. 30. Section 554.9102, subsection 1, paragraph aq,
24 14 Code 2007, is amended by striking the paragraph.

24 15 PART G

24 16 ARTICLE 12

24 17 Sec. 31. Section 554.12105, subsection 1, paragraph f,
24 18 Code 2007, is amended by striking the paragraph.

24 19 Sec. 32. Section 554.12105, subsection 1, paragraph g,
24 20 Code 2007, is amended to read as follows:

24 21 g. "Prove" with respect to a fact means to meet the burden
24 22 of establishing the fact as defined in section 554.1201,
24 23 subsection ~~g~~ 2, paragraph "h".

24 24 Sec. 33. Section 554.12106, subsection 1, Code 2007, is
24 25 amended to read as follows:

24 26 1. The time of receipt of a payment order or communication
24 27 canceling or amending a payment order is determined by the
24 28 rules applicable to receipt of a notice stated in section
24 29 ~~554.1201, subsection 27~~ 554.1202. A receiving bank may
24 30 establish a cut-off time or times on a funds-transfer business
24 31 day for the receipt and processing of payment orders, and
24 32 communications canceling or amending payment orders.
24 33 Different cut-off times may apply to payment orders,
24 34 cancellations, or amendments, or to different categories of
24 35 payment orders, cancellations, or amendments. A cut-off time
25 1 may apply to senders generally, or different cut-off times may
25 2 apply to different senders or categories of payment orders.
25 3 If a payment order or communication canceling or amending a
25 4 payment order is received after the close of a funds-transfer
25 5 business day or after the appropriate cut-off time on a
25 6 funds-transfer business day, the receiving bank may treat the
25 7 payment order or communication as received at the opening of
25 8 the next funds-transfer business day.

25 9 Sec. 34. Section 554.12204, subsection 2, Code 2007, is
25 10 amended to read as follows:

25 11 2. Reasonable time under subsection 1 may be fixed by
25 12 agreement as provided in section ~~554.1204~~ 554.1302, subsection
25 13 ~~± 2~~, but the obligation of a receiving bank to refund payment
25 14 as stated in subsection 1 may not otherwise be varied by
25 15 agreement.

25 16 PART H

25 17 ARTICLE 13

25 18 Sec. 35. Section 554.13501, subsection 4, Code 2007, is
25 19 amended to read as follows:

25 20 4. Except as otherwise provided in section ~~554.1106~~
25 21 554.1305, subsection 1, ~~of or~~ this Article or the lease
25 22 agreement, the rights and remedies referred to in subsections
25 23 2 and 3 are cumulative.

25 24 Sec. 36. Section 554.13518, subsection 2, Code 2007, is
25 25 amended to read as follows:

25 26 2. Except as otherwise provided with respect to damages
25 27 liquidated in the lease agreement (section 554.13504) or
25 28 otherwise determined pursuant to agreement of the parties
25 29 (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if
25 30 a lessee's cover is by a lease agreement substantially similar
25 31 to the original lease agreement and the new lease agreement is
25 32 made in good faith and in a commercially reasonable manner,
25 33 the lessee may recover from the lessor as damages (i) the
25 34 present value, as of the date of the commencement of the term
25 35 of the new lease agreement, of the rent under the new lease
26 1 agreement applicable to that period of the new lease term
26 2 which is comparable to the then remaining term of the original
26 3 lease agreement minus the present value as of the same date of
26 4 the total rent for the then remaining lease term of the
26 5 original lease agreement, and (ii) any incidental or
26 6 consequential damages, less expenses saved in consequence of
26 7 the lessor's default.

26 8 Sec. 37. Section 554.13519, subsection 1, Code 2007, is

26 9 amended to read as follows:

26 10 1. Except as otherwise provided with respect to damages
26 11 liquidated in the lease agreement (section 554.13504) or
26 12 otherwise determined pursuant to agreement of the parties
26 13 (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if
26 14 a lessee elects not to cover or a lessee elects to cover and
26 15 the cover is by lease agreement that for any reason does not
26 16 qualify for treatment under section 554.13518, subsection 2,
26 17 or is by purchase or otherwise, the measure of damages for
26 18 nondelivery or repudiation by the lessor or for rejection or
26 19 revocation of acceptance by the lessee is the present value,
26 20 as of the date of the default, of the then market rent minus
26 21 the present value as of the same date of the original rent,
26 22 computed for the remaining lease term of the original lease
26 23 agreement, together with incidental and consequential damages,
26 24 less expenses saved in consequence of the lessor's default.

26 25 Sec. 38. Section 554.13527, subsection 2, Code 2007, is
26 26 amended to read as follows:

26 27 2. Except as otherwise provided with respect to damages
26 28 liquidated in the lease agreement (section 554.13504) or
26 29 otherwise determined pursuant to agreement of the parties
26 30 (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if
26 31 the disposition is by lease agreement substantially similar to
26 32 the original lease agreement and the new lease agreement is
26 33 made in good faith and in a commercially reasonable manner,
26 34 the lessor may recover from the lessee as damages (i) accrued
26 35 and unpaid rent as of the date of the commencement of the term
27 1 of the new lease agreement, (ii) the present value, as of the
27 2 same date, of the total rent for the remaining lease term of
27 3 the original lease agreement minus the present value, as of
27 4 the same date, of the rent under the new lease agreement
27 5 applicable to that period of the new lease term which is
27 6 comparable to the then remaining term of the original lease
27 7 agreement, and (iii) any incidental damages allowed under
27 8 section 554.13530, less expenses saved in consequence of the
27 9 lessee's default.

27 10 Sec. 39. Section 554.13528, subsection 1, Code 2007, is
27 11 amended to read as follows:

27 12 1. Except as otherwise provided with respect to damages
27 13 liquidated in the lease agreement (section 554.13504) or
27 14 otherwise determined pursuant to agreement of the parties
27 15 (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if
27 16 a lessor elects to retain the goods or a lessor elects to
27 17 dispose of the goods and the disposition is by lease agreement
27 18 that for any reason does not qualify for treatment under
27 19 section 554.13527, subsection 2, or is by sale or otherwise,
27 20 the lessor may recover from the lessee as damages for a
27 21 default of the type described in section 554.13523, subsection
27 22 1, or section 554.13523, subsection 3, paragraph "a", or, if
27 23 agreed, for other default of the lessee, (i) accrued and
27 24 unpaid rent as of the date of default if the lessee has never
27 25 taken possession of the goods, or, if the lessee has taken
27 26 possession of the goods, as of the date the lessor repossesses
27 27 the goods or an earlier date on which the lessee makes a
27 28 tender of the goods to the lessor, (ii) the present value as
27 29 of the date determined under clause (i) of the total rent for
27 30 the then remaining lease term of the original lease agreement
27 31 minus the present value as of the same date of the market rent
27 32 at the place where the goods are located computed for the same
27 33 lease term, and (iii) any incidental damages allowed under
27 34 section 554.13530, less expenses saved in consequence of the
27 35 lessee's default.

28 1 PART I

28 2 PROVISIONS OUTSIDE THE UNIFORM COMMERCIAL CODE

28 3 Sec. 40. Section 3.3, Code 2007, is amended to read as
28 4 follows:

28 5 3.3 HEADNOTES AND HISTORICAL REFERENCES.

28 6 Proper headnotes may be placed at the beginning of a
28 7 section of a bill or a Code section, and at the end of a Code
28 8 section there may be placed a reference to the section number
28 9 of the Code, or any Iowa Act from which the matter of the Code
28 10 section was taken. However, except as provided in for the
28 11 uniform commercial code, pursuant to section 554.1109
28 12 554.1107, neither said headnotes nor said historical shall not
28 13 be considered as part of the law as enacted. Historical

28 14 references shall be considered as a part of the law as
28 15 enacted.

28 16 Sec. 41. Section 537.3603, subsection 6, Code 2007, is
28 17 amended to read as follows:

28 18 6. A lease or agreement which constitutes a security
28 19 interest as defined in section 554.1201, subsection ~~37~~ 2.

28 20 Sec. 42. Section 554D.104, subsection 2, paragraph b, Code
28 21 2007, is amended to read as follows:

~~28 22 b. Chapter 554 other than articles 2 and 13 and sections
28 23 554.1107 and 554.1206 section 554.1306.~~

~~28 24 DIVISION III~~

~~28 25 CONTINGENT PROVISIONS~~

28 26 Sec. 43. Section 554.1201, subsections 5, 6, 14, 15, 20,
28 27 and 45, Code 2007, are amended to read as follows:

~~28 28 5. e. "Bearer" means the a person in control of a
28 29 negotiable electronic document of title or a person in
28 30 possession of an a negotiable instrument, negotiable tangible
28 31 document of title, or certificated security that is payable to
28 32 bearer or endorsed indorsed in blank.~~

~~28 33 6. f. "Bill of lading" means a document of title
28 34 evidencing the receipt of goods for shipment issued by a
28 35 person engaged in the business of directly or indirectly
29 1 transporting or forwarding goods, and includes an airbill.
29 2 "Airbill" means a document serving for air transportation as a
29 3 bill of lading does for marine or rail transportation, and
29 4 includes an air consignment note or air waybill. The term
29 5 does not include a warehouse receipt.~~

~~29 6 14. o. "Delivery" with respect to instruments an
29 7 electronic document of title means voluntary transfer of
29 8 control and with respect to an instrument, documents a
29 9 tangible document of title, or chattel paper, or certificated
29 10 securities means voluntary transfer of possession.~~

~~29 11 15. p. "Document of title" includes bill of lading, dock
29 12 warrant, dock receipt, warehouse receipt or order for the
29 13 delivery of goods, and also any other document which means a
29 14 record (i) that in the regular course of business or financing
29 15 is treated as adequately evidencing that the person in
29 16 possession or control of it the record is entitled to receive,
29 17 control, hold, and dispose of the document record and the
29 18 goods it the record covers and (ii) that purports to be issued
29 19 by or addressed to a bailee and to cover goods in the bailee's
29 20 possession which are either identified or are fungible
29 21 portions of an identified mass. The term includes a bill of
29 22 lading, transport document, dock warrant, dock receipt,
29 23 warehouse receipt, and order for delivery of goods. To be a
29 24 document of title a document must purport to be issued by or
29 25 addressed to a bailee and purport to cover goods in the
29 26 bailee's possession which are either identified or are
29 27 fungible portions of an identified mass. An electronic
29 28 document of title means a document of title evidenced by a
29 29 record consisting of information stored in an electronic
29 30 medium. A tangible document of title means a document of
29 31 title evidenced by a record consisting of information that is
29 32 inscribed on a tangible medium.~~

~~29 33 20. u. "Holder", with respect to a negotiable instrument,
29 34 means:~~

~~29 35 (1) the person in possession if the of a negotiable
30 1 instrument that is payable either to bearer or, in the case of
30 2 an instrument payable to an identified person, if the
30 3 identified that is the person is in possession;~~

~~30 4 (2) "Holder" with respect to a document of title means the
30 5 person in possession of a negotiable tangible document of
30 6 title if the goods are deliverable either to bearer or to the
30 7 order of the person in possession; or~~

~~30 8 (3) the person in control of a negotiable electronic
30 9 document of title.~~

~~30 10 45. ap. "Warehouse receipt" means a receipt document of
30 11 title issued by a person engaged in the business of storing
30 12 goods for hire.~~

30 13 Sec. 44. CONFLICTING PROVISIONS.

30 14 1. If 2007 Iowa Acts, House File 716 is enacted,
30 15 notwithstanding section 4.1, all of the following apply:

30 16 a. The amendments to section 554.1201, subsections 5, 6,
30 17 14, 15, 20, and 45, Code 2007, as enacted in this division of
30 18 this Act, prevail over conflicting amendments to section
30 19 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as
30 20 enacted in division I of this Act.

30 21 b. The amendments to section 554.1201, subsections 25, 26,
30 22 and 27, as enacted in division I of this Act, prevail over
30 23 conflicting amendments to section 554.1201, subsections 25,
30 24 26, and 27, Code 2007, as enacted in 2007 Iowa Acts, House
30 25 File 716.

30 26 c. The amendments to section 554.1201, subsections 5, 6,
30 27 14, 15, 20, and 45, Code 2007, as enacted in this division of
30 28 this Act, prevail over conflicting amendments to section
30 29 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as
30 30 enacted in 2007 Iowa Acts, House File 716.

30 31 2. If 2007 Iowa Acts, House File 716 is not enacted,
30 32 notwithstanding section 4.8, the amendments to section
30 33 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as
30 34 enacted in division I of this Act, prevail over conflicting
30 35 amendments to section 554.1201, subsections 5, 6, 14, 15, 20,
31 1 and 45, Code 2007, as enacted in this division of this Act.

31 2 DIVISION IV

31 3 TRANSFERS AND RECODIFICATIONS

31 4 Sec. 45. Section 554.1105, Code 2007, is transferred to
31 5 section 554.1301.
31 6 Sec. 46. Section 554.1106, Code 2007, is transferred to
31 7 section 554.1305.
31 8 Sec. 47. Section 554.1107, Code 2007, is transferred to
31 9 section 554.1306.
31 10 Sec. 48. Section 554.1108, Code 2007, is transferred to
31 11 section 554.1105.
31 12 Sec. 49. Section 554.1109, Code 2007, is transferred to
31 13 section 554.1107.
31 14 Sec. 50. Section 554.1202, Code 2007, is transferred to
31 15 section 554.1307.
31 16 Sec. 51. Section 554.1203, Code 2007, is transferred to
31 17 section 554.1304.
31 18 Sec. 52. Section 554.1204, Code 2007, is transferred to
31 19 section 554.1205.
31 20 Sec. 53. Section 554.1205, Code 2007, is transferred to
31 21 section 554.1303.
31 22 Sec. 54. Section 554.1207, Code 2007, is transferred to
31 23 section 554.1308.
31 24 Sec. 55. Section 554.1208, Code 2007, is transferred to
31 25 section 554.1309.
31 26 Sec. 56. Section 554.1209, Code 2007, is transferred to
31 27 section 554.1310.
31 28 Sec. 57. CODIFICATION.

31 29 1. The Code editor shall codify the following new Code
31 30 sections, as enacted in this Act, into the following Code
31 31 sections, which existed immediately prior to the effective
31 32 date of this Act and which are repealed or transferred
31 33 elsewhere by this Act:

31 34 a. Section 554.1102A to section 554.1102 following its
31 35 repeal in this Act.
32 1 b. Section 554.1106A to section 554.1106 following its
32 2 transfer in this Act.
32 3 c. Section 554.1108A to section 554.1108 following its
32 4 transfer in this Act.
32 5 d. Section 554.1202A to section 554.1202 following its
32 6 transfer in this Act.
32 7 e. Section 554.1203A to section 554.1203 following its
32 8 transfer in this Act.
32 9 f. Section 554.1204A to section 554.1204 following its
32 10 transfer in this Act.
32 11 g. Section 554.1206A to section 554.1206 following its
32 12 transfer in this Act.

32 13 2. The Code editor may transfer section 554.1110 to
32 14 section 554.1110A.

32 15 DIVISION V

32 16 REPEALS

32 17 Sec. 58. Section 554.1102, Code 2007, is repealed.
32 18 Sec. 59. Section 554.1206, Code 2007, is repealed.
32 19 Sec. 60. Section 554.2208, Code 2007, is repealed.
32 20 Sec. 61. Section 554.13207, Code 2007, is repealed.

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32 24 _____
32 25 JOHN P. KIBBIE
32 26 President of the Senate

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32 28 _____
32 29 PATRICK J. MURPHY
32 30 Speaker of the House

32 31
32 32 I hereby certify that this bill originated in the Senate and
32 33 is known as Senate File 535, Eighty-second General Assembly.

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33 1 _____
33 2 MICHAEL E. MARSHALL
33 3 Secretary of the Senate

33 4 Approved _____, 2007

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33 7 _____
33 8 CHESTER J. CULVER
33 9 Governor