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By JUDICIARY COMMITTEE.

(Judiciary Committee.)

Passed Senate, Date 3/25

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Vote: Ayes 54 Nays 0

Vote: Ayes 119 Nays 0

Approved 4/22

*Judiciary 3/10  
Substituted for HF401-3/67*

# A BILL FOR

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

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

## ARTICLE 1

### GENERAL PROVISIONS

#### PART 1

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

1 Sec. 1101. Short title. This Act shall be known and may  
2 be cited as Uniform Commercial Code.

1 Sec. 1102. Purposes—rules of construction—variation by  
2 agreement.

3 1. This Act shall be liberally construed and applied to  
4 promote its underlying purposes and policies.

5 2. Underlying purposes and policies of this Act are

6 a. to simplify, clarify and modernize the law governing

7 commercial transactions;

8 b. to permit the continued expansion of commercial prac-  
9 tices through custom, usage and agreement of the parties;

10 c. to make uniform the law among the various jurisdictions.

11 3. The effect of provisions of this Act may be varied by  
12 agreement, except as otherwise provided in this Act and except  
13 that the obligations of good faith, diligence, reasonableness  
14 and care prescribed by this Act may not be disclaimed by agree-  
15 ment but the parties may by agreement determine the standards  
16 by which the performance of such obligations is to be measured  
17 if such standards are not manifestly unreasonable.

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

22 5. In this Act unless the context otherwise requires

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

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

1 Sec. 1103. Supplementary general principles of law appli-  
2 cable. Unless displaced by the particular provisions of this  
3 Act, the principles of law and equity, including the law merchant  
4 and the law relative to capacity to contract, principal and  
5 agent, estoppel, fraud, misrepresentation, duress, coercion,  
6 mistake, bankruptcy, or other validating or invalidating cause  
7 shall supplement its provisions.

1 Sec. 1104. Construction against implicit repeal. This Act  
2 being a general act intended as a unified coverage of its subject

3 matter, no part of it shall be deemed to be impliedly repealed  
4 by subsequent legislation if such construction can reasonably  
5 be avoided.

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

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

10 2. Where one of the following provisions of this Act specifies  
11 the applicable law, that provision governs and a contrary agree-  
12 ment is effective only to the extent permitted by the law (in-  
13 cluding the conflict of laws rules) so specified:

14 Rights of creditors against sold goods. Section 2402.

15 Applicability of the Article on Bank Deposits and Collections.  
16 Section 4102.

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

19 Applicability of the Article on Investment Securities.  
20 Section 8106.

21 Policy and scope of the Article on Secured Transactions.  
22 Sections 9102 and 9103.

1 Sec. 1106. Remedies to be liberally administered.

2 1. The remedies provided by this Act shall be liberally  
3 administered to the end that the aggrieved party may be put in  
4 as good a position as if the other party had fully performed but

5 neither consequential or special nor penal damages may be had  
6 except as specifically provided in this Act or by other rule of  
7 law.

8 2. Any right or obligation declared by this Act is enforce-  
9 able by action unless the provision declaring it specifies a  
10 different and limited effect.

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

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

1 Sec. 1109. Section captions. Section captions are parts of  
2 this Act.

## PART 2

### GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

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

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

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

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

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

18 5. "Bearer" means the person in possession of an instrument,  
19 document of title, or security payable to bearer or indorsed  
20 in blank.

21 6. "Bill of lading" means a document evidencing the receipt  
22 of goods for shipment issued by a person engaged in the business  
23 of transporting or forwarding goods, and includes an airbill.

24 "Airbill" means a document serving for air transportation as a  
25 bill of lading does for marine or rail transportation, and in-  
26 cludes an air consignment note or air waybill.

27 7. "Branch" includes a separately incorporated foreign  
28 branch of a bank.

29 8. "Burden of establishing" a fact means the burden of per-  
30 suading the triers of fact that the existence of the fact is  
31 more probable than its nonexistence.

32 9. "Buyer in ordinary course of business" means a person  
33 who in good faith and without knowledge that the sale to him is  
34 in violation of the ownership rights or security interest of a  
35 third party in the goods buys in ordinary course from a person  
36 in the business of selling goods of that kind but does not in-

37 clude a pawnbroker. "Buying" may be for cash or by exchange of  
38 other property or on secured or unsecured credit and includes  
39 receiving goods or documents of title under a pre-existing con-  
40 tract for sale but does not include a transfer in bulk or as  
41 security for or in total or partial satisfaction of a money debt.

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

50 11. "Contract" means the total legal obligation which results  
51 from the parties' agreement as affected by this Act and any other  
52 applicable rules of law. (Compare "Agreement".)

53 12. "Creditor" includes a general creditor, a secured creditor,  
54 a lien creditor and any representative of creditors, including  
55 an assignee for the benefit of creditors, a trustee in bank-  
56 ruptcy, a receiver in equity and a legal representative of a  
57 decedent's or incompetent's estate.

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

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

63 15. "Document of title" includes bill of lading, dock war-  
64 rant, dock receipt, warehouse receipt or order for the delivery  
65 of goods, and also any other document which in the regular course

66 of business or financing is treated as adequately evidencing  
67 that the person in possession of it is entitled to receive,  
68 hold and dispose of the document and the goods it covers. To be  
69 a document of title a document must purport to be issued by or  
70 addressed to a bailee and purport to cover goods in the bailee's  
71 possession which are either identified or are fungible portions  
72 of an identified mass.

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

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

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

81 19. "Good faith" means honesty in fact in the conduct or  
82 transaction concerned.

83 20. "Holder" means a person who is in possession of a document  
84 of title or an instrument or an investment security drawn, is-  
85 sued or indorsed to him or to his order or to bearer or in blank.

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

89 22. "Insolvency proceedings" includes any assignment for the  
90 benefit of creditors or other proceedings intended to liquidate  
91 or rehabilitate the estate of the person involved.

92 23. A person is "insolvent" who either has ceased to pay his  
93 debts in the ordinary course of business or cannot pay his debts  
94 as they become due or is insolvent within the meaning of the

95 federal bankruptcy law.

96 24. "Money" means a medium of exchange authorized or adopted  
97 by a domestic or foreign government as a part of its currency.

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

99 a. he has actual knowledge of it; or

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

101 c. from all the facts and circumstances known to him at  
102 the time in question he has reason to know that it exists.

103 A person "knows" or has "knowledge" of a fact when he has actual  
104 knowledge of it. "Discover" or "learn" or a word or phrase of  
105 similar import refers to knowledge rather than to reason to know.

106 The time and circumstances under which a notice or notification  
107 may cease to be effective are not determined by this Act.

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

113 a. it comes to his attention; or

114 b. it is duly delivered at the place of business through  
115 which the contract was made or at any other place held out by  
116 him as the place for receipt of such communications.

117 27. Notice, knowledge or a notice or notification received by  
118 an organization is effective for a particular transaction from  
119 the time when it is brought to the attention of the individual  
120 conducting that transaction, and in any event from the time when  
121 it would have been brought to his attention if the organization  
122 had exercised due diligence. An organization exercises due  
123 diligence if it maintains reasonable routines for communicating

124 significant information to the person conducting the transaction  
125 and there is reasonable compliance with the routines. Due dil-  
126 igence does not require an individual acting for the organization  
127 to communicate information unless such communication is part of  
128 his regular duties or unless he has reason to know of the trans-  
129 action and that the transaction would be materially affected  
130 by the information.

131 28. "Organization" includes a corporation, government or gov-  
132 ernmental subdivision or agency, business trust, estate, trust,  
133 partnership or association, two or more persons having a joint  
134 or common interest, or any other legal or commercial entity.

135 29. "Party", as distinct from "third party", means a person  
136 who has engaged in a transaction or made an agreement within  
137 this Act.

138 30. "Person" includes an individual or an organization  
139 (See Section 1102).

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

144 32. "Purchase" includes taking by sale, discount, negotiation,  
145 mortgage, pledge, lien, issue or reissue, gift or any other  
146 voluntary transaction creating an interest in property.

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

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

150 35. "Representative" includes an agent, an officer of a cor-  
151 poration or association, and a trustee, executor or administrator

152 of an estate, or any other person empowered to act for another.

153 36. "Rights" includes remedies.

154 37. "Security interest" means an interest in personal prop-  
155 erty or fixtures which secures payment or performance of an  
156 obligation. The retention or reservation of title by a seller  
157 of goods notwithstanding shipment or delivery to the buyer  
158 (Section 2401) is limited in effect to a reservation of a "secu-  
159 rity interest". The term also includes any interest of a buyer  
160 of accounts, chattel paper, or contract rights which is subject  
161 to Article 9. The special property interest of a buyer of goods  
162 on identification of such goods to a contract for sale under  
163 Section 2401 is not a "security interest", but a buyer may also  
164 acquire a "security interest" by complying with Article 9. Un-  
165 less a lease or consignment is intended as security, reservation  
166 of title thereunder is not a "security interest" but a consign-  
167 ment is in any event subject to the provisions on consignment  
168 sales (Section 2326). Whether a lease is intended as security  
169 is to be determined by the facts of each case; however, (a) the  
170 inclusion of an option to purchase does not of itself make the  
171 lease one intended for security, and (b) an agreement that upon  
172 compliance with the terms of the lease the lessee shall become  
173 or has the option to become the owner of the property for no  
174 additional consideration or for a nominal consideration does  
175 make the lease one intended for security.

176 38. "Send" in connection with any writing or notice means to  
177 deposit in the mail or deliver for transmission by any other  
178 usual means of communication with postage or cost of trans-  
179 mission provided for and properly addressed and in the case of

180 an instrument to an address specified thereon or otherwise agreed,  
181 or if there be none to any address reasonable under the circum-  
182 stances. The receipt of any writing or notice within the time  
183 at which it would have arrived if properly sent has the effect  
184 of a proper sending.

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

187 40. "Surety" includes guarantor.

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

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

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

196 44. "Value". Except as otherwise provided with respect to  
197 negotiable instruments and bank collections (Sections 3303, 4208  
198 and 4209) a person gives "value" for rights if he acquires them

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

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

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

207 d. generally, in return for any consideration sufficient

208 to support a simple contract.

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

211 46. "Written" or "writing" includes printing, typewriting or  
212 any other intentional reduction to tangible form.

1 Sec. 1202. Prima facie evidence by third party documents.

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

1 Sec. 1203. Obligation of good faith. Every contract or duty  
2 within this Act imposes an obligation of good faith in its per-  
3 formance or enforcement.

1 Sec. 1204. Time—reasonable time—"seasonably".

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

5 2. What is a reasonable time for taking any action depends  
6 on the nature, purpose and circumstances of such action.

7 3. An action is taken "seasonably" when it is taken at or  
8 within the time agreed or if no time is agreed at or within a  
9 reasonable time.

1 Sec. 1205. Course of dealing and usage of trade.

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

6 2. A usage of trade is any practice or method of dealing  
7 having such regularity of observance in a place, vocation or trade  
8 as to justify an expectation that it will be observed with re-  
9 spect to the transaction in question. The existence and scope  
10 of such a usage are to be proved as facts. If it is established  
11 that such a usage is embodied in a written trade code or similar  
12 writing the interpretation of the writing is for the court.

13 3. A course of dealing between parties and any usage of trade  
14 in the vocation or trade in which they are engaged or of which  
15 they are or should be aware give particular meaning to and sup-  
16 plement or qualify terms of an agreement.

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

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

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

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

3 1. Except in the cases described in subsection 2 of this sec-  
4 tion a contract for the sale of personal property is not enforce-  
5 able by way of action or defense beyond five thousand dollars in  
6 amount or value of remedy unless there is some writing which in-

7 dicates that a contract for sale has been made between the parties  
8 at a defined or stated price, reasonably identifies the subject  
9 matter, and is signed by the party against whom enforcement is  
10 sought or by his authorized agent.

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

1 Sec. 1207. Performance or acceptance under reservation of  
2 rights. A party who with explicit reservation of rights performs  
3 or promises performance or assents to performance in a manner  
4 demanded or offered by the other party does not thereby prejudice  
5 the rights reserved. Such words as "without prejudice", "under  
6 protest" or the like are sufficient.

1 Sec. 1208. Option to accelerate at will. A term providing  
2 that one party or his successor in interest may accelerate pay-  
3 ment or performance or require collateral or additional collat-  
4 eral "at will" or "when he deems himself insecure" or in words  
5 of similar import shall be construed to mean that he shall have  
6 power to do so only if he in good faith believes that the  
7 prospect of payment or performance is impaired. The burden of  
8 establishing lack of good faith is on the party against whom  
9 the power has been exercised.

## ARTICLE 2

### SALES

#### PART 1

#### SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

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

1    Sec. 2102. Scope—certain security and other transactions  
2 excluded from this Article. Unless the context otherwise re-  
3 quires, this Article applies to transactions in goods; it does  
4 not apply to any transaction which although in the form of an  
5 unconditional contract to sell or present sale is intended to  
6 operate only as a security transaction nor does this Article  
7 impair or repeal any statute regulating sales to consumers,  
8 farmers or other specified classes of buyers.

1    Sec. 2103. Definitions and index of definitions.

2    1. In this Article unless the context otherwise requires

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

5    b. "Good faith" in the case of a merchant means honesty  
6 in fact and the observance of reasonable commercial standards  
7 of fair dealing in the trade.

8    c. "Receipt" of goods means taking physical possession  
9 of them.

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

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

14    "Acceptance". Section 2606.

15    "Banker's credit". Section 2325.

16    "Between merchants". Section 2104.

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

18    "Commercial unit". Section 2105.

19    "Confirmed credit". Section 2325.

20    "Conforming to contract". Section 2106.

21    "Contract for sale". Section 2106.

- 22 "Cover". Section 2712.
- 23 "Entrusting". Section 2403.
- 24 "Financing agency". Section 2104.
- 25 "Future goods". Section 2105.
- 26 "Goods". Section 2105.
- 27 "Identification". Section 2501.
- 28 "Installment contract". Section 2612.
- 29 "Letter of Credit". Section 2325.
- 30 "Lot". Section 2105.
- 31 "Merchant". Section 2104.
- 32 "Overseas". Section 2323.
- 33 "Person in position of seller". Section 2707.
- 34 "Present sale". Section 2106.
- 35 "Sale". Section 2106.
- 36 "Sale on approval". Section 2326.
- 37 "Sale or return". Section 2326.
- 38 "Termination". Section 2106.
- 39 3. The following definitions in other Articles apply to this
- 40 Article:
- 41 "Check". Section 3104.
- 42 "Consignee". Section 7102.
- 43 "Consignor". Section 7102.
- 44 "Consumer goods". Section 9109.
- 45 "Dishonor". Section 3507.
- 46 "Draft". Section 3104.
- 47 4. In addition Article 1 contains general definitions and
- 48 principles of construction and interpretation applicable through-
- 49 out this Article.

1    Sec. 2104. Definitions: “merchant”—“between merchants”—  
2 “financing agency”.

3    1. “Merchant” means a person who deals in goods of the kind  
4 or otherwise by his occupation holds himself out as having knowl-  
5 edge or skill peculiar to the practices or goods involved in  
6 the transaction or to whom such knowledge or skill may be at-  
7 tributed by his employment of an agent or broker or other inter-  
8 mediary who by his occupation holds himself out as having such  
9 knowledge or skill.

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

21   3. “Between merchants” means in any transaction with respect  
22 to which both parties are chargeable with the knowledge or skill  
23 of merchants.

1    Sec. 2105. Definitions: transferability—“goods”—“future”  
2 goods—“lot”—“commercial unit”.

3    1. “Goods” means all things (including specially manufactured  
4 goods) which are movable at the time of identification to the  
5 contract for sale other than the money in which the price is to

6 be paid, investment securities (Article 8) and things in action.  
7 "Goods" also includes the unborn young of animals and growing  
8 crops and other identified things attached to realty as described  
9 in the section on goods to be served from realty (Section 2107).

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

15 3. There may be a sale of a part interest in existing iden-  
16 tified goods.

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

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

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

10 graph beyond the quantity of goods shown in such writing.

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

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

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

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

30 c. with respect to goods for which payment has been made  
31 and accepted or which have been received and accepted (Section  
32 2606).

1 Sec. 2202. Final written expression: parol or extrinsic  
2 evidence. Terms with respect to which the confirmatory memoranda  
3 of the parties agree or which are otherwise set forth in a writing  
4 intended by the parties as a final expression of their agreement  
5 with respect to such terms as are included therein may not be

6 contradicted by evidence of any prior agreement or of a contem-  
7 poraneous oral agreement but may be explained or supplemented  
8 a. by course of dealing or usage of trade (Section 1205)  
9 or by course of performance (Section 2208); and  
10 b. by evidence of consistent additional terms unless the  
11 court finds the writing to have been intended also as a complete  
12 and exclusive statement of the terms of the agreement.

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

1 Sec. 2204. Formation in general.

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

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

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

1 Sec. 2205. Firm offers. An offer by a merchant to buy or  
2 sell goods in a signed writing which by its terms gives assurance  
3 that it will be held open is not revocable, for lack of consider-  
4 ation, during the time stated or if no time is stated for a rea-  
5 sonable time, but in no event may such period of irrevocability  
6 exceed three months; but any such term of assurance on a form

7 supplied by the offeree must be separately signed by the offeror.

1 Sec. 2206. Offer and acceptance in formation of contract.

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

4 a. an offer to make a contract shall be construed as in-  
5 viting acceptance in any manner and by any medium reasonable  
6 in the circumstances;

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

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

1 Sec. 2207. Additional terms in acceptance or confirmation.

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

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

11 a. the offer expressly limits acceptance to the terms  
12 of the offer;  
13 b. they materially alter it; or  
14 c. notification of objection to them has already been  
15 given or is given within a reasonable time after notice of  
16 them is received.

17 3. Conduct by both parties which recognizes the existence  
18 of a contract is sufficient to establish a contract for sale  
19 although the writings of the parties do not otherwise establish  
20 a contract. In such case the terms of the particular contract  
21 consist of those terms on which the writings of the parties  
22 agree, together with any supplementary terms incorporated un-  
23 der any other provisions of this Act.

1 Sec. 2208. Course of performance or practical construction.

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

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

15 3. Subject to the provisions of the next section on mod-

16 ification and waiver, such course of performance shall be rel-  
17 evant to show a waiver or modification of any term inconsistent  
18 with such course of performance.

1 Sec. 2209. Modification, rescission and waiver.

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

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

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

12 4. Although an attempt at modification or rescission does  
13 not satisfy the requirements of subsection 2 or 3 it can operate  
14 as a waiver.

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

1 Sec. 2210. Delegation of performance—assignment of rights.

2 1. A party may perform his duty through a delegate unless  
3 otherwise agreed or unless the other party has a substantial  
4 interest in having his original promisor perform or control the  
5 acts required by the contract. No delegation of performance

6 relieves the party delegating of any duty to perform or any li-  
7 ability for breach.

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

16 3. Unless the circumstances indicate the contrary a pro-  
17 hibition of assignment of "the contract" is to be construed as  
18 barring only the delegation to the assignee of the assignor's  
19 performance.

20 4. An assignment of "the contract" or of "all my rights un-  
21 der the contract" or an assignment in similar general terms is  
22 an assignment of rights and unless the language or the circum-  
23 stances (as in an assignment for security) indicate the contrary,  
24 it is a delegation of performance of the duties of the assignor  
25 and its acceptance by the assignee constitutes a promise by  
26 him to perform those duties. This promise is enforceable by  
27 either the assignor or the other party to the original con-  
28 tract.

29 5. The other party may treat any assignment which dele-  
30 gates performance as creating reasonable grounds for insecurity  
31 and may without prejudice to his rights against the assignor  
32 demand assurances from the assignee (Section 2609).

PART 3

GENERAL OBLIGATION AND CONSTRUCTION  
OF CONTRACT

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

1 Sec. 2302. Unconscionable contract or clause.

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

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

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

1 Sec. 2304. Price payable in money, goods, realty, or other-  
2 wise.

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

6 2. Even though all or part of the price is payable in an

7 interest in realty the transfer of the goods and the seller's  
8 obligations with reference to them are subject to this Article,  
9 but not the transfer of the interest in realty or the trans-  
10 feror's obligations in connection therewith.

1 Sec. 2305. Open price term.

2 1. The parties if they so intend can conclude a contract  
3 for sale even though the price is not settled. In such a case  
4 the price is a reasonable price at the time for delivery if  
5 a. nothing is said as to price; or  
6 b. the price is left to be agreed by the parties and  
7 they fail to agree; or  
8 c. the price is to be fixed in terms of some agreed mar-  
9 ket or other standard as set or recorded by a third person or  
10 agency and it is not so set or recorded.

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

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

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

1 Sec. 2306. Output, requirements and exclusive dealings.

2 1. A term which measures the quantity by the output of the

3 seller or the requirements of the buyer means such actual out-  
4 put or requirements as may occur in good faith, except that no  
5 quantity unreasonably disproportionate to any stated estimate  
6 or in the absence of a stated estimate to any normal or other-  
7 wise comparable prior output or requirements may be tendered or  
8 demanded.

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

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

1 Sec. 2308. Absence of specified place for delivery. Unless  
2 otherwise agreed

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

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

9 c. documents of title may be delivered through custom-  
10 ary banking channels.

1 Sec. 2309. Absence of specific time provisions—notice of

2 termination.

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

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

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

1 Sec. 2310. Open time for payment or running of credit—  
2 authority to ship under reservation. Unless otherwise agreed  
3 a. payment is due at the time and place at which the  
4 buyer is to receive the goods even though the place of shipment  
5 is the place of delivery; and  
6 b. if the seller is authorized to send the goods he may  
7 ship them under reservation, and may tender the documents of  
8 title, but the buyer may inspect the goods after their arrival  
9 before payment is due unless such inspection is inconsistent  
10 with the terms of the contract (Section 2513); and  
11 c. if delivery is authorized and made by way of docu-  
12 ments of title otherwise than by subsection b then payment is  
13 due at the time and place at which the buyer is to receive the  
14 documents regardless of where the goods are to be received; and  
15 d. where the seller is required or authorized to ship the

16 goods on credit the credit period runs from the time of shipment  
17 but postdating the invoice or delaying its dispatch will cor-  
18 respondingly delay the starting of the credit period.

1 Sec. 2311. Options and cooperation respecting performance.

2 1. An agreement for sale which is otherwise sufficiently  
3 definite (subsection 3 of Section 2204) to be a contract is not  
4 made invalid by the fact that it leaves particulars of perform-  
5 ance to be specified by one of the parties. Any such specifi-  
6 cation must be made in good faith and within limits set by com-  
7 mercial reasonableness.

8 2. Unless otherwise agreed specifications relating to assort-  
9 ment of the goods are at the buyer's option and except as other-  
10 wise provided in subsections 1 c and 3 of Section 2319 specifi-  
11 cations or arrangements relating to shipment are at the seller's  
12 option.

13 3. Where such specification would materially affect the other  
14 party's performance but is not seasonably made or where one  
15 party's cooperation is necessary to the agreed performance of  
16 the other but is not seasonably forthcoming, the other party in  
17 addition to all other remedies

18 a. is excused for any resulting delay in his own perform-  
19 ance; and

20 b. may also either proceed to perform in any reasonable  
21 manner or after the time for a material part of his own perform-  
22 ance treat the failure to specify or to cooperate as a breach  
23 by failure to deliver or accept the goods.

1 Sec. 2312. Warranty of title and against infringement—buy-  
2 er's obligation against infringement.

3 1. Subject to subsection 2 there is in a contract for sale  
4 a warranty by the seller that  
5 a. the title conveyed shall be good, and its transfer  
6 rightful; and  
7 b. the goods shall be delivered free from any security  
8 interest or other lien or encumbrance of which the buyer at the  
9 time of contracting has no knowledge.

10 2. A warranty under subsection 1 will be excluded or modi-  
11 fied only by specific language or by circumstances which give  
12 the buyer reason to know that the person selling does not claim  
13 title in himself or that he is purporting to sell only such  
14 right or title as he or a third person may have.

15 3. Unless otherwise agreed a seller who is a merchant regu-  
16 larly dealing in goods of the kind warrants that the goods shall  
17 be delivered free of the rightful claim of any third person by  
18 way of infringement or the like but a buyer who furnishes spec-  
19 ifications to the seller must hold the seller harmless against  
20 any such claim which arises out of compliance with the spec-  
21 ifications.

1 Sec. 2313. Express warranties by affirmation, promise, de-  
2 scription, sample.

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

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

8 b. Any description of the goods which is made part of the  
9 basis of the bargain creates an express warranty that the goods

10 shall conform to the description.

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

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

1 Sec. 2314. Implied warranty: merchantability—usage of  
2 trade.

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

9 2. Goods to be merchantable must be at least such as  
10 a. pass without objection in the trade under the contract  
11 description; and

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

14 c. are fit for the ordinary purposes for which such goods  
15 are used; and

16 d. run, within the variations permitted by the agreement,  
17 of even kind, quality and quantity within each unit and among  
18 all units involved; and

19 e. are adequately contained, packaged, and labeled as  
20 the agreement may require; and

21 f. conform to the promises or affirmations of fact made  
22 on the container or label if any.

23 3. Unless excluded or modified (Section 2316) other im-  
24 plied warranties may arise from course of dealing or usage of  
25 trade.

1 Sec. 2315. Implied warranty: fitness for particular pur-  
2 pose. Where the seller at the time of contracting has reason  
3 to know any particular purpose for which the goods are required  
4 and that the buyer is relying on the seller's skill or judgment  
5 to select or furnish suitable goods, there is unless excluded  
6 or modified under the next section an implied warranty that the  
7 goods shall be fit for such purpose.

1 Sec. 2316. Exclusion or modification of warranties.

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

8 2. Subject to subsection 3, to exclude or modify the implied  
9 warranty of merchantability or any part of it the language must  
10 mention merchantability and in case of a writing must be con-  
11 spicuous, and to exclude or modify any implied warranty of  
12 fitness the exclusion must be by a writing and conspicuous.  
13 Language to exclude all implied warranties of fitness is suffi-  
14 cient if it states, for example, that "There are no warranties

15 which extend beyond the description on the face hereof.”

16 3. Notwithstanding subsection 2

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

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

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

29 4. Remedies for breach of warranty can be limited in accord-  
30 ance with the provisions of this Article on liquidation or limita-  
31 tion of damages and on contractual modification of remedy (Sec-  
32 tions 2718 and 2719).

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

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

9 b. A sample from an existing bulk displaces inconsis-  
10 tent general language of description.

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

1 Sec. 2318. Third party beneficiaries of warranties express  
2 or implied. A seller's warranty whether express or implied  
3 extends to any natural person who is in the family or house-  
4 hold of his buyer or who is a guest in his home if it is rea-  
5 sonable to expect that such person may use, consume or be af-  
6 fected by the goods and who is injured in person by breach of  
7 the warranty. A seller may not exclude or limit the operation  
8 of this section.

1 Sec. 2319. F.O.B. and F.A.S. terms.

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

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

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

13 c. when under either a or b the term is also F.O.B.  
14 vessel, car or other vehicle, the seller must in addition at  
15 his own expense and risk load the goods on board. If the term  
16 is F.O.B. vessel the buyer must name the vessel and in an ap-  
17 propriate case the seller must comply with the provisions of

18 this Article on the form of bill of lading (Section 2323).

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

23 a. at his own expense and risk deliver the goods along-  
24 side the vessel in the manner usual in that port or on a dock  
25 designated and provided by the buyer; and

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

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

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

1 Sec. 2320. C.I.F. and C. & F. terms.

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

- 6     2. Unless otherwise agreed and even though used only in  
7 connection with the stated price and destination, the term  
8 C.I.F. destination or its equivalent requires the seller at  
9 his own expense and risk to
- 10    a. put the goods into the possession of a carrier at the  
11 port for shipment and obtain a negotiable bill or bills of lad-  
12 ing covering the entire transportation to the named destination;  
13 and
- 14    b. load the goods and obtain a receipt from the carrier  
15 (which may be contained in the bill of lading) showing that the  
16 freight has been paid or provided for; and
- 17    c. obtain a policy or certificate of insurance, including  
18 any war risk insurance, of a kind and on terms then current at  
19 the port of shipment in the usual amount, in the currency of  
20 the contract, shown to cover the same goods covered by the bill  
21 of lading and providing for payment of loss to the order of the  
22 buyer or for the account of whom it may concern; but the seller  
23 may add to the price the amount of the premium for any such war  
24 risk insurance; and
- 25    d. prepare an invoice of the goods and procure any other  
26 documents required to effect shipment or to comply with the  
27 contract; and
- 28    e. forward and tender with commercial promptness all  
29 the documents in due form and with any indorsement necessary  
30 to perfect the buyer's rights.
- 31     3. Unless otherwise agreed the term C. & F. or its equiv-  
32 alent has the same effect and imposes upon the seller the same  
33 obligations and risks as a C.I.F. term except the obligation

34 as to insurance.

35 4. Under the term C.I.F. or C. & F. unless otherwise agreed  
36 the buyer must make payment against tender of the required doc-  
37 uments and the seller may not tender nor the buyer demand deliv-  
38 ery of the goods in substitution for the documents.

1 Sec. 2321. C.I.F. or C. & F.—“net landed weights”—“pay-  
2 ment on arrival”—warranty of condition on arrival. Under a  
3 contract containing a term C.I.F. or C. & F.

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

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

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

1 Sec. 2322. Delivery “ex-ship”.

2 1. Unless otherwise agreed a term for delivery of goods “ex-

3 ship" (which means from the carrying vessel) or in equivalent  
4 language is not restricted to a particular ship and requires de-  
5 livery from a ship which has reached a place at the named port  
6 of destination where goods of the kind are usually discharged.

7 2. Under such a term unless otherwise agreed

8 a. the seller must discharge all liens arising out of the  
9 carriage and furnish the buyer with a direction which puts the  
10 carrier under a duty to deliver the goods; and

11 b. the risk of loss does not pass to the buyer until the  
12 goods leave the ship's tackle or are otherwise properly unloaded.

1 Sec. 2323. Form of bill of lading required in overseas ship-  
2 ment—"overseas".

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

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

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

17 b. even though the full set is demanded, if the documents  
18 are sent from abroad the person tendering an incomplete set

19 may nevertheless require payment upon furnishing an indemnity  
20 which the buyer in good faith deems adequate.

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

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

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

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

1 Sec. 2325. "Letter of credit" term—"confirmed credit".

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

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

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

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

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

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

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

8     b. a "sale or return" if the goods are delivered pri-  
9 marily for resale.

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

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

- 24 a. complies with an applicable law providing for a con-  
25 signor's interest or the like to be evidenced by a sign, or  
26 b. establishes that the person conducting the business  
27 is generally known by his creditors to be substantially engaged  
28 in selling the goods of others, or  
29 c. complies with the filing provisions of the Article  
30 on Secured Transactions (Article 9).

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

1 Sec. 2327. Special incidents of sale on approval and sale  
2 or return.

3 1. Under a sale on approval unless otherwise agreed

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

7 b. use of the goods consistent with the purpose of trial  
8 is not acceptance but failure seasonably to notify the seller  
9 of election to return the goods is acceptance, and if the goods  
10 conform to the contract acceptance of any part is acceptance of  
11 the whole; and

12 c. after due notification of election to return, the  
13 return is at the seller's risk and expense but a merchant buy-  
14 er must follow any reasonable instructions.

15 2. Under a sale or return unless otherwise agreed

16 a. the option to return extends to the whole or any com-

17 mercial unit of the goods while in substantially their original  
18 condition, but must be exercised seasonably; and

19 b. the return is at the buyer's risk and expense.

1 Sec. 2328. Sale by auction.

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

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

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

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

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

1    Sec. 2401. Passing of title—reservation for security—limit-  
2    ed application of this section. Each provision of this Article  
3    with regard to the rights, obligations and remedies of the seller,  
4    the buyer, purchasers or other third parties applies irrespective  
5    of title to the goods except where the provision refers to such  
6    title. Insofar as situations are not covered by the other provi-  
7    sions of this Article and matters concerning title become material  
8    the following rules apply:

9        1. Title to goods cannot pass under a contract for sale prior  
10    to their identification to the contract (Section 2501), and un-  
11    less otherwise explicitly agreed the buyer acquires by their iden-  
12    tification a special property as limited by this Act. Any reten-  
13    tion or reservation by the seller of the title (property) in goods  
14    shipped or delivered to the buyer is limited in effect to a res-  
15    ervation of a security interest. Subject to these provisions and  
16    to the provisions of the Article on Secured Transactions (Article  
17    9), title to goods passes from the seller to the buyer in any man-  
18    ner and on any conditions explicitly agreed on by the parties.

19        2. Unless otherwise explicitly agreed title passes to the buy-  
20    er at the time and place at which the seller completes his per-  
21    formance with reference to the physical delivery of the goods,  
22    despite any reservation of a security interest and even though a  
23    document of title is to be delivered at a different time or place;  
24    and in particular and despite any reservation of a security inter-  
25    est by the bill of lading

26        a. if the contract requires or authorizes the seller to  
27    send the goods to the buyer but does not require him to deliver

28 them at destination, title passes to the buyer at the time and  
29 place of shipment; but

30 b. if the contract requires delivery at destination, title  
31 passes on tender there.

32 3. Unless otherwise explicitly agreed where delivery is to  
33 be made without moving the goods,

34 a. if the seller is to deliver a document of title, title  
35 passes at the time when and the place where he delivers such  
36 documents; or

37 b. if the goods are at the time of contracting already  
38 identified and no documents are to be delivered, title passes at  
39 the time and place of contracting.

40 4. A rejection or other refusal by the buyer to receive or  
41 retain the goods, whether or not justified, or a justified rev-  
42 ocation of acceptance reverts title to the goods in the seller.  
43 Such reversion occurs by operation of law and is not a "sale".

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

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

7 2. A creditor of the seller may treat a sale or an identi-  
8 fication of goods to a contract for sale as void if as against him  
9 a retention of possession by the seller is fraudulent under any  
10 rule of law of the state where the goods are situated, except that  
11 retention of possession in good faith and current course of trade  
12 by a merchant-seller for a commercially reasonable time after a

13 sale or identification is not fraudulent.

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

16 a. under the provisions of the Article on Secured Trans-  
17 actions (Article 9) ; or

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

1 Sec. 2403. Power to transfer—good faith purchase of goods—  
2 “entrusting”.

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

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

12 b. the delivery was in exchange for a check which is later  
13 dishonored, or

14 c. it was agreed that the transaction was to be a “cash  
15 sale”, or

16 d. the delivery was procured through fraud punishable as

17 larcenous under the criminal law.

18 2. Any entrusting of possession of goods to a merchant who  
19 deals in goods of that kind gives him power to transfer all rights  
20 of the entruster to a buyer in ordinary course of business.

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

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

#### PART 5

#### PERFORMANCE

1 Sec. 2501. Insurable interest in goods—manner of identifica-  
2 tion of goods.

3 1. The buyer obtains a special property and an insurable in-  
4 terest in goods by identification of existing goods as goods to  
5 which the contract refers even though the goods so identified are  
6 nonconforming and he has an option to return or reject them.

7 Such identification can be made at any time and in any manner  
8 explicitly agreed to by the parties. In the absence of explicit  
9 agreement identification occurs

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

12 b. If the contract is for the sale of future goods other  
13 than those described in paragraph c, when goods are shipped,

14 marked or otherwise designated by the seller as goods to which  
15 the contract refers;

16 c. when the crops are planted or otherwise become growing  
17 crops or the young are conceived if the contract is for the sale  
18 of unborn young to be born within twelve months after contract-  
19 ing or for the sale of crops to be harvested within twelve months  
20 or the next normal harvest season after contracting whichever is  
21 longer.

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

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

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

2 1. Subject to subsection 2 and even though the goods have not  
3 been shipped a buyer who has paid a part or all of the price of  
4 goods in which he has a special property under the provisions of  
5 the immediately preceding section may on making and keeping good  
6 a tender of any unpaid portion of their price recover them from  
7 the seller if the seller is insolvent at the time of receipt of  
8 the first installment on their price or becomes insolvent within  
9 ten days thereafter.

10 2. If the identification creating his special property has  
11 been made by the buyer he acquires the right to recover the goods  
12 only if they conform to the contract for sale.

1 Sec. 2503. Manner of seller's tender of delivery.

- 2 1. Tender of delivery requires that the seller put and hold  
3 conforming goods at the buyer's disposition and give the buyer  
4 any notification reasonably necessary to enable him to take de-  
5 livery. The manner, time and place for tender are determined by  
6 the agreement and this Article, and in particular
- 7 a. tender must be at a reasonable hour, and if it is of  
8 goods they must be kept available for the period reasonably nec-  
9 essary to enable the buyer to take possession; but
- 10 b. unless otherwise agreed the buyer must furnish facili-  
11 ties reasonably suited to the receipt of the goods.
- 12 2. Where the case is within the next section respecting ship-  
13 ment tender requires that the seller comply with its provisions.
- 14 3. Where the seller is required to deliver at a particular  
15 destination tender requires that he comply with subsection 1 and  
16 also in any appropriate case tender documents as described in  
17 subsections 4 and 5 of this section.
- 18 4. Where goods are in the possession of a bailee and are to  
19 be delivered without being moved
- 20 a. tender requires that the seller either tender a nego-  
21 tiable document of title covering such goods or procure acknowl-  
22 edgment by the bailee of the buyer's right to possession of the  
23 goods; but
- 24 b. tender to the buyer of a nonnegotiable document of  
25 title or of a written direction to the bailee to deliver is suffi-  
26 cient tender unless the buyer seasonably objects, and receipt by  
27 the bailee of notification of the buyer's rights fixes those  
28 rights as against the bailee and all third persons; but risk of  
29 loss of the goods and of any failure by the bailee to honor the

30 nonnegotiable document of title or to obey the direction remains  
31 on the seller until the buyer has had a reasonable time to present  
32 the document or direction, and a refusal by the bailee to honor  
33 the document or to obey the direction defeats the tender.

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

35 a. he must tender all such documents in correct form ex-  
36 cept as provided in this Article with respect to bills of lading  
37 in a set (subsection 2 of Section 2323); and

38 b. tender through customary banking channels is sufficient  
39 and dishonor of a draft accompanying the documents constitutes  
40 nonacceptance or rejection.

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

5 a. put the goods in the possession of such a carrier and  
6 make such a contract for their transportation as may be reason-  
7 able having regard to the nature of the goods and other circum-  
8 stances of the case; and

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

13 c. promptly notify the buyer of the shipment.

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

1 Sec. 2505. Seller's shipment under reservation.

- 2 1. Where the seller has identified goods to the contract by  
3 or before shipment:
- 4 a. his procurement of a negotiable bill of lading to his  
5 own order or otherwise reserves in him a security interest in the  
6 goods. His procurement of the bill to the order of a financing  
7 agency or of the buyer indicates in addition only the seller's  
8 expectation of transferring that interest to the person named.
- 9 b. a nonnegotiable bill of lading to himself or his nominee  
10 reserves possession of the goods as security but except in a case  
11 of conditional delivery (subsection 2 of Section 2507) a nonnego-  
12 tiable bill of lading naming the buyer as consignee reserves no  
13 security interest even though the seller retains possession of  
14 the bill of lading.
- 15 2. When shipment by the seller with reservation of a secu-  
16 rity interest is in violation of the contract for sale it con-  
17 stitutes an improper contract for transportation within the  
18 preceding section but impairs neither the rights given to the  
19 buyer by shipment and identification of the goods to the con-  
20 tract nor the seller's powers as a holder of a negotiable docu-  
21 ment.

1 Sec. 2506. Rights of financing agency.

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

9 has in good faith honored or purchased the draft under commitment  
10 to or authority from the buyer is not impaired by subsequent dis-  
11 covery of defects with reference to any relevant document which  
12 was apparently regular on its face.

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

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

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

1 Sec. 2508. Cure by seller of improper tender or delivery—  
2 replacement.

3 1. Where any tender or delivery by the seller is rejected  
4 because nonconforming and the time for performance has not yet  
5 expired, the seller may seasonably notify the buyer of his in-  
6 tention to cure and may then within the contract time make a  
7 conforming delivery.

8 2. Where the buyer rejects a nonconforming tender which the  
9 seller had reasonable grounds to believe would be acceptable with  
10 or without money allowance the seller may if he seasonably noti-  
11 fies the buyer have a further reasonable time to substitute a  
12 conforming tender.

1 Sec. 2509. Risk of loss in the absence of breach.

2 1. Where the contract requires or authorizes the seller to  
3 ship the goods by carrier

4 a. If it does not require him to deliver them at a particu-  
5 lar destination, the risk of loss passes to the buyer when the  
6 goods are duly delivered to the carrier even though the shipment  
7 is under reservation (Section 2505); but

8 b. If it does require him to deliver them at a particular  
9 destination and the goods are there duly tendered while in the  
10 possession of the carrier, the risk of loss passes to the buyer  
11 when the goods are there duly so tendered as to enable the buyer  
12 to take delivery.

13 2. Where the goods are held by a bailee to be delivered with-  
14 out being moved, the risk of loss passes to the buyer

15 a. on his receipt of a negotiable document of title cover-  
16 ing the goods; or

17 b. on acknowledgment by the bailee of the buyer's right  
18 to possession of the goods; or

19 c. after his receipt of a nonnegotiable document of title  
20 or other written direction to deliver, as provided in subsection  
21 4 b of Section 2503.

22 3. In any case not within subsection 1 or 2, the risk of  
23 loss passes to the buyer on his receipt of the goods if the sell-  
24 er is a merchant; otherwise the risk passes to the buyer on ten-  
25 der of delivery.

26 4. The provisions of this section are subject to contrary  
27 agreement of the parties and to the provisions of this Article  
28 on sale on approval (Section 2327) and on effect of breach on  
29 risk of loss (Section 2510).

1 Sec. 2510. Effect of breach on risk of loss.

2 1. Where a tender or delivery of goods so fails to conform

3 to the contract as to give a right of rejection the risk of their  
4 loss remains on the seller until cure or acceptance.

5 2. Where the buyer rightfully revokes acceptance he may to  
6 the extent of any deficiency in his effective insurance coverage  
7 treat the risk of loss as having rested on the seller from the  
8 beginning.

9 3. Where the buyer as to conforming goods already identi-  
10 fied to the contract for sale repudiates or is otherwise in  
11 breach before risk of their loss has passed to him, the seller  
12 may to the extent of any deficiency in his effective insurance  
13 coverage treat the risk of loss as resting on the buyer for a  
14 commercially reasonable time.

1 Sec. 2511. Tender of payment by buyer—payment by check.

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

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

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

1 Sec. 2512. Payment by buyer before inspection.

2 1. Where the contract requires payment before inspection  
3 nonconformity of the goods does not excuse the buyer from so  
4 making payment unless

5 a. the nonconformity appears without inspection; or

6 b. despite tender of the required documents the circum-  
7 stances would justify injunction against honor under the provi-  
8 sions of this Act (Section 5114).

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

1 Sec. 2513. Buyer's right to inspection of goods.

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

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

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

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

17 b. for payment against documents of title, except where  
18 such payment is due only after the goods are to become available  
19 for inspection.

20 4. A place or method of inspection fixed by the parties is  
21 presumed to be exclusive but unless otherwise expressly agreed  
22 it does not postpone identification or shift the place for delivery

23 or for passing the risk of loss. If compliance becomes impos-  
24 sible, inspection shall be as provided in this section unless  
25 the place or method fixed was clearly intended as an indispen-  
26 sable condition failure of which avoids the contract.

1 Sec. 2514. When documents deliverable on acceptance—when  
2 on payment. Unless otherwise agreed documents against which a  
3 draft is drawn are to be delivered to the drawee on acceptance  
4 of the draft if it is payable more than three days after present-  
5 ment; otherwise, only on payment.

1 Sec. 2515. Preserving evidence of goods in dispute. In  
2 furtherance of the adjustment of any claim or dispute

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

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

#### PART 6

#### BREACH, REPUDIATION AND EXCUSE

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

- 7 a. reject the whole; or
- 8 b. accept the whole; or
- 9 c. accept any commercial unit or units and reject the rest.

1 Sec. 2602. Manner and effect of rightful rejection.

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

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

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

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

16 c. the buyer has no further obligations with regard to  
17 goods rightfully rejected.

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

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

3 1. Subject to any security interest in the buyer (subsection  
4 3 of Section 2711), when the seller has no agent or place of busi-  
5 ness at the market of rejection a merchant buyer is under a duty

6 after rejection of goods in his possession or control to follow  
7 any reasonable instructions received from the seller with respect  
8 to the goods and in the absence of such instructions to make rea-  
9 sonable efforts to sell them for the seller's account if they are  
10 perishable or threaten to decline in value speedily. Instructions  
11 are not reasonable if on demand indemnity for expenses is not  
12 forthcoming.

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

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

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

1 Sec. 2605. Waiver of buyer's objections by failure to partic-  
2 ularize.

3 1. The buyer's failure to state in connection with rejection  
4 a particular defect which is ascertainable by reasonable inspec-

5 tion precludes him from relying on the unstated defect to justify  
6 rejection or to establish breach

7 a. where the seller could have cured it if stated season-  
8 ably; or

9 b. between merchants when the seller has after rejection  
10 made a request in writing for a full and final written statement  
11 of all defects on which the buyer proposes to rely.

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

1 Sec. 2606. What constitutes acceptance of goods.

2 1. Acceptance of goods occurs when the buyer

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

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

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

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

1 Sec. 2607. Effect of acceptance—notice of breach—burden of  
2 establishing breach after acceptance—notice of claim or litiga-  
3 tion to person answerable over.

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

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

12 3. Where a tender has been accepted

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

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

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

23 5. Where the buyer is sued for breach of a warranty or other  
24 obligation for which his seller is answerable over

25 a. he may give his seller written notice of the litigation.

26 If the notice states that the seller may come in and defend and  
27 that if the seller does not do so he will be bound in any action  
28 against him by his buyer by any determination of fact common to  
29 the two litigations, then unless the seller after seasonable re-  
30 ceipt of the notice does come in and defend he is so bound.

31 b. if the claim is one for infringement or the like (sub-  
32 section 3 of Section 2312) the original seller may demand in  
33 writing that his buyer turn over to him control of the litigation

34 including settlement or else be barred from any remedy over and  
35 if he also agrees to bear all expenses and to satisfy any adverse  
36 judgment, then unless the buyer after reasonable receipt of the  
37 demand does turn over control the buyer is so barred.

38 6. The provisions of subsections 3, 4 and 5 apply to any ob-  
39 ligation of a buyer to hold the seller harmless against infringe-  
40 ment or the like (subsection 3 of Section 2312).

1 Sec. 2608. Revocation of acceptance in whole or in part.

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

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

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

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

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

1 Sec. 2609. Right to adequate assurance of performance.

2 1. A contract for sale imposes an obligation on each party  
3 that the other's expectation of receiving due performance will  
4 not be impaired. When reasonable grounds for insecurity arise  
5 with respect to the performance of either party the other may in

6 writing demand adequate assurance of due performance and until he  
7 receives such assurance may if commercially reasonable suspend  
8 any performance for which he has not already received the agreed  
9 return.

10 2. Between merchants the reasonableness of grounds for insecu-  
11 rity and the adequacy of any assurance offered shall be determined  
12 according to commercial standards.

13 3. Acceptance of any improper delivery or payment does not  
14 prejudice the aggrieved party's right to demand adequate assur-  
15 ance of future performance.

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

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

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

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

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

1     Sec. 2611. Retraction of anticipatory repudiation.

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

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

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

1     Sec. 2612. "Installment contract"—breach.

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

6     2. The buyer may reject any installment which is nonconform-  
7     ing if the nonconformity substantially impairs the value of that  
8     installment and cannot be cured or if the nonconformity is a de-  
9     fect in the required documents; but if the nonconformity does  
10    not fall within subsection 3 and the seller gives adequate assur-  
11    ance of its cure the buyer must accept that installment.

12    3. Whenever nonconformity or default with respect to one or  
13    more installments substantially impairs the value of the whole  
14    contract there is a breach of the whole. But the aggrieved party  
15    reinstates the contract if he accepts a nonconforming installment  
16    without seasonably notifying of cancellation or if he brings an

17 action with respect only to past installments or demands perform-  
18 ance as to future installments.

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

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

1 Sec. 2614. Substituted performance.

2 1. Where without fault of either party the agreed berthing,  
3 loading, or unloading facilities fail or an agreed type of car-  
4 rier becomes unavailable or the agreed manner of delivery other-  
5 wise becomes commercially impracticable but a commercially rea-  
6 sonable substitute is available, such substitute performance  
7 must be tendered and accepted.

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

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

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

12    b. Where the causes mentioned in paragraph a affect only  
13    a part of the seller's capacity to perform, he must allocate  
14    production and deliveries among his customers but may at his  
15    option include regular customers not then under contract as well  
16    as his own requirement for further manufacture. He may so al-  
17    locate in any manner which is fair and reasonable.

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

1     Sec. 2616. Procedure on notice claiming excuse.

2     1. Where the buyer receives notification of a material or in-  
3     definite delay or an allocation justified under the preceding sec-  
4     tion he may by written notification to the seller as to any de-  
5     livery concerned, and where the prospective deficiency substan-  
6     tially impairs the value of the whole contract under the provisions  
7     of this Article relating to breach of installment contracts (Sec.

8 tion 2612), then also as to the whole,

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

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

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

#### PART 7

#### REMEDIES

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

1 Sec. 2702. Seller's remedies on discovery of buyer's insol-  
2 vency.

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

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

14 or innocent misrepresentation of solvency or of intent to pay.

15 3. The seller's right to reclaim under subsection 2 is sub-  
16 ject to the rights of a buyer in ordinary course or other good  
17 faith purchaser or lien creditor under this Article (Section  
18 2403). Successful reclamation of goods excludes all other  
19 remedies with respect to them.

1 Sec. 2703. Seller's remedies in general. Where the buyer  
2 wrongfully rejects or revokes acceptance of goods or fails to  
3 make a payment due on or before delivery or repudiates with re-  
4 spect to a part or the whole, then with respect to any goods  
5 directly affected and, if the breach is of the whole contract  
6 (Section 2612), then also with respect to the whole undelivered  
7 balance, the aggrieved seller may

8 a. withhold delivery of such goods;

9 b. stop delivery by any bailee as hereafter provided  
10 (Section 2705);

11 c. proceed under the next section respecting goods still  
12 unidentified to the contract;

13 d. resell and recover damages as hereafter provided (Sec.  
14 tion 2706);

15 e. recover damages for nonacceptance (Section 2708) or in  
16 a proper case the price (Section 2709);

17 f. cancel.

1 Sec. 2704. Seller's right to identify goods to the contract  
2 notwithstanding breach or to salvage unfinished goods.

3 1. An aggrieved seller under the preceding section may

4 a. identify to the contract conforming goods not already

5 identified if at the time he learned of the breach they are in

6 his possession or control;

7 b. treat as the subject of resale goods which have demon-  
8 strably been intended for the particular contract even though  
9 those goods are unfinished.

10 2. Where the goods are unfinished an aggrieved seller may in  
11 the exercise of reasonable commercial judgment for the purposes  
12 of avoiding loss and of effective realization either complete  
13 the manufacture and wholly identify the goods to the contract or  
14 cease manufacture and resell for scrap or salvage value or proceed  
15 in any other reasonable manner.

1 Sec. 2705. Seller's stoppage of delivery in transit or  
2 otherwise.

3 1. The seller may stop delivery of goods in the possession  
4 of a carrier or other bailee when he discovers the buyer to be  
5 insolvent (Section 2702) and may stop delivery of carload, truck-  
6 load, planeload or larger shipments of express or freight when  
7 the buyer repudiates or fails to make a payment due before deliv-  
8 ery or if for any other reason the seller has a right to withhold  
9 or reclaim the goods.

10 2. As against such buyer the seller may stop delivery until

11 a. receipt of the goods by the buyer; or

12 b. acknowledgment to the buyer by any bailee of the goods

13 except a carrier that the bailee holds the goods for the buyer; or

14 c. such acknowledgment to the buyer by a carrier by reship-  
15 ment or as warehouseman; or

16 d. negotiation to the buyer of any negotiable document of  
17 title covering the goods.

18 3. a. To stop delivery the seller must so notify as to en-

19 able the bailee by reasonable diligence to prevent delivery of  
20 the goods.

21 b. After such notification the bailee must hold and de-  
22 liver the goods according to the directions of the seller but  
23 the seller is liable to the bailee for any ensuing charges or  
24 damages.

25 c. If a negotiable document of title has been issued  
26 for goods the bailee is not obliged to obey a notification to  
27 stop until surrender of the document.

28 d. A carrier who has issued a nonnegotiable bill of lading  
29 is not obliged to obey a notification to stop received from a  
30 person other than the consignor.

1 Sec. 2706. Seller's resale including contract for resale.

2 1. Under the conditions stated in Section 2703 on seller's  
3 remedies, the seller may resell the goods concerned or the undeliv-  
4 ered balance thereof. Where the resale is made in good faith and  
5 in a commercially reasonable manner the seller may recover the  
6 difference between the resale price and the contract price to-  
7 gether with any incidental damages allowed under the provisions  
8 of this Article (Section 2710), but less expenses saved in con-  
9 sequence of the buyer's breach.

10 2. Except as otherwise provided in subsection 3 or unless  
11 otherwise agreed resale may be at public or private sale including  
12 sale by way of one or more contracts to sell or of identifica-  
13 tion to an existing contract of the seller. Sale may be as a  
14 unit or in parcels and at any time and place and on any terms  
15 but every aspect of the sale including the method, manner, time,  
16 place and terms must be commercially reasonable. The resale

17 must be reasonably identified as referring to the broken con-  
18 tract, but is not necessary that the goods be in existence  
19 or that any or all of them have been identified to the contract  
20 before the breach.

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

23 4. Where the resale is at public sale

24 a. only identified goods can be sold except where there is  
25 a recognized market for a public sale of futures in goods of the  
26 kind; and

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

32 c. if the goods are not be within the view of those at-  
33 tending the sale the notification of sale must state the place  
34 where the goods are located and provide for their reasonable in-  
35 spection by prospective bidders; and

36 d. the seller may buy.

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

41 6. The seller is not accountable to the buyer for any profit  
42 made on any resale. A person in the position of a seller (Sec-  
43 tion 2707) or a buyer who has rightfully rejected or justifi-

44 ably revoked acceptance must account for any excess over the  
45 amount of his security interest, as hereinafter defined (subsec-  
46 tion 3 of Section 2711).

1 Sec. 2707. "Person in the position of a seller".

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

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

1 Sec. 2708. Seller's damages for nonacceptance or repudiation.

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

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

1 Sec. 2709. Action for the price.

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

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

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

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

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

1 Sec. 2710. Seller's incidental damages. Incidental damages  
2 to an aggrieved seller include any commercially reasonable  
3 charges, expenses or commissions incurred in stopping delivery,  
4 in the transportation, care and custody of goods after the buy-  
5 er's breach, in connection with return or resale of the goods

6 or otherwise resulting from the breach.

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

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

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

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

14 2. Where the seller fails to deliver or repudiates the buy-  
15 er may also

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

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

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

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

2 1. After a breach within the preceding section the buyer

3 may "cover" by making in good faith and without unreasonable  
4 delay any reasonable purchase of or contract to purchase goods  
5 in substitution for those due from the seller.

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

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

1 Sec. 2713. Buyer's damages for nondelivery or repudiation.

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

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

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

3 1. Where the buyer has accepted goods and given notifica-  
4 tion (subsection 3 of Section 2607) he may recover as damages  
5 for any nonconformity of tender the loss resulting in the ordi-  
6 nary course of events from the seller's breach as determined in

7 any manner which is reasonable.

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

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

1 Sec. 2715. Buyer's incidental and consequential damages.

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

8 2. Consequential damages resulting from the seller's breach  
9 include

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

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

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

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

4 2. The decree for specific performance may include such terms  
5 and conditions as to payment of the price, damages, or other re-

6 lief as the court may deem just.

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

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

1 Sec. 2718. Liquidation or limitation of damages—deposits.

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

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

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

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

17 3. The buyer's right to restitution under subsection 2 is

18 subject to offset to the extent that the seller establishes

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

21 b. the amount or value of any benefits received by the buy-  
22 er directly or indirectly by reason of the contract.

23 4. Where a seller has received payment in goods their reason-  
24 able value or the proceeds of their resale shall be treated as  
25 payments for the purposes of subsection 2; but if the seller has  
26 notice of the buyer's breach before reselling goods received in  
27 part performance, his resale is subject to the conditions laid  
28 down in this Article on resale by an aggrieved seller (Section  
29 2706).

1 Sec. 2719. Contractual modification or limitation of remedy.

2 1. Subject to the provisions of subsections 2 and 3 of this  
3 section and of the preceding section on liquidation and limi-  
4 tation of damages,

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

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

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

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

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

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

1 Sec. 2722. Who can sue third parties for injury to goods.  
2 Where a third party so deals with goods which have been identi-  
3 fied to a contract for sale as to cause actionable injury to a  
4 party to that contract

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

12 b. if at the time of the injury the party plaintiff did  
13 not bear the risk of loss as against the other party to the

14 contract for sale and there is no arrangement between them for  
15 disposition of the recovery, his suit or settlement is, subject  
16 to his own interest, as a fiduciary for the other party to the  
17 contract;

18 c. either party may with the consent of the other sue  
19 for the benefit of whom it may concern.

1 Sec. 2723. Proof of market price: time and place.

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

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

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

1 Sec. 2724. Admissibility of market quotations. Whenever  
2 the prevailing price or value of any goods regularly bought and  
3 sold in any established commodity market is in issue, reports in

4 official publications or trade journals or in newspapers or pe-  
5 riodicals of general circulation published as the reports of  
6 such market shall be admissible in evidence. The circumstances  
7 of the preparation of such a report may be chosen to affect its  
8 weight but not its admissibility.

1 Sec. 2725. Statute of limitations in contracts for sale.

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

5 2. A cause of action accrues when the breach occurs, regard-  
6 less of the aggrieved party's lack of knowledge of the breach.

7 A breach of warranty occurs when tender of delivery is made, ex-  
8 cept that where a warranty explicitly extends to future perform-  
9 ance of the goods and discovery of the breach must await the time  
10 of such performance the cause of action accrues when the breach  
11 is or should have been discovered.

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

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

## ARTICLE 3

## COMMERCIAL PAPER

## PART I

## SHORT TITLE, FORM AND INTERPRETATION

- 1     Sec. 3101. Short title. This Article shall be known and  
2     may be cited as Uniform Commercial Code—Commercial Paper.
- 1     Sec. 3102. Definitions and index of definitions.
- 2     1. In this Article unless the context otherwise requires
- 3     a. "Issue" means the first delivery of an instrument to  
4     a holder or a remitter.
- 5     b. An "order" is a direction to pay and must be more than  
6     an authorization or request. It must identify the person to pay  
7     with reasonable certainty. It may be addressed to one or more  
8     such persons jointly or in the alternative but not in succession.
- 9     c. A "promise" is an undertaking to pay and must be more  
10    than an acknowledgment of an obligation.
- 11    d. "Secondary party" means a drawer or endorser.
- 12    e. "Instrument" means a negotiable instrument.
- 13    2. Other definitions applying to this Article and the sec-  
14    tions in which they appear are:
- 15    "Acceptance". Section 3410.
- 16    "Accommodation party". Section 3415.
- 17    "Alteration". Section 3407.
- 18    "Certification of deposit". Section 3104.
- 19    "Certification". Section 3411.
- 20    "Check". Section 3104.
- 21    "Definite time". Section 3109.
- 22    "Dishonor". Section 3507.

- 23 "Draft". Section 3104.
- 24 "Holder in due course". Section 3302.
- 25 "Negotiation". Section 3202.
- 26 "Note". Section 3104.
- 27 "Notice of dishonor". Section 3508.
- 28 "On demand". Section 3108.
- 29 "Presentment". Section 3504.
- 30 "Protest". Section 3509.
- 31 "Restrictive Indorsement". Section 3205.
- 32 "Signature". Section 3401.
- 33 3. The following definitions in other Articles apply to this

34 Article:

- 35 "Account". Section 4104.
- 36 "Banking Day". Section 4104.
- 37 "Clearing house". Section 4104.
- 38 "Collecting bank". Section 4105.
- 39 "Customer". Section 4104.
- 40 "Depository Bank." Section 4105.
- 41 "Documentary Draft". Section 4104.
- 42 "Intermediary Bank". Section 4105.
- 43 "Item". Section 4104.
- 44 "Midnight deadline". Section 4104.
- 45 "Payor bank". Section 4105.

46 4. In addition Article 1 contains general definitions and  
47 principles of construction and interpretation applicable through-  
48 out this Article.

1 Sec. 3103. Limitations on scope of Article.

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

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

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

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

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

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

9     and

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

11    d. be payable to order or to bearer.

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

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

15    b. a "check" if it is a draft drawn on a bank and payable  
16 on demand;

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

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

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

1     Sec. 3105. When promise or order unconditional.

- 2 1. A promise or order otherwise unconditional is not made  
3 conditional by the fact that the instrument  
4 a. is subject to implied or constructive conditions; or  
5 b. states its consideration, whether performed or prom-  
6 ised, or the transaction which gave rise to the instrument, or  
7 that the promise or order is made or the instrument matures in  
8 accordance with or "as per" such transaction; or  
9 c. refers to or states that it arises out of a separate  
10 agreement or refers to a separate agreement for rights as to  
11 prepayment or acceleration; or  
12 d. states that it is drawn under a letter of credit; or  
13 e. states that it is secured, whether by mortgage, reser-  
14 vation of title or otherwise; or  
15 f. indicates a particular account to be debited or any  
16 other fund or source from which reimbursement is expected; or  
17 g. is limited to payment out of a particular fund or the  
18 proceeds of a particular source, if the instrument is issued by  
19 a government or governmental agency or unit; or  
20 h. is limited to payment out of the entire assets of a  
21 partnership, unincorporated association, trust or estate by or  
22 on behalf of which the instrument is issued.
- 23 2. A promise or order is not unconditional if the instrument  
24 a. states that it is subject or governed by any other  
25 agreement; or  
26 b. states that it is to be paid only out of a particular  
27 fund or source except as provided in this section.
- 1 Sec. 3106. Sum certain.  
2 1. The sum payable is a sum certain even though it is to be  
3 paid

- 4 a. with stated interest or by stated installments; or
- 5 b. with stated different rates of interest before and
- 6 after default or a specified date; or
- 7 c. with a stated discount or addition if paid before or
- 8 after the date fixed for payment; or
- 9 d. with exchange or less exchange, whether at a fixed
- 10 rate or at the current rate; or
- 11 e. with costs of collection or at attorney's fee or both
- 12 upon default.

13 2. Nothing in this section shall validate any term which is  
14 otherwise illegal.

1 Sec. 3107. Money.

2 1. An instrument is payable in money if the medium of ex-  
3 change in which it is payable is money at the time the instru-  
4 ment is made. An instrument payable in "currency" or "current  
5 funds" is payable in money.

6 2. A promise or order to pay a sum stated in a foreign cur-  
7 rency is for a sum certain in money and, unless a different medi-  
8 um of payment is specified in the instrument, may be satisfied  
9 by payment of that number of dollars which the stated foreign  
10 currency will purchase at the buying sight rate for that currency  
11 on the day on which the instrument is payable or, if payable on  
12 demand, on the day of demand. If such an instrument specifies  
13 a foreign currency as the medium of payment the instrument is  
14 payable in that currency.

1 Sec. 3108. Payable on demand. Instruments payable on demand  
2 include those payable at sight or on presentation and those in  
3 which no time for payment is stated.

1     **Sec. 3109. Definite time.**

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

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

6     b. at the fixed period after sight; or

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

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

9 of the holder, or to extension to a further definite time at the  
10 option of the maker or acceptor or automatically upon or after  
11 a specified act or event.

12    2. An instrument which by its terms is otherwise payable  
13 only upon an act or event uncertain as to time of occurrence is  
14 not payable at a definite time even though the act or event has  
15 occurred.

1     **Sec. 3110. Payable to order.**

2     1. An instrument is payable to order when by its terms it  
3 is payable to the order or assigns of any person therein speci-  
4 fied with reasonable certainty, or to him or his order, or when  
5 it is conspicuously designated on its face as "exchange" or the  
6 like and names a payee. It may be payable to the order of

7     a. the maker or drawer; or

8     b. the drawee; or

9     c. a payee who is not maker, drawer or drawee; or

10    d. two or more payees together or in the alternative; or

11    e. an estate, trust or fund, in which case it is payable

12 to the order of the representative of such estate, trust or fund

13 or his successors; or

14 f. an office, or an officer by his title as such in which  
15 case it is payable to the principal but the incumbent of the  
16 office or his successors may act as if he or they were the holder;  
17 or

18 g. a partnership or unincorporated association, in which  
19 case it is payable to the partnership or association and may be  
20 indorsed or transferred by any person thereto authorized.

21 2. An instrument not payable to order is not made so pay-  
22 able by such words as "payable upon return of this instrument  
23 properly indorsed."

24 3. An instrument made payable both to order and to bearer  
25 is payable to order unless the bearer words are handwritten or  
26 typewritten.

1 Sec. 3111. Payable to bearer. An instrument is payable to  
2 bearer when by its terms it is payable to

3 a. bearer or the order of bearer; or

4 b. a specified person or bearer; or

5 c. "cash" or the order of "cash", or any other indication  
6 which does not purport to designate a specific payee.

1 Sec. 3112. Terms and omissions not affecting negotiability.

2 1. The negotiability of an instrument is not affected by

3 a. the omission of a statement of any consideration or  
4 of the place where the instrument is drawn or payable; or

5 b. a statement that collateral has been given to secure  
6 obligations either on the instrument or otherwise of an obligor  
7 on the instrument or that in case of default on those obligations  
8 the holder may realize on or dispose of the collateral; or

9 c. a promise or power to maintain or protect collateral

10 or to give additional collateral; or

11 d. a term authorizing a confession of judgment on the  
12 instrument if it is not paid when due; or

13 e. a term purporting to waive the benefit of any law in-  
14 tended for the advantage or protection of any obligor; or

15 f. a term in a draft providing that the payee by indorsing  
16 or cashing it acknowledges full satisfaction of an obligation  
17 of the drawer; or

18 g. a statement in a draft drawn in a set of parts (Sec-  
19 tion 3801) to the effect that the order is effective only if  
20 no other part has been honored.

21 2. Nothing in this section shall validate any term which is  
22 otherwise illegal.

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

1 Sec. 3114. Date, antedating, postdating.

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

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

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

1 Sec. 3115. Incomplete instruments.

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

6 given it is effective as completed.

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

1 Sec. 3116. Instruments payable to two or more persons. An  
2 instrument payable to the order of two or more persons

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

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

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

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

7 b. as any other fiduciary for a specified person or pur-  
8 pose is payable to the payee and may be negotiated, discharged  
9 or enforced by him;

10 c. in any other manner is payable to the payee uncondi-  
11 tionally and the additional words are without effect on sub-  
12 sequent parties.

1 Sec. 3118. Ambiguous terms and rules of construction. The  
2 following rules apply to every instrument:

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

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

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

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

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

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

1 Sec. 3119. Other writings affecting instrument.

2 1. As between the obligor and his immediate obligee or any  
3 transferee the terms of an instrument may be modified or affected  
4 by any other written agreement executed as a part of the  
5 same transaction, except that a holder in due course is not  
6 affected by any limitation of his rights arising out of the sep-

7 arate written agreement if he had no notice of the limitation  
8 when he took the instrument.

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

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

1 Sec. 3121. Instruments payable at bank. A note or accept-  
2 ance which states that it is payable at a bank is not of itself  
3 an order or authorization to the bank to pay it.

1 Sec. 3122. Accrual of cause of action.

2 1. A cause of action against a maker or an acceptor accrues  
3 a. in the case of a time instrument on the day after ma-  
4 turity;

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

7 2. A cause of action against the obligor of a demand or time  
8 certificate of deposit accrues upon demand, but demand on a time  
9 certificate may not be made until on or after the date of matu-  
10 rity.

11 3. A cause of action against a drawer of a draft or an in-  
12 dorser of any instrument accrues upon demand following dishonor  
13 of the instrument. Notice of dishonor is a demand.

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

16 a. in the case of a maker, acceptor or other primary ob-  
17 ligor of a demand instrument, from the date of demand;

18 b. in all other cases from the date of accrual of the  
19 cause of action.

PART 2

TRANSFER AND NEGOTIATION

1 Sec. 3201. Transfer—right to indorsement.

2 1. Transfer of an instrument vests in the transferee such  
3 rights as the transferor has therein, except that a transferee  
4 who has himself been a party to any fraud or illegality affect-  
5 ing the instrument or who as a prior holder had notice of a de-  
6 fense or claim against it cannot improve his position by taking  
7 from a later holder in due course.

8 2. A transfer of a security interest in an instrument vests  
9 the foregoing rights in the transferee to the extent of the in-  
10 terest transferred.

11 3. Unless otherwise agreed any transfer for value of an in-  
12 strument not then payable to bearer gives the transferee the  
13 specifically enforceable right to have the unqualified indorse-  
14 ment of the transferor. Negotiation takes effect only when the  
15 endorsement is made and until that time there is no presumption  
16 that the transferee is the owner.

1 Sec. 3202. Negotiation.

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

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

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

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

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

1 Sec. 3204. Special indorsement—blank indorsement.

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

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

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

1 Sec. 3205. Restrictive indorsements. An indorsement is  
2 restrictive which either

3 a. is conditional; or

4 b. purports to prohibit further transfer of the instru-  
5 ment; or

6 c. includes the words "for collection", "for deposit",  
7 "pay any bank", or like terms signifying a purpose of deposit  
8 or collection; or

9 d. otherwise states that it is for the benefit or use of  
10 the indorser or of another person.

1 Sec. 3206. Effect of restrictive indorsement.

2 1. No restrictive indorsement prevents further transfer or  
3 negotiation of the instrument.

4 2. An intermediary bank, or a payor bank which is not the  
5 depositary bank, is neither given notice nor otherwise affected  
6 by a restrictive indorsement of any person except the bank's  
7 immediate transferor or the person presenting for payment.

8 3. Except for an intermediary bank, and transferee under an  
9 indorsement which is conditional or includes the words "for col-  
10 lection", "for deposit", "pay the bank", or like terms (sub-  
11 paragraphs a and c of Section 3205) must pay or apply any value  
12 given by him for on the security of the instrument consist-  
13 ently with the endorsement and to the extent that he does so he  
14 becomes a holder for value. In addition such transferee is a  
15 holder in due course if he otherwise complies with the require-  
16 ments of Section 3302 on what constitutes a holder in due course.

17 4. The first taker under an indorsement for the benefit of  
18 the indorser or another person (subparagraph d of Section 3205)  
19 must pay or apply any value given by him for or on the security  
20 of the instrument consistently with the indorsement and to the  
21 extent that he does so he becomes a holder for value. In addi-  
22 tion such taker is a holder in due course if he otherwise com-  
23 plies with the requirements of Section 2203 on what constitutes

24 a holder in due course. A later holder for value is neither  
25 given notice nor otherwise affected by such restrictive indorse-  
26 ment unless he has knowledge that a fiduciary or other person  
27 has negotiated the instrument in any transaction for his own  
28 benefit or otherwise in breach of duty (subsection 2 of Section  
29 3304).

1 Sec. 3207. Negotiation effective although it may be rescinded.

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

4 a. made by an infant, a corporation exceeding its powers,

5 or any other person without capacity; or

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

7 c. part of an illegal transaction; or

8 d. made in breach of duty.

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

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

### PART 3

#### RIGHTS OF A HOLDER

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

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

1 Sec. 3302. Holder in due course.

2 1. A holder in due course is a holder who takes the instru-  
3 ment

4 a. for value; and

5 b. in good faith; and

6 c. without notice that it is overdue or has been dishonor-  
7 ed or of any defense against or claim to it on the part of any  
8 person

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

10 3. A holder does not become a holder in due course of an  
11 instrument:

12 a. by purchase of it at judicial sale or by taking it  
13 under legal process; or

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

15 c. by purchasing it as part of a bulk transaction not in  
16 regular course of business of the transferor.

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

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

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

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

9 c. when he gives a negotiable instrument for it or makes

10 an irrevocable commitment to a third person.

1 Sec. 3304. Notice to purchaser.

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

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

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

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

15 3. The purchaser has notice that in instrument is overdue  
16 if he has reason to know

17 a. that any part of the principal amount is overdue or  
18 that there is an uncured default in payment of another instru-  
19 ment of the same series; or

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

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

26 4. Knowledge of the following facts does not of itself give  
27 the purchaser notice of a defense or claim

- 28 a. that the instrument is antedated or postdated;  
29 b. that it was issued or negotiated in return for an  
30 executory promise or accompanied by a separate agreement, unless  
31 the purchaser has notice that a defense or claim has arisen from  
32 the terms thereof;  
33 c. that any party has signed for accommodation;  
34 d. that an incomplete instrument has been completed, un-  
35 less the purchaser has notice of any improper completion;  
36 e. that any person negotiating the instrument is or was  
37 a fiduciary;  
38 f. that there has been default in payment of interest on  
39 the instrument or in payment of any other instrument, except  
40 one of the same series.

41 5. The filing or recording of a document does not of itself  
42 constitute notice within the provisions of this Article to a  
43 person who would otherwise be a holder in due course.

44 6. To be effective notice must be received at such time and  
45 in such manner as to give a reasonable opportunity to act on it.

1 Sec. 3305. Rights of a holder in due course. To the extent  
2 that a holder is a holder in due course he takes the instrument  
3 free from

4 1. all claims to it on the part of any person; and

5 2. all defenses of any party to the instrument with whom the  
6 holder has not dealt except

7 a. infancy, to the extent that it is a defense to a simple  
8 contract; and

9 b. such other incapacity, or duress, or illegality of the  
10 transaction, as renders the obligation of the party a nullity;  
11 and

12 c. such misrepresentation as has induced the party to  
13 sign the instrument with neither knowledge nor reasonable opportu-  
14 nity to obtain knowledge of its character or its essential terms;

15 and

16 d. discharge in insolvency proceedings; and

17 e. any other discharge of which the holder has notice  
18 when he takes the instrument.

1 Sec. 3306. Rights of one not holder in due course. Unless  
2 he has the rights of a holder in due course any person takes the  
3 instrument subject to

4 a. all valid claims to it on the part of any person; and

5 b. all defenses of any party which would be available in  
6 an action on a simple contract; and

7 c. the defenses of want or failure of consideration, non-  
8 performance of any condition precedent, nondelivery, or delivery  
9 for a special purpose (Section 3408); and

10 d. the defense that he or a person through whom he holds  
11 the instrument acquired it by theft, or that payment or satisfac-  
12 tion to such holder would be inconsistent with the terms of a  
13 restrictive indorsement. The claim of any third person to the  
14 instrument is not otherwise available as a defense to any party  
15 liable thereon unless the third person himself defends the ac-  
16 tion for such party.

1 Sec. 3307. Burden of establishing signatures, defenses and  
2 due course.

3 1. Unless specifically denied in the pleadings each signa-  
4 ture on an instrument is admitted. When the effectiveness of a  
5 signature is put in issue

6 a. the burden of establishing it is on the party claiming  
7 under the signature; but

8 b. the signature is presumed to be genuine or authorized  
9 except where the action is to enforce the obligation of a pur-  
10 ported signer who has died or become incompetent before proof  
11 is required.

12 2. When signatures are admitted or established, production  
13 of the instrument entitles a holder to recover on it unless the  
14 defendant establishes a defense.

15 3. After it is shown that a defense exists a person claiming  
16 the rights of a holder in due course has the burden of establish-  
17 ing that he or some person under whom he claims is in all respects  
18 a holder in due course.

#### PART 4

#### LIABILITY OF PARTIES

1 Sec. 3401. Signature.

2 1. No person is liable on an instrument unless his signature  
3 appears thereon.

4 2. A signature is made by use of any name, including any  
5 trade or assumed name, upon an instrument, or by any word or  
6 mark used in lieu of a written signature.

1 Sec. 3402. Signature is ambiguous capacity. Unless the in-  
2 strument clearly indicates that a signature is made in some  
3 other capacity it is an indorsement.

1 Sec. 3403. Signature by authorized representative.

2 1. A signature may be made by an agent or other represent-  
3 ative, and his authority to make it may be established as in  
4 other cases of representation. No particular form of appoint-

5 ment is necessary to establish such authority.

6 2. An authorized representative who signs his own name to  
7 an instrument

8 a. is personally obligated if the instrument neither  
9 names the person represented nor shows that the representative  
10 signed in a representative capacity;

11 b. except as otherwise established between the immediate  
12 parties, is personally obligated if the instrument names the  
13 person represented but does not show that the representative  
14 signed in a representative capacity, or if the instrument does  
15 not name the person represented but does show that the represent-  
16 ative signed in a representative capacity.

17 3. Except as otherwise established the name of an organi-  
18 zation preceded or followed by the name and office of an author-  
19 ized individual is a signature made in a representative capacity.

1 Sec. 3404. Unauthorized signatures.

2 1. Any unauthorized signature is wholly inoperative as that  
3 of the person whose name is signed unless he ratifies it or is  
4 precluded from denying it; but it operates as the signature of  
5 the unauthorized signer in favor of any person who in good faith  
6 pays the instrument or takes it for value.

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

1 Sec. 3405. Impostors—signature in name of payee.

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

- 4 a. an impostor by use of the mails or otherwise has in-
- 5 duced the maker or drawer to issue the instrument to him or his
- 6 confederate in the name of the payee; or
- 7 b. a person signing as or on behalf of a maker or drawer
- 8 intends the payee to have no interest in the instrument; or
- 9 c. an agent or employee of the maker or drawer has sup-
- 10 plied him with the name of the payee intending the latter to have
- 11 no such interest.

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

1 Sec. 3406. Negligence contributing to alteration or unau-  
2 thorized signature. Any person who by his negligence substan-  
3 tially contributes to a material alteration of the instrument  
4 or to the making of an unauthorized signature is precluded from  
5 asserting the alteration or lack of authority against a holder  
6 in due course or against a drawee or other payor who pays the  
7 instrument in good faith and in accordance with the reasonable  
8 commercial standards of the drawee's or payor's business.

1 Sec. 3407. Alteration.

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

- 5 a. the number or relations of the parties; or
- 6 b. an incomplete instrument, by completing it otherwise
- 7 than as authorized; or
- 8 c. the writing as signed, by adding to it or by removing
- 9 any part of it.

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

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

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

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

1 Sec. 3408. Consideration. Want or failure of consideration  
2 is a defense as against any person not having the rights of a  
3 holder in due course (Section 3305), except that no considera-  
4 tion is necessary for an instrument or obligation thereon given  
5 in payment of or as security for an antecedent obligation of  
6 any kind. Nothing in this section shall be taken to displace  
7 any statute outside this Act under which a promise is enforce-  
8 able notwithstanding lack or failure of consideration. Partial  
9 failure of consideration is a defense pro tanto whether or not  
10 the failure is in an ascertained or liquidated amount.

1 Sec. 3409. Draft not an assignment.

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

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

1     Sec. 3410. Definition and operation of acceptance.

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

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

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

1     Sec. 3411. Certification of a check.

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

5     2. Unless otherwise agreed a bank has no obligation to certi-  
6 fy a check.

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

1     Sec. 3412. Acceptance varying draft.

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

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

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

1 Sec. 3413. Contract of maker, drawer or acceptor.

2 1. The maker or acceptor engages that he will pay the in-  
3 strument according to its tenor at the time of his engagement  
4 or as completed pursuant to Section 3115 on incomplete instru-  
5 ments.

6 2. The drawer engages that upon dishonor of the draft and  
7 any necessary notice of dishonor or protest he will pay the  
8 amount of the draft to the holder or to any indorser who takes  
9 it up. The drawer may disclaim this liability by drawing with-  
10 out recourse.

11 3. By making, drawing or accepting the party admits as  
12 against all subsequent parties including the drawee the exist-  
13 ence of the payee and his then capacity to indorse.

1 Sec. 3414. Contract of indorser—order of liability.

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

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

1 Sec. 3415. Contract of accommodation party.

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

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

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

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

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

1 Sec. 3416. Contract of guarantor.

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

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

- 13 3. Words of guaranty which do not otherwise specify guar-  
14 antee payment.
- 15 4. No words of guaranty added to the signature of a sole  
16 maker or acceptor affect his liability on the instrument. Such  
17 words added to the signature of one of two or more makers or  
18 acceptors create a presumption that the signature is for the  
19 accommodation of the others.
- 20 5. When words of guaranty are used presentment, notice of  
21 dishonor and protest are not necessary to charge the user.
- 22 6. Any guaranty written on the instrument is enforceable  
23 notwithstanding any statute of frauds.
- 1 Sec. 3417. Warranties on presentment and transfer.
- 2 1. Any person who obtains payment or acceptance and any  
3 prior transferor warrants to a person who in good faith pays or  
4 accepts that
- 5 a. he has a good title to the instrument or is authorized  
6 to obtain payment or acceptance on behalf of one who has a good  
7 title; and
- 8 b. he has no knowledge that the signature of the maker  
9 or drawer is unauthorized, except that this warranty is not  
10 given by a holder in due course acting in good faith
- 11 i. to a maker with respect to the maker's own sig-  
12 nature; or
- 13 ii. to a drawer with respect to the drawer's own sig-  
14 nature, whether or not the drawer is also the drawee; or
- 15 iii. to an acceptor of a draft if the holder in due  
16 course took the draft after the acceptance or obtained the  
17 acceptance without knowledge that the drawer's signature was  
18 unauthorized; and

19 c. the instrument has not been materially altered, ex-  
20 cept that this warranty is not given by a holder in due course  
21 acting in good faith.

22 i. to the maker of a note; or

23 ii. to the drawer of a draft whether or not the drawer  
24 is also the drawee; or

25 iii. to the acceptor of a draft with respect to an alter-  
26 ation made prior to the acceptance if the holder in due course  
27 took the draft after the acceptance, even though the acceptance  
28 provided "payable as originally drawn" or equivalent terms; or

29 iv. to the acceptor of a draft with respect to an alter-  
30 ation made after the acceptance.

31 2. Any person who transfers an instrument and receives con-  
32 sideration warrants to his transferee and if the transfer is by  
33 indorsement to any subsequent holder who takes the instrument  
34 in good faith that

35 a. he has a good title to the instrument or is authorized  
36 to obtain payment or acceptance on behalf of one who has a good  
37 title and the transfer is otherwise rightful; and

38 b. All signatures are genuine or authorized; and

39 c. the instrument has not been materially altered; and

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

41 e. he has no knowledge of any insolvency proceeding in-  
42 stituted with respect to the maker or acceptor or the drawer  
43 of an unaccepted instrument.

44 3. By transferring "without recourse" the transferor limits  
45 the obligation stated in subsection 2 d to a warranty that he  
46 has no knowledge of such a defense.

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

1 Sec. 3418. Finality of payment or acceptance. Except for  
2 recovery of bank payments as provided in the Article on Bank De-  
3 posits and Collections (Article 4) and except for liability for  
4 breach of warranty on presentment under the preceding section,  
5 payment or acceptance of any instrument is final in favor of a  
6 holder in due course, or a person who has in good faith changed  
7 his position in reliance on the payment.

1 Sec. 3419. Conversion of instrument—innocent representative.

2 1. An instrument is converted when

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

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

7 c. it is paid on a forged indorsement.

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

13 3. Subject to the provisions of this Act concerning restric-  
14 tive indorsements a representative, including a depository or  
15 collecting bank, who has in good faith and in accordance with  
16 the reasonable commercial standards applicable to the business  
17 of such representative dealt with an instrument or its proceeds

18 on behalf of one who was not the true owner is not liable in  
19 conversion or otherwise to the true owner beyond the amount of  
20 any proceeds remaining in his hands.

21 4. An intermediary bank or payor bank which is not a de-  
22 pository bank is not liable in conversion solely by reason of  
23 the fact that proceeds of an item indorsed restrictively (Sec-  
24 tions 3205 and 3206) are not paid or applied consistently with  
25 the restrictive indorsement of an indorser other than its im-  
26 mediate transferor.

#### PART 5

#### PRESENTATION, NOTICE OF DISHONOR AND PROTEST

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

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

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

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

13 c. in the case of any drawer, the acceptor of a draft pay-  
14 able at a bank or the maker of a note payable at a bank, present-  
15 ment for payment is necessary, but failure to make presentment  
16 discharges such drawer, acceptor or maker only as stated in  
17 Section 3502 subsection 1 b.

18 2. Unless excused (Section 3511)

19 a. notice of any dishonor is necessary to charge any in-  
20 dorser;

21 b. in the case of any drawer, the acceptor of a draft pay-  
22 able at a bank or the maker of a note payable at a bank, notice  
23 of any dishonor is necessary, but failure to give such notice  
24 discharges such drawer, acceptor or maker only as stated in  
25 Section 3502 subsection 1 b.

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

35 4. Notwithstanding any provision of this section, neither  
36 presentment nor notice of dishonor nor protest is necessary to  
37 charge an indorser who has indorsed an instrument after maturity.

1 Sec. 3502. Unexcused delay—discharge.

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

4 a. any indorser is discharged; and

5 b. any drawer or the acceptor of a draft payable at a  
6 bank or the maker of a note payable at a bank who because the  
7 drawee or payor bank becomes insolvent during the delay is de-  
8 prived of funds maintained with the drawee or payor bank to

9 cover the instrument may discharge his liability by written as-  
10 signment to the holder of his rights against the drawee or payor  
11 bank in respect of such funds, but such drawer, acceptor or  
12 maker is not otherwise discharged.

13 2. Where without excuse a necessary protest is delayed be-  
14 yond the time when it is due any drawer or indorser is discharged.

1 Sec. 3503. Time of presentment.

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

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

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

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

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

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

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

23 to be reasonable periods within which to present for payment or  
24 to initiate bank collection:

25 a. with respect to the liability of the drawer, thirty

26 days after date or issue whichever is later; and

27 b. with respect to the liability of an indorser, seven

28 days after his indorsement.

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

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

1 Sec. 3504. How presentment made.

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

5 2. Presentment may be made

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

8 b. through a clearing house; or

9 c. at the place of acceptance or payment specified in the  
10 instrument or if there be none at the place of business or res-  
11 idence of the party to accept or pay. If neither the party to  
12 accept or pay nor anyone authorized to act for him is present  
13 or accessible at such place presentment is excused.

14 3. It may be made

15 a. to any one of two or more makers, acceptors, drawees  
16 or other payors; or

17 b. to any person who has authority to make or refuse the

18 acceptance or payment.

19 4. A draft accepted or a note made payable at a bank in the  
20 United States must be presented at such bank.

21 5. In the cases described in Section 4210 presentment may  
22 be made in the manner and with the result stated in that section.

1 Sec. 3505. Rights of party to whom presentment is made

2 1. The party to whom presentment is made may without dis-  
3 honor require

4 a. exhibition of the instrument; and

5 b. reasonable identification of the person making present-  
6 ment and evidence of his authority to make it if made for an-  
7 other; and

8 c. that the instrument be produced for acceptance or pay-  
9 ment at a place specified in it, or if there be none at any  
10 place reasonable in the circumstances; and

11 d. a signed receipt on the instrument for any partial or  
12 full payment and its surrender upon full payment.

13 2. Failure to comply with any such requirement invalidates  
14 the presentment but the person presenting has a reasonable time  
15 in which to comply and the time for acceptance or payment runs  
16 from the time of compliance.

1 Sec. 3506. Time allowed for acceptance or payment.

2 1. Acceptance may be deferred without dishonor until the  
3 close of the next business day following presentment. The holder  
4 may also in a good faith effort to obtain acceptance and without  
5 either dishonor of the instrument or discharge of secondary  
6 parties allow postponement of acceptance for an additional busi-  
7 ness day.

8 2. Except as a longer time is allowed in the case of docu-

9 mentary drafts drawn under a letter of credit, and unless an  
10 earlier time is agreed to by the party to pay, payment of an  
11 instrument may be deferred without dishonor pending reasonable  
12 examination to determine whether it is properly payable, but  
13 payment must be made in any event before the close of business  
14 on the day of presentment.

1 Sec. 3507. Dishonor—holder's right of recourse—term allow-  
2 ing re-presentment.

3 1. An instrument is dishonored when

4 a. a necessary or optional presentment is duly made and  
5 due acceptance or payment is refused or cannot be obtained with-  
6 in the prescribed time or in case of bank collections the in-  
7 strument is seasonably returned by the midnight deadline (Sec-  
8 tion 4301); or

9 b. presentment is excused and the instrument is not duly  
10 accepted or paid.

11 2. Subject to any necessary notice of dishonor and protest,  
12 the holder has upon dishonor an immediate right of recourse  
13 against the drawers and indorsers.

14 3. Return of an instrument for lack of proper indorsement  
15 is not dishonor.

16 4. A term in a draft or an indorsement thereof allowing a  
17 stated time for re-presentment in the event of any dishonor of  
18 the draft by nonacceptance if a time draft or by nonpayment if  
19 a sight draft gives the holder as against any secondary party  
20 bound by the term an option to waive the dishonor without af-  
21 fecting the liability of the secondary party and he may present  
22 again up to the end of the stated time.

1 Sec. 3508. Notice of dishonor.

2 1. Notice of dishonor may be given to any person who may be  
3 liable on the instrument by or on behalf of the holder or any  
4 party who has himself received notice, or any other party who  
5 can be compelled to pay the instrument. In addition an agent or  
6 bank in whose hands the instrument is dishonored may give notice  
7 to his principal or customer or to another agent or bank from  
8 which the instrument was received.

9 2. Any necessary notice must be given by a bank before its  
10 midnight deadline and by any other person before midnight of the  
11 third business day after dishonor or receipt of notice of dishonor.

12 3. Notice may be given in any reasonable manner. It may be  
13 oral or written and in any terms which identify the instrument  
14 and state that it has been dishonored. A misdescription which  
15 does not mislead the party notified does not vitiate the notice.  
16 Sending the instrument bearing a stamp, ticket or writing stating  
17 that acceptance or payment has been refused or sending a notice  
18 of debit with respect to the instrument is sufficient.

19 4. Written notice is given when sent although it is not re-  
20 ceived.

21 5. Notice to one partner is notice to each although the firm  
22 has been dissolved.

23 6. When any party is in insolvency proceedings instituted  
24 after the issue of the instrument notice may be given either to  
25 the party or to the representative of his estate.

26 E. when any party is dead or incompetent notice may be sent  
27 to his last known address or given to his personal representative.

28 8. Notice operates for the benefit of all parties who have  
29 rights on the instrument against the party notified.

1 Sec. 3509. Protest—noting for protest.

2 1. A protest is a certificate of dishonor made under the hand  
3 and seal of a United States consul or vice consul or a notary  
4 public or other person authorized to certify dishonor by the law  
5 of the place where dishonor occurs. It may be made upon informa-  
6 tion satisfactory to such person.

7 2. The protest must identify the instrument and certify ei-  
8 ther that due presentment has been made or the reason why it is  
9 excused and that the instrument has been dishonored by nonaccept-  
10 ance or nonpayment.

11 3. The protest may also certify that notice of dishonor has  
12 been given to all parties or to specified parties.

13 4. Subject to subsection 5 any necessary protest is due by  
14 the time that notice of dishonor is due.

15 5. If, before protest is due, an instrument has been noted  
16 for protest by the officer to make protest, the protest may be  
17 made at any time thereafter as of the date of the noting.

1 1. Sec. 3510. Evidence of dishonor and notice of dishonor. The  
2 following are admissible as evidence and create a presumption of  
3 dishonor and of any notice of dishonor therein shown:

4 a. a document regular in form as provided in the preced-  
5 ing section which purports to be a protest;

6 b. the purported stamp or writing of the drawee, payor  
7 bank or presenting bank on the instrument or accompanying it  
8 stating that acceptance or payment has been refused for reasons  
9 consistent with dishonor;

10 c. Any book or record of the drawee, payor bank, or any  
11 collecting bank kept in the usual course of business which shows  
12 dishonor, even though there is no evidence of who made the entry.

1 1. Sec. 3511. Waived or excused presentment, protest or notice

2 of dishonor or delay therein.

3 1. Delay in presentment, protest or notice of dishonor is  
4 excused when the party is without notice that it is due or when  
5 the delay is caused by circumstances beyond his control and he  
6 exercises reasonable diligence after the cause of the delay  
7 ceases to operate.

8 2. Presentment or notice or protest as the case may be is  
9 entirely excused when

10 a. the party to be charged has waived it expressly or by  
11 implication either before or after it is due; or

12 b. such party has himself dishonored the instrument or  
13 has countermanded payment or otherwise has no reason to expect  
14 or right to require that the instrument be accepted or paid; or

15 c. by reasonable diligence the presentment or protest can-  
16 not be made or the notice given.

17 3. Presentment is also entirely excused when

18 a. the maker, acceptor or drawee of any instrument except  
19 a documentary draft is dead or in insolvency proceedings in-  
20 stituted after the issue of the instrument; or

21 b. acceptance or payment is refused but not for want of  
22 proper presentment.

23 4. Where a draft has been dishonored by nonacceptance a later  
24 presentment for payment and any notice of dishonor and protest  
25 for nonpayment are excused unless in the meantime the instrument  
26 has been accepted.

27 5. A waiver of protest is also a waiver of presentment and  
28 of notice of dishonor even though protest is not required.

29 6. Where a waiver of presentment or notice or protest is  
30 embodied in the instrument itself it is binding upon all parties;

31 but where it is written above the signature of an indorser it  
32 binds him only.

## PART 6

## DISCHARGE

- 1 Sec. 3601. Discharge of parties.
- 2 1. The extent of the discharge of any party from liability  
3 on an instrument is governed by the sections on  
4 a. payment or satisfaction (Section 3603); or  
5 b. tender of payment (Section 3604); or  
6 c. cancellation or renunciation (Section 3605); or  
7 d. impairment of right of recourse or of collateral (Sec-  
8 tion 3606); or  
9 e. reacquisition of the instrument by a prior party (Sec-  
10 tion 3208); or  
11 f. fraudulent and material alteration (Section 3407); or  
12 g. certification of a check (Section 3411); or  
13 h. acceptance varying a draft (Section 3412); or  
14 i. unexcused delay in presentment or notice of dishonor  
15 or protest (Section 3502).
- 16 2. Any party is also discharged from his liability on an  
17 instrument to another party by any other act or agreement with  
18 such party which would discharge his simple contract for the  
19 payment of money.
- 20 3. The liability of all parties is discharged when any party  
21 who has himself no right of action or recourse on the instrument  
22 a. reacquires the instrument in his own right; or  
23 b. is discharged under any provision of this Article, ex-  
24 cept as otherwise provided with respect to discharge for impair-  
25 ment of recourse or of collateral (Section 3606).

1    Sec. 3602. Effect of discharge against holder in due course.  
2    No discharge of any party provided by this Article is effective  
3    against a subsequent holder in due course unless he has notice  
4    thereof when he takes the instrument.

1    Sec. 3603. Payment or satisfaction.

2    1. The liability of any party is discharged to the extent of  
3    his payment or satisfaction to the holder even though it is made  
4    with knowledge of a claim of another person to the instrument  
5    unless prior to such payment or satisfaction the person making  
6    the claim either supplies indemnity deemed adequate by the party  
7    seeking the discharge or enjoins payment or satisfaction by or-  
8    der of a court of competent jurisdiction in an action in which  
9    the adverse claimant and the holder are parties. This subsection  
10   does not, however, result in the discharge of the liability

11    a. of a party who in bad faith pays or satisfies a holder  
12    who acquired the instrument by theft or who (unless having the  
13    rights of a holder in due course) holds through one who so ac-  
14    quired it; or

15    b. of a party (other than an intermediary bank or a payor  
16    bank which is not a depository bank) who pays or satisfies the  
17    holder of an instrument which has been restrictively indorsed  
18    in a manner not consistent with the terms of such restrictive  
19    indorsement.

20    2. Payment or satisfaction may be made with the consent of  
21    the holder by any person including a stranger to the instrument.  
22    Surrender of the instrument to such a person gives him the rights  
23    of a transferee (Section 3201).

1    Sec. 3604. Tender of payment.

2 1. Any party making tender of full payment to a holder when  
3 or after it is due is discharged to the extent of all subsequent  
4 liability for interest, costs and attorney's fees.

5 2. The holder's refusal of such tender wholly discharges  
6 any party who has a right of recourse against the party making  
7 the tender.

8 3. Where the maker or acceptor of an instrument payable  
9 otherwise than on demand is able and ready to pay at every  
10 place of payment specified in the instrument when it is due, it  
11 is equivalent to tender

12 4. Tender shall be made as provided by Section five hundred  
13 thirty-eight point five (538.5) of the Code.

1 Sec. 3605. Cancellation and renunciation.

2 1. The holder of an instrument may even without considera-  
3 tion discharge any party

4 a. in any manner apparent on the face of the instrument  
5 or the indorsement, as by intentionally cancelling the instru-  
6 ment or the party's signature by destruction or mutilation, or  
7 by striking out the party's signature; or

8 b. by renouncing his rights by a writing signed and de-  
9 livered or by surrender of the instrument to the party to be  
10 discharged.

11 2. Neither cancellation nor renunciation without surrender  
12 of the instrument affects the title thereto.

1 Sec. 3606. Impairment of recourse or of collateral.

2 1. The holder discharges any party to the instrument to the  
3 extent that without such party's consent the holder

4 a. without express reservation of rights releases or agrees

5 not to sue any person against whom the party has to the knowledge  
6 of the holder a right of recourse or agrees to suspend the right  
7 to enforce against such person the instrument or collateral or  
8 otherwise discharges such person, except that failure or delay  
9 in effecting any required presentment, protest or notice of dis-  
10 honor with respect to any such person does not discharge any  
11 party as to whom presentment, protest or notice of dishonor is  
12 effective or unnecessary; or

13 b. unjustifiably impairs any collateral for the instru-  
14 ment given by or on behalf of the party or any person against  
15 whom he has a right of recourse.

16 2. By express reservation of rights against a party with a  
17 right of recourse the holder preserves

18 a. all his rights against such party as of the time when  
19 the instrument was originally due; and

20 b. the right of the party to pay the instrument as of  
21 that time; and

22 c. all rights of such party to recourse against others.

#### PART 7

#### ADVICE OF INTERNATIONAL SIGHT DRAFT

1 Sec. 3701. Letter of advice of international sight draft.

2 1. A "letter of advice" is a drawer's communication to the  
3 drawee that a described draft has been drawn.

4 2. Unless otherwise agreed when a bank receives from another  
5 bank a letter of advice of an international sight draft the drawee  
6 bank may immediately debit the drawer's account and stop the  
7 running of interest pro tanto. Such a debit and any resulting  
8 credit to any account covering outstanding drafts leaves in the

9 drawer full power to stop payment or otherwise dispose of the  
10 amount and creates no trust or interest in favor of the holder.  
11 3. Unless otherwise agreed and except where a draft is drawn  
12 under a credit issued by the drawee, the drawee of an interna-  
13 tional sight draft owes the drawer no duty to pay an unadvised  
14 draft but if it does so and the draft is genuine, may appropri-  
15 ately debit the drawer's account.

## PART 8

## MISCELLANEOUS

1 Sec. 3801. Drafts in a set.  
2 1. Where a draft is drawn in a set of parts, each of which  
3 is numbered and expressed to be an order only if no other part  
4 has been honored, the whole of the parts constitutes one draft  
5 but a taker of any part may become a holder in due course of  
6 the draft.  
7 2. Any person who negotiates, indorses or accepts a single  
8 part of a draft drawn in a set thereby becomes liable to any hold-  
9 er in due course of that part as if it were the whole set, but  
10 as between different holders in due course to whom different  
11 parts have been negotiated the holder whose title first accrues  
12 has all rights to the draft and its proceeds.  
13 3. As against the drawee the first presented part of a draft  
14 drawn in a set is the part entitled to payment, or if a time draft  
15 to acceptance and payment. Acceptance of any subsequently pre-  
16 sented part renders the drawee liable thereon under subsection  
17 2. With respect both to a holder and to the drawer payment of  
18 a subsequently presented part of a draft payable at sight has  
19 the same effect as payment of a check notwithstanding an effec-

20 tive stop order (Section 4407).

21 4. Except as otherwise provided in this section, where any  
22 part of a draft in a set is discharged by payment or otherwise  
23 the whole draft is discharged.

1 Sec. 3802. Effect of instrument on obligation for which it  
2 is given.

3 1. Unless otherwise agreed where an instrument is taken for  
4 an underlying obligation

5 a. the obligation is pro tanto discharged if a bank is  
6 drawer, maker or acceptor of the instrument and there is no re-  
7 course on the instrument against the underlying obligor; and

8 b. in any other case the obligation is suspended pro tanto  
9 until the instrument is due or if it is payable on demand until  
10 its presentment. If the instrument is dishonored action may be  
11 maintained on either the instrument or the obligation; discharge  
12 of the underlying obligor on the instrument also discharges him  
13 on the obligation.

14 2. The taking in good faith of a check which is not post-  
15 dated does not of itself so extend the time on the original ob-  
16 ligation as to discharge a surety.

1 Sec. 3803. Notice to third party. Where a defendant is sued  
2 for breach of an obligation for which a third person is answer-  
3 able over under this Article he may give the third person writ-  
4 ten notice of the litigation, and the person notified may then  
5 give similar notice to any other person who is answerable over  
6 to him under this Article. If the notice states that the per-  
7 son notified may come in and defend and that if the person noti-  
8 fied does not do so he will in any action against him by the  
9 person giving the notice be bound by any determination of fact

10 common to the two litigations, then unless after reasonable re-  
11 ceipt of the notice the person notified does come in and defend  
12 he is so bound.

1 Sec. 3804. Lost, destroyed or stolen instruments. The owner  
2 of an instrument which is lost, whether by destruction, theft or  
3 otherwise, may maintain an action in his own name and recover  
4 from any party liable thereon upon due proof of his ownership,  
5 the facts which prevent his production of the instrument and its  
6 terms. The court may require security indemnifying the defend-  
7 ant against loss by reason of further claims on the instrument.

1 Sec. 3805. Instruments not payable to order or to bearer.  
2 This Article applies to any instrument whose terms do not pre-  
3 clude transfer and which is otherwise negotiable within this Ar-  
4 ticle but which is not payable to order or to bearer, except  
5 that there can be no holder in due course of such an instrument.

#### ARTICLE 4

##### BANK DEPOSITS AND COLLECTIONS

###### PART 1

###### GENERAL PROVISIONS AND DEFINITIONS

1 Sec. 4101. Short title. This Article shall be known and  
2 may be cited as Uniform Commercial Code—Bank Deposits and  
3 Collections.

1 Sec. 4102. Applicability.

2 1. To the extent that items within this Article are also with-  
3 in the scope of Articles 3 and 8, they are subject to the provi-  
4 sions of those Articles. In the event of conflict the provisions  
5 of this Article govern those of Article 3 but the provisions of  
6 Article 8 govern those of this Article.

7     2. The liability of a bank for action or nonaction with re-  
8     spect to any item handled by it for purposes of presentment, pay-  
9     ment or collection is governed by the law of the place where the  
10    bank is located.

1     Sec. 4103. Variation by agreement—measure of damages—cer-  
2     tain action constituting ordinary care.

3     1. The effect of the provisions of this Article may be varied  
4     by agreement except that no agreement can disclaim a bank's respon-  
5     sibility for its own lack of good faith or failure to exercise  
6     ordinary care or can limit the measure of damages for such lack  
7     or failure; but the parties may by agreement determine the stand-  
8     ards by which such responsibility is to be measured if such stand-  
9     ards are not manifestly unreasonable.

10    2. Federal Reserve regulations and operating letters, clear-  
11    ing house rules, and the like, have the effect of agreements un-  
12    der subsection 1, whether or not specifically assented to by all  
13    parties interested in items handled.

14    3. Action or nonaction approved by this Article or pursuant  
15    to Federal Reserve regulations or operating letters constitutes  
16    the exercise of ordinary care and, in the absence of special in-  
17    structions, action or nonaction consistent with clearing house  
18    rules and the like or with a general banking usage not disap-  
19    proved by this Article, prima facie constitutes the exercise of  
20    ordinary care.

21    4. The specification or approval of certain procedures by  
22    this Article does not constitute disapproval of other procedures  
23    which may be reasonable under the circumstances.

24    5. The measure of damages for failure to exercise ordinary

25 care in handling an item is the amount of the item reduced by an  
26 amount which could not have been realized by the use of ordinary  
27 care, and where there is bad faith it includes other damages, if  
28 any, suffered by the party as a proximate consequence.

1 Sec. 4104. Definitions and index of definitions.

2 1. In this Article unless the context otherwise requires

3 a. "Account" means any account with a bank and includes  
4 a checking, time, interest or savings account;

5 b. "Afternoon" means the period of a day between noon and  
6 midnight;

7 c. "Banking day" means that part of any day on which a  
8 bank is open to the public for carrying on substantially all of  
9 its banking functions;

10 d. "Clearing house" means any association of banks or  
11 other payors regularly clearing items;

12 e. "Customer" means any person having an account with a  
13 bank or for whom a bank has agreed to collect items and includes  
14 a bank carrying an account with another bank;

15 f. "Documentary draft" means any negotiable or nonnego-  
16 tiable draft with accompanying documents, securities or other  
17 papers to be delivered against honor of the draft;

18 g. "Item" means any instrument for the payment of money  
19 even though it is not negotiable but does not include money;

20 h. "Midnight deadline" with respect to a bank is midnight  
21 on its next banking day following the banking day on which it  
22 receives the relevant item or notice or from which the time for  
23 taking action commences to run, whichever is later;

24 i. "Properly payable" includes the availability of funds  
25 for payment at the time of decision to pay or dishonor;

26 j. "Settle" means to pay in cash, by clearing house set-  
27 tlement, in a charge or credit or by remittance, or otherwise  
28 as instructed. A settlement may be either provisional or final;

29 k. "Suspends payments" with respect to a bank means that  
30 it has been closed by order of the supervisory authorities, that  
31 a public officer has been appointed to take it over or that it  
32 ceases or refuses to make payments in the ordinary course of  
33 business.

34 2. Other definitions applying to this Article and the sec-  
35 tions in which they appear are:

36 "Collecting bank"	Section 4105.
37 "Depository bank"	Section 4105.
38 "Intermediary bank"	Section 4105.
39 "Payor bank"	Section 4105.
40 "Presenting bank"	Section 4105.
41 "Remitting bank"	Section 4105.

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

44 "Acceptance"	Section 3410.
45 "Certificate of deposit"	Section 3104.
46 "Certification"	Section 3411.
47 "Check"	Section 3104.
48 "Draft"	Section 3104.
49 "Holder in due course"	Section 3302.
50 "Notice of dishonor"	Section 3508.
51 "Presentment"	Section 3504.
52 "Protest"	Section 3509.
53 "Secondary party"	Section 3102.

54 4. In addition Article 1 contains general definitions and

55 principles of construction and interpretation applicable through-  
56 out this Article.

1. Sec. 4105. "Depository bank"—"intermediary bank"—"collect-  
2 ing bank"—"payor bank"—"presenting bank"—"remitting bank". In  
3 this Article unless the context otherwise requires:

4 a. "Depository bank" means the first bank to which an item  
5 is transferred for collection even though it is also the payor  
6 bank;

7 b. "Payor bank" means a bank by which an item is payable  
8 as drawn or accepted;

9 c. "Intermediary bank" means any bank to which an item is  
10 transferred in course of collection except the depository or  
11 payor bank;

12 d. "Collecting bank" means any bank handling the item for  
13 collection except the payor bank;

14 e. "Presenting bank" means any bank presenting an item  
15 except a payor bank;

16 f. "Remitting bank" means any payor or intermediary bank  
17 remitting for an item.

1 Sec. 4106. Separate office of a bank. A separate office of  
2 a bank is a separate bank for the purpose of computing the time  
3 within which and determining the place at or to which action may  
4 be taken or notices or orders shall be given under this Article  
5 and under Article 3.

1 Sec. 4107. Time of receipt of items.

2 1. For the purpose of allowing time to process items, prove  
3 balances and make the necessary entries on its books to deter-  
4 mine its position for the day, a bank may fix an afternoon hour  
5 of two P.M. or later as a cut-off hour for the handling of money

6 and items and the making of entries on its books.

7 2. Any item or deposit of money received on any day after a  
8 cutoff hour so fixed or after the close of the banking day may  
9 be treated as being received at the opening of the next banking  
10 day.

1 Sec. 4108. Delays.

2 1. Unless otherwise instructed, a collecting bank in a good  
3 faith effort to secure payment may, in the case of specific items  
4 and with or without the approval of any person involved, waive,  
5 modify or extend time limits imposed or permitted by this Act  
6 for a period not in excess of an additional banking day without  
7 discharge of secondary parties and without liability to its trans-  
8 feror or any prior party.

9 2. Delay by a collecting bank or payor bank beyond time lim-  
10 its prescribed or permitted by this Act or by instructions is  
11 excused if caused by interruption of communication facilities,  
12 suspension of payments by another bank, war, emergency condi-  
13 tions or other circumstances beyond the control of the bank  
14 provided it exercises such diligence as the circumstances require.

1 Sec. 4109. Process of posting. The "process of posting" means  
2 the usual procedure followed by a payor bank in determining to pay  
3 an item and in recording the payment including one or more of  
4 the following or other steps as determined by the bank:

- 5 a. verification of any signature;
- 6 b. ascertaining that sufficient funds are available;
- 7 c. Affixing a "paid" or other stamp;
- 8 d. entering a charge or entry to a customer's account;
- 9 e. correcting or reversing an entry or erroneous action
- 10 with respect to the item.

## PART 2

COLLECTION OF ITEMS: DEPOSITARY AND  
COLLECTING BANKS

1     Sec. 4201. Presumption and duration of agency status of  
2     collecting banks and provisional status of credits—applicability  
3     of Article—item indorsed “pay any bank”.

4     1. Unless a contrary intent clearly appears and prior to the  
5     time that a settlement given by a collecting bank for an item is  
6     or becomes final (subsectoin 3 of Section 4211 and Sections 4212  
7     and 4213) the bank is an agent or subagent of the owner of the  
8     item and any settlement given for the item is provisional. This  
9     provision applies regardless of the form of indorsement or lack  
10    of indorsement and even though credit given for the item is sub-  
11    ject to immediate withdrawal as of right or is in fact withdrawn;  
12    but the continuance of ownership of an item by its owner and any  
13    rights of the owner to proceeds of the item are subject to rights  
14    of a collecting bank such as those resulting from outstanding  
15    advances on the item and valid rights of setoff. When an item  
16    is handled by banks for purposes of presentment, payment and  
17    collection, the relevant provisions of this Article apply even  
18    though action of parties clearly establishes that a particular  
19    bank has purchased the item and is the owner of it.

20    2. After an item has been indorsed with the words “pay any  
21    bank” or the like, only a bank may acquire the rights of a holder

22    a. until the item has been returned to the customer ini-  
23    tiating collection; or

24    b. until the item has been specially indorsed by a bank  
25    to a person who is not a bank.

1     Sec. 4202. Responsibility for collection—when action sea-

2 sonable.

3 1. A collecting bank must use ordinary care in

4 a. presenting an item or sending it for presentment; and

5 b. sending notice of dishonor or nonpayment or returning

6 an item other than a documentary draft to the bank's transferor

7 or directly to the depository bank under subsection 2 of Section

8 4212 after learning that the item has not been paid or accepted,

9 as the case may be; and

10 c. settling for an item when the bank receives final

11 settlement; and

12 d. making or providing for any necessary protest; and

13 e. notifying its transferor of any loss or delay in trans-

14 it within a reasonable time after discovery thereof.

15 2. A collecting bank taking proper action before its midnight

16 deadline following receipt of an item, notice or payment acts

17 seasonably; taking proper action within a reasonably longer time

18 may be seasonable but the bank has the burden of so establishing.

19 3. Subject to subsection 1 a, a bank is not liable for the

20 insolvency, neglect, misconduct, mistake or default of another

21 bank or person or for loss or destruction of an item in transit

22 or in the possession of others.

1 Sec. 4203. Effect of instructions. Subject to the provisions

2 of Article 3 concerning conversion of instruments (Section 3419)

3 and the provisions of both Article 3 and this Article concerning

4 restrictive indorsements only a collecting bank's transferor can

5 give instructions which affect the bank or constitute notice to

6 it and a collecting bank is not liable to prior parties for any

7 action taken pursuant to such instructions or in accordance with

8 any agreement with its transferor.

1     Sec. 4204. Methods of sending and presenting—sending direct  
2     to payor bank.

3     1. A collecting bank must send items by reasonably prompt  
4     method taking into consideration any relevant instructions, the  
5     nature of the item, the number of such item on hand, and the  
6     cost of collection involved and the method generally used by it  
7     or others to present such items.

8     2. A collecting bank may send

9     a. any item direct to the payor bank;

10    b. any item to any nonbank payor if authorized by its  
11    transferor; and

12    c. any item other than documentary drafts to any nonbank  
13    payor, if authorized by Federal Reserve regulation or operating  
14    letter, clearing house rule or the like.

15    3. Presentment may be made by a presenting bank at a place  
16    where the payor bank has requested that presentment be made.

1     Sec. 4205. Supplying missing indorsement—no notice from  
2     prior indorsement.

3     1. A depository bank which has taken an item for collection  
4     may supply any indorsement of the customer which is necessary  
5     to title unless the item contains the words "payee's indorsement  
6     required" or the like. In the absence of such a requirement a  
7     statement placed on the item by the depository bank to the effect  
8     that the item was deposited by a customer or credited to his  
9     account is effective as the customer's indorsement.

10    2. An intermediary bank, or payor bank which is not a de-  
11    pository bank, is neither given notice nor otherwise affected by  
12    a restrictive indorsement of any person except the bank's im-  
13    mediate transferor.

1     Sec. 4206. Transfer between banks. Any agreed method which  
2 identifies the transferor bank is sufficient for the item's fur-  
3 ther transfer to another bank.

1     Sec. 4207. Warranties of customer and collecting bank on  
2 transfer of presentment of items—time for claims.

3     1. Each customer or collecting bank who obtains payment or  
4 acceptance of an item and each prior customer and collecting bank  
5 warrants to the payor bank or other payor who in good faith pays  
6 or accepts the item that

7       a. he has a good title to the item or is authorized to  
8 obtain payment or acceptance on behalf of one who has a good  
9 title; and

10      b. he has no knowledge that the signature of the maker or  
11 drawer is unauthorized, except that this warranty is not given  
12 by any customer or collecting bank that is a holder in due  
13 course and acts in good faith

14       i. to a maker with respect to the maker's own signa-  
15 ture; or

16       ii. to a drawer with respect to the drawer's own sig-  
17 nature, whether or not the drawer is also the drawee; or

18       iii. to an acceptor of an item if the holder in due  
19 course took the item after the acceptance or obtained the ac-  
20 ceptance without knowledge that the drawer's signature was un-  
21 authorized; and

22      c. the item has not been materially altered, except that  
23 this warranty is not given by any customer or collecting bank  
24 that is a holder in due course and acts in good faith

25       i. to the maker of a note; or

26       ii. to the drawer of a draft whether or not the drawer

27 is also the drawee; or

28     iii. to the acceptor of an item with respect to an alteration  
29     made prior to the acceptance if the holder in due course  
30     took the item after the acceptance, even though the acceptance  
31     provided "payable as originally drawn" or equivalent terms; or

32     iv. to the acceptor of an item with respect to an alteration  
33     made after the acceptance.

34     2. Each customer and collecting bank who transfers an item  
35     and receives a settlement or other consideration for it warrants  
36     to his transferee and to any subsequent collecting bank who  
37     takes the item in good faith that

38     a. he has a good title to the item or is authorized to  
39     obtain payment or acceptance on behalf of one who has a good  
40     title and the transfer is otherwise rightful; and

41     b. all signatures are genuine or authorized; and

42     c. the item has not been materially altered; and

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

44     e. he has no knowledge of any insolvency proceeding instituted  
45     with respect to the maker or acceptor or the drawer  
46     of an unaccepted item.

47 In addition each customer and collecting bank so transferring  
48 an item and receiving a settlement or other consideration engages  
49 that upon dishonor and any necessary notice of dishonor and protest  
50 he will take up the item.

51     3. The warranties and the engagement to honor set forth in  
52     the two preceding subsections arise notwithstanding the absence  
53     of indorsement or words of guaranty or warranty in the transfer  
54     or presentment and a collecting bank remains liable for their  
55     breach despite remittance to its transferor. Damages for breach

56 of such warranties or engagement to honor shall not exceed the  
57 consideration received by the customer or collecting bank respon-  
58 sible plus finance charges and expenses related to the item, if  
59 any.

60 4. Unless a claim for breach of warranty under this section  
61 is made within a reasonable time after the person claiming learns  
62 of the breach, the person liable is discharged to the extent of  
63 any loss caused by the delay in making claim.

1 Sec. 4208. Security interest of collecting bank in items,  
2 accompanying documents and proceeds.

3 1. A bank has a security interest in an item and any accom-  
4 panying documents or the proceeds of either

5 a. in case of an item deposited in an account to the ex-  
6 tent to which credit given for the item has been withdrawn or  
7 applied;

8 b. in case of an item for which it has given credit avail-  
9 able for withdrawal as of right, to the extent of the credit given  
10 whether or not the credit is drawn upon and whether or not  
11 there is a right of charge-back; or

12 c. if it makes an advance on or against the item.

13 2. When credit which has been given for several items receiv-  
14 ed at one time or pursuant to a single agreement is withdrawn or  
15 applied in part the security interest remains upon all the items,  
16 any accompanying documents or the proceeds of either. For the  
17 purpose of this section, credits first given are first withdrawn.

18 3. Receipt by a collecting bank of a final settlement for an  
19 item is a realization on its security interest in the item, accom-  
20 panying documents and proceeds. To the extent and so long as the  
21 bank does not receive final settlement for the item or give up

22 possession of the item or accompanying documents for purposes  
23 other than collection, the security interest continues and is  
24 subject to the provisions of Article 9 except that

25 a. no security agreement is necessary to make the security  
26 interest enforceable (subsection 1 b of Section 9203); and

27 b. no filing is required to perfect the security interest;

28 and

29 c. the security interest has priority over conflicting  
30 perfected security interests in the item, accompanying documents  
31 or proceeds.

1 Sec. 4209. When the bank gives value for purposes of holder in  
2 due course. For purposes of determining its status as a holder  
3 in due course, the bank has given value to the extent that it  
4 has a security interest in an item provided that the bank other-  
5 wise complies with the requirements of Section 3302 on what con-  
6 stitutes a holder in due course.

1 Sec. 4210. Presentment by notice of item not payable by,  
2 through or at a bank—liability of secondary parties.

3 1. Unless otherwise instructed, a collecting bank may present  
4 an item not payable by, through or at a bank by sending to the  
5 party to accept or pay a written notice that the bank holds the  
6 item for acceptance or payment. The notice must be sent in time  
7 to be received on or before the day when presentment is due and  
8 the bank must meet any requirement of the party to accept or pay  
9 under Section 3505 by the close of the bank's next banking day  
10 after it knows of the requirement.

11 2. Where presentment is made by notice and neither honor  
12 nor request for compliance with a requirement under Section

13 3505 is received by the close of business on the day after ma-  
14 turity or in the case of demand items by the close of business  
15 on the third banking day after notice was sent, the presenting  
16 bank may treat the item as dishonored and charge any secondary  
17 party by sending him notice of the facts.

1 Sec. 4211. Media of remittance—provisional and final settle-  
2 ment in remittance cases.

3 1. A collecting bank may take in settlement of an item

4 a. a check of the remitting bank or of another bank on  
5 any bank except the remitting bank; or

6 b. a cashier's check or similar primary obligation of a  
7 remitting bank which is a member of or clears through a member  
8 of the same clearing house or group as the collecting bank; or

9 c. appropriate authority to charge an account of the re-  
10 mitting bank or of another bank with the collecting bank; or

11 d. if the item is drawn upon or payable by a person other  
12 than a bank, a cashier's check, certified check or other bank  
13 check or obligation.

14 2. If before its midnight deadline the collecting bank prop-  
15 erly dishonors a remittance check or authorization to charge on  
16 itself or presents or forwards for collection a remittance in-  
17 strument of or on another bank which is of a kind approved by  
18 subsection 1 or has not been authorized by it, the collecting  
19 bank is not liable to prior parties in the event of the dishonor  
20 of such check, instrument or authorization.

21 3. A settlement for an item by means of a remittance instru-  
22 ment or authorization to charge is or becomes a final settle-  
23 ment as to both the person making and the person receiving the  
24 settlement

25 a. if the remittance instrument or authorization to charge  
26 is of a kind approved by subsection 1 or has not been authorized  
27 by the person receiving the settlement and in either case the  
28 person receiving the settlement acts seasonably before its mid-  
29 night deadline in presenting, forwarding for collection or pay-  
30 ing the instrument or authorization—at the time the remittance  
31 instrument or authorization is finally paid by the payor by  
32 which it is payable;

33 b. if the person receiving the settlement has authorized  
34 remittance by a nonbank check or obligation or by a cashier's  
35 check or similar primary obligation of or a check upon the payor  
36 or other remitting bank which is not of a kind approved by sub-  
37 section 1 b,—at the time of receipt of such remittance check  
38 or obligation; or

39 c. if in a case not covered by subparagraphs a or b the  
40 person receiving the settlement fails to seasonably present, for-  
41 ward for collection, pay or return a remittance instrument or  
42 authorization to it to charge before its midnight deadline,—at  
43 such midnight deadline.

1 Sec. 4212. Right of charge-back or refund.

2 1. If a collecting bank has made provisional settlement with  
3 its customer for an item and itself fails by reason of dishonor,  
4 suspension of payments by a bank or otherwise to receive a set-  
5 tlement for the item which is or becomes final, the bank may  
6 revoke the settlement given by it, charge back the amount of  
7 any credit given for the item to its customer's account or ob-  
8 tain refund from its customer whether or not it is able to re-  
9 turn the items if by its midnight deadline or within a longer  
10 reasonable time after it learns the facts it returns the item

11 or sends notification of the facts. These rights to revoke,  
12 charge-back and obtain refund terminate if and when a settlement  
13 for the item received by the bank is or becomes final (subsection  
14 3 of Section 4211 and subsections 2 and 3 of Section 4213).

15 2. Within the time and manner prescribed by this section  
16 and Section 4301, an intermediary or payor bank, as the case may  
17 be, and return an unpaid item directly to the depositary bank  
18 and may send for collection a draft on the depositary bank and  
19 obtain reimbursement. In such case, if the depositary bank has  
20 received provisional settlement for the item, it must reimburse  
21 the bank drawing the draft and any provisional credits for the  
22 item between banks shall become and remain final.

23 3. A depositary bank which is also the payor may charge-  
24 back the amount of an item to its customer's account or obtain  
25 refund in accordance with the section governing return of an  
26 item received by a payor bank for credit on its books (Section  
27 4301).

28 4. The right to charge-back is not affected by  
29 a. prior use of the credit given for the item; or  
30 b. failure by any bank to exercise ordinary care with  
31 respect to the item but any bank so failing remains liable.

32 5. A failure to charge-back or claim refund does not affect  
33 other rights of the bank against the customer or any other party.

34 6. If credit is given in dollars as the equivalent of the  
35 value of an item payable in a foreign currency the dollar amount  
36 of any charge-back or refund shall be calculated on the basis of  
37 the buying sight rate for the foreign currency prevailing on the  
38 day when the person entitled to the charge-back or refund learns  
39 that it will not receive payment in ordinary course.

1     Sec. 4213. Final payment of item by payor bank—when provi-  
2     sional debits and credits become final—when certain credits  
3     become available for withdrawal.

4     1. An item is finally paid by a payor bank when the bank has  
5     done any of the following, whichever happens first:

6         a. paid the item in cash; or

7         b. settled for the item without reserving a right to re-  
8     voke the settlement and without having such right under statute,  
9     clearing house rule or agreement; or

10        c. completed the process of posting the item to the in-  
11     dicated account of the drawer, maker or other person to be  
12     charged therewith; or

13        d. made a provisional settlement for the item and failed  
14     to revoke the settlement in the time and manner permitted by  
15     statute, clearing house rule or agreement.

16     Upon a final payment under subparagraphs b, c or d the payor  
17     bank shall be accountable for the amount of the item.

18     2. If provisional settlement for an item between the present-  
19     ing and payor banks is made through a clearing house or by debits  
20     or credits in an account between them, then to the extent that  
21     provisional debits or credits for the item are entered in ac-  
22     counts between the presenting and payor banks or between the  
23     presenting and successive prior collecting banks seriatim, they  
24     become final upon final payment of the item by the payor bank.

25     3. If a collecting bank receives a settlement for an item  
26     which is or becomes final (subsection 3 of Section 4211, sub-  
27     section 2 of Section 4213) the bank is accountable to its cus-  
28     tomer for the amount of the item and any provisional credit giv-  
29     en for the item in an account with its customer becomes final.

30 4. Subject to any right of the bank to apply the credit to  
31 an obligation of the customer, credit given by a bank for an  
32 item in an account with its customer becomes available for with-  
33 drawal as of right

34 a. in any case where the bank has received a provisional  
35 settlement for the item,—when such settlement becomes final  
36 and the bank has had a reasonable time to learn that the settle-  
37 ment is final;

38 b. in any case where the bank is both a depository bank  
39 and a payor bank and the item is finally paid,—at the opening  
40 of the bank's second banking day following receipt of the item.

41 5. A deposit of money in a bank is final when made but, sub-  
42 ject to any right of the bank to apply the deposit to an obliga-  
43 tion of the customer, the deposit becomes available for with-  
44 drawal as of right at the opening of the bank's next banking  
45 day following receipt of the deposit.

1 Sec. 4214. Insolvency and preference.

2 1. Any item in or coming into the possession of a payor or  
3 collecting bank which suspends payment and which item is not  
4 finally paid shall be returned by the receiver, trustee or agent  
5 in charge of the closed bank to the presenting bank or the closed  
6 bank's customer.

7 2. if a payor bank finally pays an item and suspends pay-  
8 ments without making a settlement for the item with its customer  
9 or the presenting bank which settlement is or becomes final, the  
10 owner of the item has a preferred claim against the payor bank.

11 3. If a payor bank gives or a collecting bank gives or re-  
12 ceives a provisional settlement for an item and thereafter sus-  
13 pends payments, the suspension does not prevent or interfere

14 with the settlement becoming final if such finality occurs auto-  
15 matically upon the lapse of certain time or the happening of  
16 certain events (subsection 3 of Section 4211, subsections 1 d,  
17 2 and 3 of Section 4213).

18 4. If a collecting bank receives from subsequent parties set-  
19 tlement for an item which settlement is or becomes final and  
20 suspends payments without making a settlement for the item with  
21 its customer which is or becomes final, the owner of the item  
22 has a preferred claim against such collecting bank.

### PART 3

#### COLLECTION OF ITEMS: PAYOR BANKS

1 Sec. 4301. Deferred posting—recovery of payment by return  
2 of items—time of dishonor.

3 1. Where an authorized settlement for a demand item (other  
4 than a documentary draft) received by a payor bank otherwise than  
5 for immediate payment over the counter has been made before mid-  
6 night of the banking day of receipt the payor bank may revoke  
7 the settlement and recover any payment if before it has made fi-  
8 nal payment (subsection 1 of Section 4213) and before its mid-  
9 night deadline it

10 a. returns the item; or

11 b. sends written notice of dishonor or nonpayment if the  
12 item is held for protest or is otherwise unavailable for return  
13 and the item or notice includes the reason for dishonor.

14 2. If a demand item is received by a payor bank for credit  
15 on its books it may return such item or send notice of dishonor  
16 and may revoke any credit given or recover the amount thereof  
17 withdrawn by its customer, if it acts within the time limit and  
18 in the manner specified in the preceding subsection.

19 3. Unless previous notice of dishonor has been sent an item  
20 is dishonored at the time when for purposes of dishonor it is  
21 returned or notice sent in accordance with this section.

22 4. An item is returned:

23 a. as to an item received through a clearing house, when  
24 it is delivered to the presenting or last collecting bank or to  
25 the clearing house or is sent or delivered in accordance with  
26 its rules; or

27 b. in all other cases, when it is sent or delivered to  
28 the bank's customer or transferor or pursuant to his instructions.

1 Sec. 4302. Payor bank's responsibility for late return of  
2 item. In the absence of a valid defense such as breach of a  
3 presentment warranty (subsection 1 of Section 4207), settlement  
4 effected or the like, if an item is presented on and received

5 by a payor bank the bank is accountable for the amount of

6 a. a demand item other than a documentary draft whether  
7 properly payable or not if the bank, in any case where it is not  
8 also the depositary bank, retains the item beyond midnight of  
9 the banking day of receipt without settling for it or, regard-  
10 less of whether it is also the depositary bank, does not pay or  
11 return the item or send notice of dishonor until after its mid-  
12 night deadline; or

13 b. Any other properly payable item unless within the time  
14 allowed for acceptance or payment of that item the bank either  
15 accepts or pays the item or returns it and accompanying documents.

1 Sec. 4303. When items subject to notice, stop order, legal  
2 process or setoff—order in which items may be charged or cer-  
3 tified.

4 1. Any knowledge, notice or stop order received by, legal

5 process served upon or setoff exercised by a payor bank, whether  
6 or not effective under other rules of law to terminate, suspend  
7 or modify the bank's right or duty to pay an item or to charge  
8 its customer's account for the item, comes too late to so ter-  
9minate, suspend or modify such right or duty if the knowledge,  
10 notice, stop order or legal process is received or served and a  
11 reasonable time for the bank to act thereon expires or the set-  
12 off is exercised after the bank has done any of the following:

- 13 a. accepted or certified the item;
  - 14 b. paid the item in cash;
  - 15 c. settled for the item without reserving a right to re-  
16voke the settlement and without having such right under statute,  
17 clearing house rule or agreement;
  - 18 d. completed the process of posting the item to the indi-  
19cated account of the drawer, maker or other person to be charged  
20 therewith or otherwise has evidenced by examination of such in-  
21dicated account and by action its decision to pay the item; or
  - 22 e. become accountable for the amount of the item under  
23 subsection 1 d of Section 4213 and Section 4302 dealing with  
24 the payor bank's responsibility for late return of items.
- 25 2. Subject to the provisions of subsection 1 items may be  
26 accepted, paid, certified or charged to the indicated account of  
27 its customer in any order convenient to the bank.

#### PART 4

### RELATIONSHIP BETWEEN PAYOR BANK

#### AND ITS CUSTOMER

1 Sec. 4401. When bank may charge customer's account.

- 2 1. As against its customer, a bank may charge against his  
3 account any item which is otherwise properly payable from that

4 account even though the charge creates an overdraft.

5 2. A bank which in good faith makes payment to a holder may

6 charge the indicated account of its customer according to

7 a. the original tenor of his altered item; or

8 b. the tenor of his completed item, even though the bank

9 knows the item has been completed unless the bank has notice

10 that the completion was improper.

1 Sec. 4402. Bank's liability to customer for wrongful dis-

2 honor. A payor bank is liable to its customer for damages prox-

3 imately caused by the wrongful dishonor of an item. When the

4 dishonor occurs through mistake liability is limited to actual

5 damages proved. If so proximately caused and proved damages may

6 include damages for an arrest or prosecution of the customer or

7 other consequential damages. Whether any consequential damages

8 are proximately caused by the wrongful dishonor is a question

9 of fact to be determined in each case.

1 Sec. 4403. Customer's right to stop payment—burden of proof

2 of loss.

3 1. A customer may by order to his bank stop payment of any

4 item payable for his account but the order must be received at

5 such time and in such manner as to afford the bank a reasonable

6 opportunity to act on it prior to any action by the bank with

7 respect to the item described in Section 4303.

8 2. An oral order is binding upon the bank only for fourteen

9 calendar days unless confirmed in writing within that period. A

10 written order is effective for only six months unless renewed in

11 writing.

12 3. The burden of establishing the fact and amount of loss

13 resulting from the payment of an item contrary to a binding stop

14 payment order is on the customer.

1 Sec. 4404. Bank not obligated to pay check more than six  
2 months old. A bank is under no obligation to a customer having  
3 a checking account to pay a check, other than a certified check,  
4 which is presented more than six months after its date, but it  
5 may charge its customer's account for a payment made thereafter  
6 in good faith.

1 Sec. 4405. Death or incompetence of customer.

2 1. A payor or collecting bank's authority to accept, pay or  
3 collect an item or to account for proceeds of its collection if  
4 otherwise effective is not rendered ineffective by incompetence  
5 of a customer of either bank existing at the time the item is  
6 issued or its collection is undertaken if the bank does not know  
7 of an adjudication of incompetence. Neither death nor incom-  
8 petence of a customer revokes such authority to accept, pay, col-  
9 lect or account until the bank knows of the fact of death or of  
10 an adjudication of incompetence and has reasonable opportunity  
11 to act on it.

12 2. Even with knowledge a bank may for ten days after the  
13 date of death pay or certify checks drawn on or prior to that  
14 date unless ordered to stop payment by a person claiming an in-  
15 terest in the account.

1 Sec. 4406. Customer's duty to discover and report unauthor-  
2 ized signature or alteration.

3 1. When a bank sends to its customer a statement of account  
4 accompanied by items paid in good faith in support of the debit  
5 entries or holds the statement and items pursuant to a request  
6 or instructions of its customer or otherwise in a reasonable  
7 manner makes the statement and items available to the customer,

8 the customer must exercise reasonable care and promptness to  
9 examine the statement and items to discover his unauthorized  
10 signature or any alteration on an item and must notify the bank  
11 promptly after discovery thereof.

12 2. If the bank establishes that the customer failed with re-  
13 spect to an item to comply with the duties imposed on the cus-  
14 tomer by subsection 1 the customer is precluded from asserting  
15 against the bank.

16 a. his unauthorized signature or any alteration on the  
17 item if the bank also establishes that it suffered a loss by  
18 reason of such failure; and

19 b. an unauthorized signature or alteration by the same  
20 wrongdoer or any other item paid in good faith by the bank after  
21 the first item and statement was available to the customer for  
22 a reasonable period not exceeding fourteen calendar days and  
23 before the bank receives notification from the customer of any  
24 such unauthorized signature or alteration.

25 3. The preclusion under subsection 2 does not apply if the  
26 customer establishes lack of ordinary care on the part of the  
27 bank in paying the item(s).

28 4. Without regard to care or lack of care of either the cus-  
29 tomer or the bank a customer who does not within one year from  
30 the time the statement and items are made available to the cus-  
31 tomer (subsection 1) discover and report his unauthorized sig-  
32 nature or any alteration on the face or back of the item or does  
33 not within three years from that time discover and report any  
34 unauthorized indorsement is precluded from asserting against the  
35 bank such unauthorized signature or indorsement or such altera-  
36 tion.

37 5. If under this section a payor bank has a valid defense  
38 against a claim of a customer upon or resulting from payment of  
39 an item and waives or fails upon request to assert the defense  
40 the bank may not assert against any collecting bank or other  
41 prior party presenting or transferring the item a claim based  
42 upon the unauthorized signature or alteration giving rise to the  
43 customer's claim.

1 Sec. 4407. Payor bank's right to subrogation on improper  
2 payment. If a payor bank has paid an item over the stop payment  
3 order of the drawer or maker or otherwise under circumstances  
4 giving a basis for objection by the drawer or maker, to prevent  
5 unjust enrichment and only to the extent necessary to prevent  
6 loss to the bank by reason of its payment of the item, the payor  
7 bank shall be subrogated to the rights

8 a. of any holder in due course on the item against the  
9 drawer or maker; and

10 b. of the payee or any other holder of the item against  
11 the drawer or make either on the item or under the transaction  
12 out of which the item arose; and

13 c. of the drawer or maker against the payee or any other  
14 holder of the item with respect to the transaction out of which  
15 the item arose.

## PART 5

### COLLECTION OF DOCUMENTARY DRAFTS

1 Sec. 4501. Handling of documentary drafts—duty to send for  
2 presentment and to notify customer of dishonor. A bank which  
3 takes a documentary draft for collection must present or send  
4 the draft and accompanying documents for presentment and upon  
5 learning that the draft has not been paid or accepted in due

6 course must seasonably notify its customer of such fact even  
7 though it may have discounted or brought the draft or extended  
8 credit available for withdrawal as of right.

1 Sec. 4502. Presentment of "on arrival" drafts. When a draft  
2 or the relevant instructions require presentment "on arrival",  
3 "when goods arrive" or the like, the collecting bank need not  
4 present until in its judgment a reasonable time for arrival of  
5 the goods has expired. Refusal to pay or accept because the  
6 goods have not arrived is not dishonor; the bank must notify  
7 its transferor of such refusal but need not present the draft  
8 again until it is instructed to do so or learns of the arrival  
9 of the goods.

1 Sec. 4503. Responsibility of presenting bank for documents  
2 and goods—report of reasons for dishonor—referee in case of  
3 need. Unless otherwise instructed and except as provided in  
4 Article 5 a bank presenting a documentary draft

5 a. must deliver the documents to the drawee on acceptance  
6 of the draft if it is payable more than three days after present-  
7 ment; otherwise, only on payment; and

8 b. upon dishonor, either in the case of presentment for  
9 acceptance or presentment for payment, may seek and follow in-  
10 structions from any referee in case of need designated in the  
11 draft or if the presenting bank does not choose to utilize his  
12 services must use diligence and good faith to ascertain the  
13 reason for dishonor, must notify its transferor of the dishonor  
14 and of the results of its effort to ascertain the reasons there-  
15 for and must request instructions.

16 But the presenting bank is under no obligation with respect to  
17 goods represented by the documents except to follow any reasona-

18 ble instructions seasonably received; it has a right to reimburse-  
19 ment for any expense incurred in following instructions and to  
20 prepayment of or indemnity for such expenses.

1 Sec. 4504. Privilege of presenting bank to deal with goods—  
2 security interest for expenses.

3 1. A presenting bank which, following the dishonor of a docu-  
4 mentary draft, has seasonably requested instructions but does  
5 not receive them within a reasonable time may store, sell, or  
6 otherwise deal with the goods in any reasonable manner.

7 2. For its reasonable expenses incurred by action under sub-  
8 section 1 the presenting bank has a lien upon the goods or their  
9 proceeds, which may be foreclosed in the same manner as an un-  
10 paid seller's lien.

## ARTICLE 5

### LETTERS OF CREDIT

1 Sec. 5101. Short title. This Article shall be known and may  
2 be cited as Uniform Commercial Code—Letters of Credit.

1 Sec. 5102. Scope.

2 1. This Article applies

3 a. to a credit issued by a bank if the credit requires  
4 a documentary draft or a documentary demand for payment; and

5 b. to a credit issued by a person other than a bank if  
6 the credit requires that the draft or demand for payment be  
7 accompanied by a document of title; and

8 c. to a credit issued by a bank or other person if the  
9 credit is not within subparagraphs a or b but conspicuously  
10 states that it is a letter of credit or is conspicuously so  
11 entitled.

12 2. Unless the engagement meets the requirements of subsec-

13 tion 1, this Article does not apply to engagements to make ad-  
14 vances or to honor drafts or demands for payment, to authorities  
15 to pay or purchase, to guarantees or to general agreements.

16 3. This Article deals with some but not all of the rules  
17 and concepts of letters of credit as such rules or concepts have  
18 developed prior to this Act or may hereafter develop. The fact  
19 that this Article states a rule does not by itself require, imply  
20 or negate application of the same or a converse rule to a situa-  
21 tion not provided for or to a person not specified by this Article.

1 Sec. 5103. Definitions.

2 1. In this Article unless the context otherwise requires

3 a. "Credit" or "letter of credit" means an engagement by  
4 a bank or other person made at the request of a customer and of  
5 a kind within the scope of this Article (Section 5102) that the  
6 issuer will honor drafts or other demands for payment upon com-  
7 pliance with the conditions specified in the credit. A credit  
8 may be either revocable or irrevocable. The engagement may be  
9 either an agreement to honor or a statement that the bank or other  
10 person is authorized to honor.

11 b. A "documentary draft" or a "documentary demand for pay-  
12 ment" is one honor of which is conditioned upon the presentation  
13 of a document or documents. "Document" means any paper includ-  
14 ing document of title, security, invoice, certificate, notice  
15 of default and the like.

16 c. An "issuer" is a bank or other person issuing a credit.

17 d. A "beneficiary" of a credit is a person who is entitled  
18 under its terms to draw or demand payment.

19 e. An "advising bank" is a bank which gives notification

20 of the issuance of a credit by another bank.

21 f. A "confirming bank" is a bank which engages either  
22 that it will itself honor a credit already issued by another  
23 bank or that such a credit will be honored by the issuer or a  
24 third bank.

25 g. A "customer" is a buyer or other person who causes an  
26 issuer to issue a credit. The term also includes a bank which  
27 procures issuance or confirmation on behalf of that bank's  
28 customer.

29 2. Other definitions applying to this Article and the sec-  
30 tions in which they appear are:

31 "Notification of Credit". Section 5108.  
32 "Presenter". Section 5112 sub. 3.

33 3. Definitions in other Articles applying to this Article  
34 and the sections in which they appear are:

35 "Accept" or "Acceptance". Section 3410.  
36 "Contract for sale". Section 2106.  
37 "Draft". Section 3104.  
38 "Holder in due course". Section 3302.  
39 "Midnight deadline". Section 4104.  
40 "Security". Section 8102.

41 4. In addition, Article 1 contains general definitions and  
42 principles of construction and interpretation applicable through-  
43 out this Article.

1 Sec. 5104. Formal requirements—signing.

2 1. Except as otherwise required in subsection 1 c of Sec-  
3 tion 5102 on scope, no particular form of phrasing is required  
4 for a credit. A credit must be in writing and signed by the

5 issuer and a confirmation must be in writing and signed by the  
6 confirming bank. A modification of the terms of a credit or con-  
7 firmation must be signed by the issuer or confirming bank.

8 2. A telegram may be a sufficient signed writing if it  
9 identifies its sender by an authorized authentication. The  
10 authentication may be in code and the authorized naming of the  
11 issuer in an advice of credit is a sufficient signing.

1 Sec. 5105. Consideration. No consideration is necessary to  
2 establish a credit or to enlarge or otherwise modify its terms.

1 Sec. 5106. Time and effect of establishment of credit.

2 1. Unless otherwise agreed a credit is established

3 a. as regards the customer as soon as a letter of credit  
4 is sent to him or the letter of credit or an authorized written  
5 advice of its issuance is sent to the beneficiary; and

6 b. as regards the beneficiary when he receives a letter  
7 of credit or an authorized written advice of its issuance.

8 2. Unless otherwise agreed once an irrevocable credit is  
9 established as regards the customer it can be modified or re-  
10 voked only with the consent of the customer and once it is es-  
11 tablished as regards the beneficiary it can be modified or re-  
12 voked only with his consent.

13 3. Unless otherwise agreed after a revocable credit is estab-  
14 lished it may be modified or revoked by the issuer without notice  
15 to or consent from the customer or beneficiary.

16 4. Notwithstanding any modification or revocation of a rev-  
17 ocable credit any person authorized to honor or negotiate under  
18 the terms of the original credit is entitled to reimbursement  
19 for or honor of any draft or demand for payment duly honored or

20 negotiated before receipt of notice of the modification or rev-  
21 ocation and the issuer in turn is entitled to reimbursement from  
22 its customer.

1 Sec. 5107. Advice of credit—confirmation—error in state-  
2 ment of terms.

3 1. Unless otherwise specified an advising bank by advising  
4 a credit issued by another bank does not assume any obligation  
5 to honor drafts drawn or demands for payment made under the cred-  
6 it but it does assume obligation for the accuracy of its own  
7 statement.

8 2. A confirming bank by confirming a credit becomes directly  
9 obligated on the credit to the extent of its confirmation as  
10 though it were its issuer and acquires the rights of an issuer.

11 3. Even though an advising bank incorrectly advised the  
12 terms of a credit it has been authorized to advise the credit  
13 is established as against the issuer to the extent of its orig-  
14 inal terms.

15 4. Unless otherwise specified the customer bears as against  
16 the issuer all risks of transmission and reasonable translation  
17 or interpretation of any message relating to a credit.

1 Sec. 5108. "Notation credit"—exhaustion of credit.

2 1. A credit which specifies that any person purchasing or  
3 paying drafts drawn or demands for payment made under it must  
4 note the amount of the draft or demand on the letter or advice  
5 of credit is a "notation credit".

6 2. Under a notation credit

7 a. a person paying the beneficiary or purchasing a draft  
8 or demand for payment from him acquires a right to honor only if

9 the appropriate notation is made and by transferring or forward-  
10 ing for honor the documents under the credit such a person war-  
11 rants to the issuer that the notation has been made; and

12 b. unless the credit or a signed statement that an appro-  
13 priate notation has been made accompanies the draft or demand  
14 for payment the issuer may delay honor until evidence of nota-  
15 tion has been procured which is satisfactory to it but its  
16 obligation and that of its customer continue for a reasonable  
17 time not exceeding thirty days to obtain such evidence

18 3. If the credit is not a notation credit

19 a. the issuer may honor complying drafts or demands for  
20 payment presented to it in the order in which they are presented  
21 and is discharged pro tanto by honor of any such draft or demand;

22 b. as between competing good faith purchasers or comply-  
23 ing drafts or demands the person first purchasing has priority  
24 over a subsequent purchaser even though the later purchased  
25 draft or demand has been first honored.

1 Sec. 5109. Issuer's obligation to its customer.

2 1. An issuer's obligation to its customer includes good faith  
3 and observance of any general banking usage but unless otherwise  
4 agreed does not include liability or responsibility

5 a. for performance of the underlying contract for sale or  
6 other transaction between the customer and the beneficiary; or

7 b. for any act or omission of any person other than itself  
8 or its own branch or for loss or destruction of a draft, demand  
9 or document in transit or in the possession of others; or

10 c. based on knowledge or lack of knowledge of any usage  
11 of any particular trade.

12 2. An issuer must examine documents with care so as to as-

13 certain that on their face they appear to comply with the terms  
14 of the credit but unless otherwise agreed assumes no liability  
15 or responsibility for the genuineness, falsification or effect  
16 of any document which appears on such examination to be regular  
17 on its face.

18 3. A nonbank issuer is not bound by any banking usage of  
19 which it has no knowledge.

1 Sec. 5110. Availability of credit in portions—presenter's  
2 reservation of lien or claim.

3 1. Unless otherwise specified a credit may be used in por-  
4 tions in the discretion of the beneficiary.

5 2. Unless otherwise specified a person by presenting a docu-  
6 mentary draft or demand for payment under a credit relinquishes  
7 upon its honor all claims to the documents and a person by trans-  
8 ferring such draft or demand or causing such presentment author-  
9 izes such relinquishment. An explicit reservation of claim makes  
10 the draft or demand noncomplying.

1 Sec. 5111. Warranties on transfer and presentment.

2 1. Unless otherwise agreed the beneficiary by transferring  
3 or presenting a documentary draft or demand for payment warrants  
4 to all interested parties that the necessary conditions of the  
5 credit have been complied with. This is in addition to any war-  
6 ranties arising under Articles 3, 4, 7 and 8.

7 2. Unless otherwise agreed a negotiating, advising, confirm-  
8 ing, collecting or issuing bank presenting or transferring a  
9 draft or demand for payment under a credit warrants only the  
10 matters warranted by a collecting bank under Article 4 and any  
11 such bank transferring a document warrants only the matters war-  
12 ranted by an intermediary under Articles 7 and 8.

1     Sec. 5112. Time allowed for honor or rejection—withholding  
2 honor or rejection by consent—“presenter”.

3     1. A bank to which a documentary draft or demand for payment  
4 is presented under a credit may without dishonor of the draft,  
5 demand or credit

6     a. defer honor until the close of the third banking day  
7 following receipt of the documents; and

8     b. further defer honor if the presenter has expressly or  
9 impliedly consented thereto.

10 Failure to honor within the time here specified constitutes dis-  
11 honor of the draft or demand and of the credit except as other-  
12 wise provided in subsection 4 of Section 5114 on conditional  
13 payment.

14     2. Upon dishonor the bank may unless otherwise instructed  
15 fulfill its duty to return the draft or demand and the documents  
16 by holding them at the disposal of the presenter and sending him  
17 an advice to that effect.

18     3. “Presenter” means any person presenting a draft or demand  
19 for payment for honor under a credit even though that person is  
20 a confirming bank or other correspondent which is acting under  
21 an issuer’s authorization.

1     Sec. 5113. Indemnities.

2     1. A bank seeking to obtain (whether for itself or another)  
3 honor, negotiation or reimbursement under a credit may give an  
4 indemnity to induce such honor, negotiation or reimbursement.

5     2. An indemnity agreement inducing honor, negotiation or  
6 reimbursement

7     a. unless otherwise explicitly agreed applies to defects  
8 in the documents but not in the goods; and

9 b. unless a longer time is explicitly agreed expires at  
10 the end of ten business days following receipt of the documents  
11 by the ultimate customer unless notice of objection is sent be-  
12 fore such expiration date. The ultimate customer may send notice  
13 of objection to the person from whom he received the documents  
14 and any bank receiving such notice is under a duty to send notice  
15 to its transferor before its midnight deadline.

1 Sec. 5114. Issuer's duty and privilege to honor—right to  
2 reimbursement.

3 1. An issuer must honor a draft or demand for payment which  
4 complies with the terms of the relevant credit regardless of  
5 whether the goods or documents conform to the underlying contract  
6 for sale or other contract between the customer and the benefi-  
7 ciary. The issuer is not excused from honor of such a draft or  
8 demand by reason of an additional general term that all documents  
9 must be satisfactory to the issuer, but an issuer may require  
10 that specified documents must be satisfactory to it.

11 2. Unless otherwise agreed when documents appear on their  
12 face to comply with the terms of a credit but a required docu-  
13 ment does not in fact conform to the warranties made on nego-  
14 tiation or transfer of a document of title (Section 7507) or of  
15 a security (Section 8306) or is forged or fraudulent or there  
16 is fraud in the transaction

17 a. the issuer must honor the draft or demand for payment  
18 if honor is demanded by a negotiating bank of other holder of  
19 the draft or demand which has taken the draft or demand under  
20 the credit and under circumstances which would make it a holder  
21 in due course (Section 3302) and in an appropriate case would  
22 make it a person to whom a document of title has been duly nego-

23 tiated (Section 7502) or a bona fide purchaser of a security  
24 (Section 8302); and

25 b. in all other cases as against its customer, an issuer  
26 acting in good faith may honor the draft or demand for payment  
27 despite notification from the customer of fraud, forgery or other  
28 defect not apparent on the face of the documents but a court of  
29 appropriate jurisdiction may enjoin such honor.

30 3. Unless otherwise agreed an issuer which has duly honored  
31 a draft or demand for payment is entitled to immediate reimburse-  
32 ment of any payment made under the credit and to be put in effec-  
33 tively available funds not later than the day before maturity of  
34 any acceptance made under the credit.

35 4. When a credit provides for payment by the issuer on  
36 receipt of notice that the required documents are in the posses-  
37 sion of a correspondent or other agent of the issuer

38 a. any payment made on receipt of such notice is condi-  
39 tional; and

40 b. the issuer may reject documents which do not comply  
41 with the credit if it does so within three banking days follow-  
42 ing its receipt of the documents; and

43 c. in the event of such rejection, the issuer is entitled  
44 by charge-back or otherwise to return of the payment made.

45 5. In the case covered by subsection 4 failure to reject docu-  
46 ments within the time specified in subparagraph b constitutes  
47 acceptance of the documents and makes the payment final in favor  
48 of the beneficiary.

1 Sec. 5115. Remedy for improper dishonor or anticipatory  
2 repudiation.

3 1. When an issuer wrongfully dishonors a draft or demand for  
4 payment presented under a credit the person entitled to honor  
5 has with respect to any documents the rights of a person in the  
6 position of a seller (Section 2707) and may recover from the  
7 issuer the face amount of the draft or demand together with inci-  
8 dental damages under Section 2710 on seller's incidental damages  
9 and interest but less any amount realized by resale or other use  
10 or disposition of the subject matter of the transaction. In the  
11 event no resale or other utilization is made the documents, goods  
12 or other subject matter involved in the transaction must be  
13 turned over to the issuer on payment of judgment.

14 2. When an issuer wrongfully cancels or otherwise repudi-  
15 ates a credit before presentment of a draft or demand for pay-  
16 ment drawn under it the beneficiary has the rights of a seller  
17 after anticipatory repudiation by the buyer under Section 2610  
18 if he learns of the repudiation in time reasonably to avoid  
19 procurement of the required documents. Otherwise the beneficiary  
20 has an immediate right of action for wrongful dishonor.

1 Sec. 5116. Transfer and assignment.

2 1. The right to draw under a credit can be transferred or  
3 assigned only when a credit is expressly designated as trans-  
4 ferable or assignable.

5 2. Even though the credit specifically states that it is non-  
6 transferable or nonassignable the beneficiary may before perform-  
7 ance of the conditions of the credit assign his right to proceeds.  
8 Such an assignment is an assignment of a contract right under  
9 Article 9 on Secured Transactions and is governed by that Article  
10 except that

11 a. the assignment is ineffective until the letter of credit  
12 or advice of credit is delivered to the assignee which delivery  
13 constitutes perfection of the security interest under Article 9;  
14 and

15 b. the issuer may honor drafts or demands for payment  
16 drawn under the credit until it receives a notification of the  
17 assignment signed by the beneficiary which reasonably identifies  
18 the credit involved in the assignment and contains a request to  
19 pay the assignee; and

20 c. after what reasonably appears to be such a notification  
21 has been received the issuer may without dishonor refuse to ac-  
22 cept or pay even to a person otherwise entitled to honor until  
23 the letter of credit or advice of credit is exhibited to the  
24 issuer.

25 3. Except where the beneficiary has effectively assigned his  
26 right to draw or his right to proceeds, nothing in this section  
27 limits his right to transfer or negotiate drafts or demands drawn  
28 under the credit.

1 Sec. 5117. Insolvency of bank holding funds for documentary  
2 credit.

3 1. Where an issuer or an advising or confirming bank or a  
4 bank which has for a customer procured issuance of a credit by  
5 another bank becomes insolvent before final payment under the  
6 credit and the credit is one to which this Article is made appli-  
7 cable by paragraphs a or b of Section 5102 subsection 1 on scope,  
8 the receipt or allocation of funds or collateral to secure or  
9 meet obligations under the credit shall have the following results:

10 a. to the extent of any funds or collateral turned over

- 11 after or before the insolvency as indemnity against or specif-  
12 ically for the purpose of payment of drafts or demands for pay-  
13 ment drawn under the designated credit, the drafts or demands  
14 are entitled to payment in preference over depositors or other  
15 general creditors of the insurer or bank; and
- 16 b. on expiration of the credit or surrender of the bene-  
17 ficiary's rights under it unused any person who has given such  
18 funds or collateral is similarly entitled to return thereof; and
- 19 c. a change to a general or current account with a bank  
20 if specifically consented to for the purpose of indemnity against  
21 or payment of drafts or demands for payment drawn under the des-  
22 igned credit falls under the same rules as if the funds had  
23 been drawn out in cash and then turned over with specific in-  
24 structions.
- 25 2. After honor or reimbursement under this section the cus-  
26 tomer or other person for whose account the insolvent bank has  
27 acted is entitled to receive the documents involved.

## ARTICLE 6

### BULK TRANSFERS

- 1 Sec. 6101. Short title. This Article shall be known and  
2 may be cited as Uniform Commercial Code—Bulk Transfers.
- 1 Sec. 6102. "Bulk transfers"—transfers of equipment—enter-  
2 prises subject to this Article—bulk transfers subject to this  
3 Article.
- 4 1. A "bulk transfer" is any transfer in bulk and not in the  
5 ordinary course of the transferor's business of a major part in  
6 value of the materials, supplies, merchandise or other inventory  
7 (Section 9109) of an enterprise subject to this Article.

8     2. A transfer of a substantial part of the equipment (Section  
9 9109) of such an enterprise is a bulk transfer if it is made in  
10 connection with a bulk transfer of inventory, but not otherwise.

11     3. The enterprise subject to this Article are all those  
12 whose principal business is the sale of merchandise from stock,  
13 including those who manufacture what they sell.

14     4. Except as limited by the following section all bulk trans-  
15 fers of goods located within this state are subject to this  
16 Article.

1     Sec. 6103. Transfers excepted from this Article. The follow-  
2 ing transfers are not subject to this Article:

3     1. Those made to give security for the performance of an  
4 obligation:

5     2. General assignments for the benefit of all the creditors  
6 of the transferor, and subsequent transfers by the assignee  
7 thereunder;

8     3. Transfers in settlement or realization of a lien or other  
9 security interest;

10     4. Sales by executors, administrators, receivers, trustees  
11 in bankruptcy, or any public officer under judicial process;

12     5. Sales made in the course of judicial or administrative  
13 proceedings for the dissolution or reorganization of a corpora-  
14 tion and of which notice is sent to the creditors of the corpora-  
15 tion pursuant to order of the court or administrative agency;

16     6. Transfers to a person maintaining a known place of busi-  
17 ness in this State who becomes bound to pay the debts of the  
18 transferor in full and gives public notice of that fact, and who  
19 is solvent after becoming so bound;

20 7. A transfer to a new business enterprise organized to take  
21 over and continue the business, if public notice of the trans-  
22 action is given and the new enterprise assumes the debts of the  
23 transferor and he receives nothing from the transaction except  
24 an interest in the new enterprise junior to the claims of credi-  
25 tors;

26 8. Transfers of property which is exempt from execution.  
27 Public notice under subsection 6 or subsection 7 may be given  
28 by publishing once a week for two consecutive weeks in a news-  
29 paper of general circulation where the transferor had its prin-  
30 cipal place of business in this state an advertisement including  
31 the names and addresses of the transferor and transferee and  
32 the effective date of the transfer.

1 Sec. 6104. Schedule of property, list of creditors.

2 1. Except as provided with respect to auction sales (Section  
3 6108), a bulk transfer subject to this Article is ineffective  
4 against any creditor of the transferor unless:

5 a. The transferee requires the transferor to furnish a  
6 list of his existing creditors prepared as stated in this sec-  
7 tion; and

8 b. The parties prepare a schedule of the property trans-  
9 ferred sufficient to identify it; and

10 c. The transferee preserves the list and schedule for six  
11 months next following the transfer and permits inspection of  
12 either or both and copying therefrom at all reasonable hours by  
13 any creditor of the transferor, or files the list and schedule  
14 in the office of the Recorder in the county or counties where  
15 the goods are located.

16 2. The list of creditors must be signed and sworn to or af-

17 firmed by the transferor or his agent. It must contain the  
18 names and business addresses of all creditors of the transferor,  
19 with the amounts when known, and also the names of all persons  
20 who are known to the transferor to assert claims against him  
21 even though such claims are disputed. If the transferor is the  
22 obligor of an outstanding issue of bonds, debentures or the like  
23 as to which there is an indenture trustee, the list of creditors  
24 need include only the name and address of the indenture trustee  
25 and the aggregate outstanding principal amount of the issue.

26 3. Responsibility for the completeness and accuracy of the  
27 list of creditors rests on the transferor, and the transfer is  
28 not rendered ineffective by errors or omissions therein unless  
29 the transferee is shown to have had knowledge.

1 Sec. 6105. Notice to creditors. In addition to the require-  
2 ments of the preceding section, any bulk transfer subject to this  
3 Article except one made by auction sale (Section 6108) is ineffec-  
4 tive against any creditor of the transferor unless at least ten  
5 days before he takes possession of the goods or pays for them,  
6 whichever happens first, the transferee gives notice of the  
7 transfer in the manner and to the persons hereafter provided  
8 (Section 6107).

1 Sec. 6106. This section reserved for future use.

1 Sec. 6107. The notice.

2 1. The notice to creditors (Section 6105) shall state:

3 a. that a bulk transfer is about to be made; and

4 b. the names and business addresses of the transferor and  
5 transferee, and all other business names and addresses used by  
6 the transferor within three years last past so far as known to  
7 the transferee; and

- 8 c. whether or not all the debts of the transferor are to  
9 be paid in full as they fall due as a result of the transaction,  
10 and if so, the address to which creditors should send their bills.
- 11 2. If the debts of the transferor are not to be paid in full  
12 as they fall due or if the transferee is in doubt on that point  
13 then the notice shall state further:
- 14 a. the location and general description of the property  
15 to be transferred and the estimated total of the transferor's  
16 debts;
- 17 b. the address where the schedule of property and list  
18 of creditors (Section 6104) may be inspected;
- 19 c. whether the transfer is to pay existing debts and if  
20 so the amount of such debts and to whom owing;
- 21 d. whether the transfer is for new consideration and if  
22 so the amount of such consideration and the time and place of  
23 payment.
- 24 3. The notice in any case shall be delivered personally or  
25 sent by registered or certified mail to all the persons shown on  
26 the list of creditors furnished by the transferor (Section 6104)  
27 and to all other persons who are known to the transferee to hold  
28 or assert claims against the transferor.

1 Sec. 6108. Auction sales—"auctioneer".

- 2 1. A bulk transfer is subject to this Article even though it  
3 is by sale at auction, but only in the manner and with the results  
4 stated in this section.
- 5 2. The transferor shall furnish a list of his creditors and  
6 assist in the preparation of a schedule of the property to be  
7 sold, both prepared as before stated (Section 6104).

8 3. The person or persons other than the transferor who di-  
9 rect, control or are responsible for the auction are collectively  
10 called the "auctioneer". The auctioneer shall:

11 a. receive and retain the list of creditors and prepare  
12 and retain the schedule of property for the period stated in  
13 this Article (Section 6104);

14 b. give notice of the auction personally or by registered  
15 or certified mail at least ten days before it occurs to all per-  
16 sons shown on the list of creditors and to all other persons who  
17 are known to him to hold or assert claims against the transferor.

18 4. Failure of the auctioneer to perform any of these duties  
19 does not affect the validity of the sale or the title of the  
20 purchasers, but if the auctioneer knows that the auction con-  
21 stitutes a bulk transfer such failure renders the auctioneer li-  
22 able to the creditors of the transferor as a class for the sums  
23 owing to them from the transferor up to but not exceeding the  
24 net proceeds of the auction. If the auctioneer consists of  
25 several persons their liability is joint and several.

1 Sec. 6109. What creditors protected. The creditors of the  
2 transferor mentioned in this Article are those holding claims  
3 based on transactions or events occurring before the bulk trans-  
4 fer, but creditors who become such after notice to creditors is  
5 given (Sections 6105 and 6107) are not entitled to notice.

1 Sec. 6110. Subsequent transfers. When the title of a trans-  
2 feree to property is subject to a defect by reason of his non-  
3 compliance with the requirements of this Article, then:

4 1. a purchaser of any of such property from such transferee  
5 who pays no value or who takes with notice of such noncompliance  
6 takes subject to such defect, but

7 2. a purchaser for value in good faith and without such no-  
8 tice takes free of such defect.

1 Sec. 6111. Limitation of actions and levies. No action un-  
2 der this Article shall be brought nor levy made more than six  
3 months after the date on which the transferee took possession  
4 of the goods unless the transfer has been concealed. If the  
5 transfer has been concealed, actions may be brought or levies  
6 made within six months after its discovery.

#### ARTICLE 7

### WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

#### PART 1

#### GENERAL

1 Sec. 7101. Short title. This Article shall be known and may  
2 be cited as Uniform Commercial Code—Documents of Title.

1 Sec. 7102. Definitions and index of definitions.

2 1. In this Article, unless the context otherwise requires:

3 a. "Bailee" means the person who by a warehouse receipt,  
4 bill of lading or other document of title acknowledges posses-  
5 sion of goods and contracts to deliver them.

6 b. "Consignee" means the person named in a bill to whom  
7 or to whose order the bill promises delivery.

8 c. "Consignor" means the person named in a bill as the  
9 person from whom the goods have been received for shipment.

10 d. "Delivery order" means a written order to deliver  
11 goods directed to a warehouseman, carrier or other person who  
12 in the ordinary course of business issues warehouse receipts or  
13 bills of lading.

14 e. "Document" means document of title as defined in the  
15 general definitions in Article 1 (Section 1201).

16 f. "Goods" means all things which are treated as movable  
17 for the purposes of a contract of storage or transportation.

18 g. "Issuer" means a bailee who issues a document except  
19 that in relation to an unaccepted delivery order it means the  
20 person who orders the possessor of goods to deliver. Issuer in-  
21 cludes any person for whom an agent or employee purports to act  
22 in issuing a document if the agent or employee has real or appar-  
23 ent authority to issue documents, notwithstanding that the issuer  
24 received no goods or that the goods were misdescribed or that in  
25 any other respect the agent or employee violated his instructions.

26 b. "Warehouseman" is a person engaged in the business of  
27 storing goods for hire.

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

30 "Duly negotiate". Section 7501.

31 "Person entitled under the document". Section 7403 subsec-  
32 tion 4.

33 3. Definitions in other Articles applying to this Article  
34 and the sections in which they appear are:

35 "Contract for sale". Section 2106.

36 "Overseas". Section 2323.

37 "Receipt" of goods. Section 2103.

38 4. In addition Article 1 contains general definitions and  
39 principles of construction and interpretation applicable through-  
40 out this Article.

1 Sec. 7103. Relation of Article to treaty, statute, tariff,

2 classification or regulation. To the extent that any treaty or  
3 statute of the United States, regulatory statute of this State  
4 or tariff, classification or regulation filed or issued pursuant  
5 thereto is applicable, the provisions of this Article are subject  
6 thereto.

1 Sec. 7104. Negotiable and nonnegotiable warehouse receipt,  
2 bill of lading or other document of title.

3 1. A warehouse receipt, bill of lading or other document of  
4 title is negotiable

5 a. if by its terms the goods are to be delivered to bear-  
6 er or to the order of a named person; or

7 b. where recognized in overseas trade, if it runs to a  
8 named person or assigns.

9 2. Any other document is nonnegotiable. A bill of lading in  
10 which it is stated that the goods are consigned to a named person  
11 is not made negotiable by a provision that the goods are to be  
12 delivered only against a written order signed by the same or an-  
13 other named person.

1 Sec. 7105. Construction against negative implication. The  
2 omission from either Part 2 or Part 3 of this Article of a pro-  
3 vision corresponding to a provision made in the other Part does  
4 not imply that a corresponding rule of law is not applicable.

## PART 2

### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

1 Sec. 7201. Who may issue a warehouse receipt—storage under  
2 government bond.

3 1. A warehouse receipt may be issued by any warehouseman.

4 2. Where goods including distilled spirits and agricultural

5 commodities are stored under a statute requiring a bond against  
6 withdrawal or a license for the issuance of receipts in the na-  
7 ture of warehouse receipts, a receipt issued for the goods has  
8 like effect as a warehouse receipt even though issued by a per-  
9 son who is the owner of the goods and is not a warehouseman.

1 Sec. 7202. Form of warehouse receipt—essential terms—op-  
2 tional terms.

3 1. A warehouse receipt need not be in any particular form.

4 2. Unless a warehouse receipt embodies within its written  
5 or printed terms each of the following, the warehouseman is  
6 liable for damages caused by the omission to a person injured  
7 thereby: ||

8 a. the location of the warehouse where the goods are  
9 stored; |

10 b. the date of issue of the receipt;

11 c. the consecutive number of the receipt;

12 d. a statement whether the goods received will be deliv-  
13 ered to the bearer, to a specified person, or to a specified  
14 person or his order;

15 e. the rate of storage and handling charges, except that  
16 where goods are stored under a field warehousing arrangement a  
17 statement of that fact is sufficient on a nonnegotiable receipt;

18 f. a description of the goods or of the packages contain-  
19 ing them;

20 g. the signature of the warehouseman, which may be made  
21 by his authorized agent;

22 h. if the receipt is issued for goods of which the ware-  
23 houseman is owner, either solely or jointly or in common with

24 others, the fact of such ownership; and  
25 i. a statement of the amount of advances made and of li-  
26 abilities incurred for which the warehouseman claims a lien or  
27 security interest (Section 7209). If the precise amount of such  
28 advances made or of such liabilities incurred is, at the time of  
29 the issue of the receipt, unknown to the warehouseman or to his  
30 agent who issues it, a statement of the fact that advances have  
31 been made or liabilities incurred and the purpose thereof is  
32 sufficient.

33 3. A warehouseman may insert in his receipt any other terms  
34 which are not contrary to the provisions of this Act and do not  
35 impair his obligation of delivery (Section 7403) or his duty of  
36 care (Section 7204). Any contrary provisions shall be ineffec-  
37 tive.

1 Sec. 7203. Liability for nonreceipt or misdescription. A  
2 party to or purchaser for value in good faith of a document of  
3 title other than a bill of lading relying in either case upon  
4 the description therein of the goods may recover from the issuer  
5 damages caused by the nonreceipt or misdescription of the goods,  
6 except to the extent that the document conspicuously indicates  
7 that the issuer does not know whether any part or all of the  
8 goods in fact were received or conform to the description, as  
9 where the description is in terms of marks or labels or kind,  
10 quantity or condition, or the receipt or description is quali-  
11 fied by "contents, condition and quality unknown", "said to  
12 contain" or the like, if such indication be true, or the party  
13 or purchaser otherwise has notice.

1 Sec. 7204. Duty of care—contractual limitation of warehouse-  
2 man's liability.

3 1. A warehouseman is liable for damages for loss of or in-  
4 jury to the goods caused by his failure to exercise such care  
5 in regard to them as a reasonably careful man would exercise  
6 under like circumstances but unless otherwise agreed he is not  
7 liable for damages which could not have been avoided by the ex-  
8 ercise of such care.

9 2. Damages may be limited by a term in the warehouse receipt  
10 or storage agreement limiting the amount of liability in case of  
11 loss or damage, and setting forth a specific liability per article  
12 or item, or value per unit of weight, beyond which the warehouse-  
13 man shall not be liable; provided, however, that such liability  
14 may on written request of the bailor at the time of signing such  
15 storage agreement or within a reasonable time after receipt of  
16 the warehouse receipt be increased on part or all of the goods  
17 thereunder, in which event increased rates may be charged based  
18 on such increased valuation, but that no such increase shall be  
19 permitted contrary to a lawful limitation of liability contained  
20 in the warehouseman's tariff, if any. No such limitation is ef-  
21 fective with respect to the warehouseman's liability for conver-  
22 sion to his own use.

23 3. Reasonable provisions as to the time and manner of pre-  
24 senting claims and instituting actions based on the bailment  
25 may be included in the warehouse receipt or tariff.

1 Sec. 7205. Title under warehouse receipt defeated in certain  
2 cases. A buyer in the ordinary course of business of fungible  
3 goods sold and delivered by a warehouseman who is also in the  
4 business of buying and selling such goods takes free of any  
5 claim under a warehouse receipt even though it has been duly

6 negotiated.

1 Sec. 7206. Termination of storage at warehouseman's option.

2 1. A warehouseman may on notifying the person on whose ac-  
3 count the goods are held and any other person known to claim an  
4 interest in the goods require payment of any charges and removal  
5 of the goods from the warehouse at the termination of the period  
6 of storage fixed by the document, or, if no period is fixed,  
7 within a stated period not less than thirty days after the no-  
8 tification. If the goods are not removed before the date spec-  
9 ified in the notification, the warehouseman may sell them in ac-  
10 cordance with the provisions of the section on enforcement of a  
11 warehouseman's lien (Section 7210).

12 2. If a warehouseman in good faith believes that the goods  
13 are about to deteriorate or decline in value to less than the  
14 amount of his lien within the time prescribed in subsection 1  
15 for notification, advertisement and sale, the warehouseman may  
16 specify in the notification any reasonable shorter time for re-  
17 moval of the goods and in case the goods are not removed, may  
18 sell them at public sale held not less than one week after a  
19 single advertisement or posting.

20 3. If as a result of a quality or condition of the goods of  
21 which the warehouseman had no notice at the time of deposit the  
22 goods are a hazard to other property or to the warehouse or to  
23 persons, the warehouseman may sell the goods at public or pri-  
24 vate sale without advertisement on reasonable notification to  
25 all persons known to claim an interest in the goods. If the  
26 warehouseman after a reasonable effort is unable to sell the  
27 goods he may dispose of them in any lawful manner and shall in-

28 cur no liability by reason of such disposition.

29 4. The warehouseman must deliver the goods to any person  
30 entitled to them under this Article upon due demand made at any  
31 time prior to sale or other disposition under this section.

32 5. The warehouseman may satisfy his lien from the proceeds  
33 of any sale or disposition under this section but must hold the  
34 balance for delivery on the demand of any person to whom he  
35 would have been bound to deliver the goods.

1 Sec. 7207. Goods must be kept separate—fungible goods.

2 1. Unless the warehouse receipt otherwise provides, a ware-  
3 houseman must keep separate the goods covered by each receipt so  
4 as to permit at all times identification and delivery of those  
5 goods except that different lots of fungible goods may be com-  
6 mingled.

7 2. Fungible goods so commingled are owned in common by the  
8 persons entitled thereto and the warehouseman is severally liable  
9 to each owner for that owner's share. Where because of over-  
10 issue a mass of fungible goods is insufficient to meet all the  
11 receipts which the warehouseman has issued against it, the per-  
12 sons entitled include all holders to whom overissued receipts  
13 have been duly negotiated.

1 Sec. 7208. Altered warehouse receipts. Where a blank in a  
2 negotiable warehouse receipt has been filled in without author-  
3 ity, a purchaser for value and without notice of the want of  
4 authority may treat the insertion as authorized. Any other un-  
5 authorized alteration leaves any receipt enforceable against the  
6 issuer according to its original tenor.

1 Sec. 7209. Lien of warehouseman.

2 1. A warehouseman has a lien against the bailor on the goods

3 covered by a warehouse receipt or on the proceeds thereof in his  
4 possession for charges for storage or transportation (including  
5 demurrage and terminal charges), insurance, labor, or charges  
6 present or future in relation to the goods, and for expenses  
7 necessary for preservation of the goods or reasonably incurred  
8 in their sale pursuant to law. If the person on whose account  
9 the goods are held is liable for like charges or expenses in rela-  
10 tion to other goods whenever deposited and it is stated in the  
11 receipt that a lien is claimed for charges and expenses in rela-  
12 tion to other goods, the warehouseman also has a lien against  
13 him for such charges and expenses whether or not the other goods  
14 have been delivered by the warehouseman. But against a person  
15 to whom a negotiable warehouse receipt is duly negotiated a  
16 warehouseman's lien is limited to charges in an amount or at a  
17 rate specified on the receipt or if no charges are so specified  
18 then to a reasonable charge for storage of the goods covered  
19 by the receipt subsequent to the date of the receipt.

20 2. The warehouseman may also reserve a security interest  
21 against the bailor for a maximum amount specified on the receipt  
22 for charges other than those specified in subsection 1, such as  
23 for money advanced and interest. Such a security interest is  
24 governed by the Article on Secured Transactions (Article 9).

25 3. A warehouseman's lien for charges and expenses under sub-  
26 section 1 or a security interest under subsection 2 is also ef-  
27 fective against any person who so entrusted the bailor with pos-  
28 session of the goods that a pledge of them by him to a good faith  
29 purchaser for value would have been valid but is not effective  
30 against a person as to whom the document confers no right in  
31 the goods covered by it under Section 7503.

32 4. A warehouseman loses his lien on any goods which he vol-  
33 untarily delivers or which he unjustifiably refuses to deliver.

1 Sec. 7210. Enforcement of warehouseman's lien.

2 1. Except as provided in subsection 2, a warehouseman's lien  
3 may be enforced by public or private sale of the goods in block  
4 or in parcels, at any time or place and on any terms which are  
5 commercially reasonable, after notifying all persons known to  
6 claim an interest in the goods. Such notification must include  
7 a statement of the amount due, the nature of the proposed sale  
8 and the time and place of any public sale. The fact that a bet-  
9 ter price could have been obtained by a sale at a different time  
10 or in a different method from that selected by the warehouseman  
11 is not of itself sufficient to establish that the sale was not  
12 made in a commercially reasonable manner. If the warehouseman  
13 either sells the goods in the usual manner in any recognized  
14 market therefor, or if he sells at the price current in such  
15 market at the time of his sale, or if he has otherwise sold in  
16 conformity with commercially reasonable practices among dealers  
17 in the type of goods sold, he has sold in a commercially reason-  
18 able manner. A sale of more goods than apparently necessary to  
19 be offered to insure satisfaction of the obligation is not com-  
20 mercially reasonable except in cases covered by the preceding  
21 sentence.

22 2. A warehouseman's lien on goods other than goods stored by  
23 a merchant in the course of his business may be enforced only as  
24 follows:

25 a. All persons known to claim an interest in the goods  
26 must be notified.

27 b. The notification must be delivered in person or sent

28 by registered or certified letter to the last known address of  
29 any person to be notified.

30 c. The notification must include an itemized statement of  
31 the claim, a description of the goods subject to the lien, a de-  
32 mand for payment within a specified time not less than ten days  
33 after receipt of the notification, and a conspicuous statement  
34 that unless the claim is paid within that time the goods will be  
35 advertised for sale and sold by auction at a specified time and  
36 place.

37 d. The sale must conform to the terms of the notification.

38 e. The sale must be held at the nearest suitable place  
39 to that where the goods are held or stored.

40 f. After the expiration of the time given in the notifica-  
41 tion, an advertisement of the sale must be published once a week  
42 for two weeks consecutively in a newspaper of general circula-  
43 tion where the sale is to be held. The advertisement must in-  
44 clude a description of the goods, the name of the person on whose  
45 account they are being held, and the time and place of the sale.  
46 The sale must take place at least fifteen days after the first  
47 publication. If there is no newspaper of general circulation  
48 where the sale is to be held, the advertisement must be posted  
49 at least ten days before the sale in not less than six conspicuous  
50 places in the neighborhood of the proposed sale.

51 3. Before any sale pursuant to this section any person claim-  
52 ing a right in the goods may pay the amount necessary to satisfy  
53 the lien and the reasonable expenses incurred under this section.  
54 In that event the goods must not be sold, but must be retained  
55 by the warehouseman subject to the terms of the receipt and this

56 Article.

57 4. The warehouseman may buy at any public sale pursuant to  
58 this section.

59 5. A purchaser in good faith of goods sold to enforce a ware-  
60 houseman's lien takes the goods free of any rights of persons  
61 against whom the lien was valid, despite noncompliance by the  
62 warehouseman with the requirements of this section.

63 6. The warehouseman may satisfy his lien from the proceeds  
64 of any sale pursuant to this section but must hold the balance,  
65 if any, for delivery on demand to any person to whom he would  
66 have been bound to deliver the goods.

67 7. The rights provided by this section shall be in addition  
68 to all other rights allowed by law to a creditor against his  
69 debtor.

70 8. Where a lien is on goods stored by a merchant in the  
71 course of his business the lien may be enforced in accordance  
72 with either subsection 1 or 2.

73 9. The warehouseman is liable for damages caused by failure  
74 to comply with the requirements for sale under this section and  
75 in case of willful violation is liable for conversion.

### PART 3

#### BILLS OF LADING: SPECIAL PROVISIONS

1 Sec. 7301. Liability for nonreceipt or misdescription—"said  
2 to contain"—"shipper's load and count"—improper handling.

3 1. A consignee of a nonnegotiable bill who has given value  
4 in good faith or a holder to whom a negotiable bill has been duly  
5 negotiated relying in either case upon the description therein  
6 of the goods, or upon the date therein shown, may recover from  
7 the issuer damages caused by the misdating of the bill or the

8 nonreceipt or misdescription of the goods, except to the extent  
9 that the document indicates that the issuer does not know wheth-  
10 er any part or all of the goods in fact were received or conform  
11 to the description, as where the description is in terms of marks  
12 or labels or kind, quantity, or condition or the receipt or  
13 description is qualified by "contents or condition of contents  
14 of packages unknown", "said to contain", "shipper's weight, load  
15 and count" or the like, if such indication be true.

16 2. When goods are loaded by an issuer who is a common car-  
17 rier, the issuer must count the packages of goods if package  
18 freight and ascertain the kind and quantity if bulk freight. In  
19 such cases "shipper's weight, load and count" or other words in-  
20 dicating that the description was made by the shipper are inef-  
21 fective except as to freight concealed by packages.

22 3. When bulk freight is loaded by a shipper who makes avail-  
23 able to the issuer adequate facilities for weighing such freight,  
24 an issuer who is a common carrier must ascertain the kind and  
25 quantity within a reasonable time after receiving the written  
26 request of the shipper to do so. In such cases "shipper's weight"  
27 or other words of like purport are ineffective.

28 4. The issuer may by inserting in the bill the words "ship-  
29 per's weight, load and count" or other words of like purport in-  
30 dicate that the goods were loaded by the shipper; and if such  
31 statement be true the issuer shall not be liable for damages  
32 caused by the improper loading. But their omission does not  
33 imply liability for such damages.

34 5. The shipper shall be deemed to have guaranteed to the  
35 issuer the accuracy at the time of shipment of the description,  
36 marks, labels, number, kind, quantity, condition and weight,

37 as furnished by him; and the shipper shall indemnify the issuer  
38 against damage caused by inaccuracies in such particulars. The  
39 right of the issuer to such indemnity shall in no way limit his  
40 responsibility and liability under the contract of carriage to  
41 any person other than the shipper.

1 Sec. 7302. Through bills of lading and similar documents.

2 1. The issuer of a through bill of lading or other document  
3 embodying an undertaking to be performed in part by persons act-  
4 ing as its agents or by connecting carriers is liable to anyone  
5 entitled to recover on the document for any breach by such other  
6 persons or by a connecting carrier of its obligation under the  
7 document but to the extent that the bill covers an undertaking  
8 to be performed overseas or in territory not contiguous to the  
9 continental United States or an undertaking including matters  
10 other than transportation this liability may be varied by agree-  
11 ment of the parties.

12 2. Where goods covered by a thorough bill of lading or other  
13 document embodying an undertaking to be performed in part by  
14 persons other than the issuer are received by any such person,  
15 he is subject with respect to his own performance while the goods  
16 are in his possession to the obligation of the issuer. His ob-  
17 ligation is discharged by delivery of the goods to another such  
18 person pursuant to the document, and does not include liability  
19 for breach by any other such persons or by the issuer.

20 3. The issuer of such through bill of lading or other docu-  
21 ment shall be entitled to recover from the connecting carrier or  
22 such other person in possession of the goods when the breach of  
23 the obligation under the document occurred, the amount it may be  
24 required to pay to anyone entitled to recover on the document

25 therefor, as may be evidenced by any receipt, judgment, or tran-  
26 script thereof, and the amount of any expense reasonably incurred  
27 by it in defending any action brought by anyone entitled to recover  
28 on the document therefor.

1 Sec. 7303. Diversion—reconsignment—change of instructions.

2 1. Unless the bill of lading otherwise provides, the carrier  
3 may deliver the goods to a person or destination other than that  
4 stated in the bill or may otherwise dispose of the goods on in-  
5 structions from

6 a. the holder of a negotiable bill; or

7 b. the consignor on a nonnegotiable bill notwithstanding  
8 contrary instructions from the consignee; or

9 c. the consignee on a nonnegotiable bill in the absence  
10 of contrary instructions from the consignor, if the goods have  
11 arrived at the billed destination or if the consignee is in pos-  
12 session of the bill; or

13 d. the consignee on a nonnegotiable bill if he is entitled  
14 as against the consignor to dispose of them.

15 2. Unless such instructions are noted on a negotiable bill  
16 of lading, a person to whom the bill is duly negotiated can  
17 hold the bailee according to the original terms.

1 Sec. 7304. Bills of lading in a set.

2 1. Except where customary in overseas transportation, a bill  
3 of lading must not be issued in a set of parts. The issuer is  
4 liable for damages caused by violation of this subsection.

5 2. Where a bill of lading is lawfully drawn in a set of  
6 parts, each of which is numbered and expressed to be valid only  
7 if the goods have not been delivered against any other part, the  
8 whole of the parts constitute one bill.

9     3. Where a bill of lading is lawfully issued in a set of  
10 parts and different parts are negotiated to different persons,  
11 the title of the holder to whom the first due negotiation is  
12 made prevails as to both the document and the goods even though  
13 any later holder may have received the goods from the carrier  
14 in good faith and discharged the carrier's obligation by surren-  
15 der of his part.

16     4. Any person who negotiates or transfers a single part of  
17 a bill of lading drawn in a set is liable to holders of that  
18 part as if it were the whole set.

19     5. The bailee is obliged to deliver in accordance with Part  
20 4 of this Article against the first presented part of a bill of  
21 lading lawfully drawn in a set. Such delivery discharges the  
22 bailee's obligation on the whole bill.

1     Sec. 7305. Destination bills.

2     1. Instead of issuing a bill of lading to the consignor at  
3 the place of shipment a carrier may at the request of the con-  
4 signor procure the bill to be issued at destination or at any  
5 other place designated in the request.

6     2. Upon request of anyone entitled as against the carrier to  
7 control the goods while in transit and on surrender of any out-  
8 standing bill of lading or other receipt covering such goods,  
9 the issuer may procure a substitute bill to be issued at any  
10 place designated in the request.

1     Sec. 7306. Altered bills of lading. An unauthorized alter-  
2 ation or filling in of a blank in a bill of lading leaves the  
3 bill enforceable according to its original tenor.

1     Sec. 7307. Lien of carrier.

2 1. A carrier has a lien on the goods covered by a bill of  
3 lading for charges subsequent to the date of its receipt of the  
4 goods for storage or transportation (including demurrage and  
5 terminal charges) and for expenses necessary for preservation of  
6 the goods incident to their transportation or reasonably incurred  
7 in their sale pursuant to law. But against a purchaser for value  
8 of a negotiable bill of lading a carrier's lien is limited to  
9 charges stated in the bill or the applicable tariffs, or if no  
10 charges are stated then to a reasonable charge.

11 2. A lien for charges and expenses under subsection 1 on  
12 goods which the carrier was required by law to receive for trans-  
13 portation is effective against the consignor or any person en-  
14 titled to the goods unless the carrier had notice that the con-  
15 signor lacked authority to subject the goods to such charges  
16 and expenses. Any other lien under subsection 1 is effective  
17 against the consignor and any person who permitted the bailor  
18 to have control or possession of the goods unless the carrier  
19 had notice that the bailor lacked such authority.

20 3. A carrier loses his lien on any goods which he voluntar-  
21 ily delivers or which he unjustifiably refuses to deliver.

1 **Sec. 7308. Enforcement of carrier's lien.**

2 1. A carrier's lien may be enforced by public or private  
3 sale of the goods, in bloc or in parcels, at any time or place  
4 and on any terms which are commercially reasonable, after noti-  
5 fying all persons known to claim an interest in the goods. Such  
6 notification must include a statement of the amount due, the  
7 nature of the proposed sale and the time and place of any public  
8 sale. The fact that a better price could have been obtained by  
9 a sale at a different time or in a different method from that

10 selected by the carrier is not of itself sufficient to establish  
11 that the sale was not made in a commercially reasonable manner.  
12 If the carrier either sells the goods in the usual manner in any  
13 recognized market therefor or if he sells at the price current  
14 in such market at the time of his sale or if he has otherwise  
15 sold in conformity with commercially reasonable practices among  
16 dealers in the type of goods sold he has sold in a commercially  
17 reasonable manner. A sale of more goods than apparently nec-  
18 cessary to be offered to ensure satisfaction of the obligation  
19 is not commercially reasonable except in cases covered by the  
20 preceding sentence.

21 2. Before any sale pursuant to this section any person claim-  
22 ing a right in the goods may pay the amount necessary to satisfy  
23 the lien and the reasonable expenses incurred under this section.  
24 In that event the goods must not be sold, but must be retained  
25 by the carrier subject to the terms of the bill and this Article.

26 3. The carrier may buy at any public sale pursuant to this  
27 section.

28 4. A purchaser in good faith of goods sold to enforce a car-  
29 rier's lien takes the goods free of any rights of persons against  
30 whom the lien was valid, despite noncompliance by the carrier  
31 with the requirements of this section.

32 5. The carrier may satisfy his lien from the proceeds of  
33 any sale pursuant to this section but must hold the balance, if  
34 any, for delivery on demand to any person to whom he would have  
35 been bound to deliver the goods.

36 6. The rights provided by this section shall be in addition  
37 to all other rights allowed by law to a creditor against his  
38 debtor.

39 7. A carrier's lien may be enforced in accordance with either  
40 subsection 1 or the procedure set forth in subsection 2 of Sec-  
41 tion 7210.

42 8. The carrier is liable for damages caused by failure to  
43 comply with the requirements for sale under this section and in  
44 case of willful violation is liable for conversion.

1 Sec. 7309. Duty of care—contractual limitation of carrier's  
2 liability.

3 1. A carrier who issues a bill of lading whether negotiable  
4 or nonnegotiable must exercise the degree of care in relation  
5 to the goods which a reasonably careful man would exercise un-  
6 der like circumstances. This subsection does not repeal or  
7 change any law or rule of law which imposes liability upon a  
8 common carrier for damages not caused by its negligence.

9 2. Damages may be limited by a provision that the carrier's  
10 liability shall not exceed a value stated in the document if the  
11 carrier's rates are dependent upon value and the consignor by  
12 the carrier's tariff is afforded an opportunity to declare a  
13 higher value or a value as lawfully provided in the tariff, or  
14 where no tariff is filed he is otherwise advised of such oppor-  
15 tunity; but no such limitation is effective with respect to the  
16 carrier's liability for conversion to its own use.

17 3. Reasonable provisions as to the time and manner of pre-  
18 senting claims and instituting actions based on the shipment may  
19 be included in a bill of lading or tariff.

#### PART 4

#### WAREHOUSE RECEIPTS AND BILLS OF LADING:

#### GENERAL OBLIGATIONS

1 Sec. 7401. Irregularities in issue of receipt or bill or

2 conduct of issuer. The obligations imposed by this Article  
3 on an issuer apply to a document of title regardless of the  
4 fact that

5 a. the document may not comply with the requirements of  
6 this Article or of any other law or regulation regarding its  
7 issue, form or content; or

8 b. the issuer may have violated laws regulating the con-  
9 duct of his business; or

10 c. the goods covered by the document were owned by the  
11 bailee at the time the document was issued; or

12 d. the person issuing the document does not come within  
13 the definition of warehouseman if it purports to be a warehouse  
14 receipt.

1 Sec. 7402. Duplicate receipt or bill—overissue. Neither a  
2 duplicate nor any other document of title purporting to cover goods  
3 already represented by an outstanding document of the same issuer  
4 confers any right in the goods, except as provided in the case  
5 of bills in a set, overissue of documents for fungible goods  
6 and substitutes for lost, stolen or destroyed documents. But  
7 the issuer is liable for damages caused by his overissue or fail-  
8 ure to identify a duplicate document as such by conspicuous nota-  
9 tion on its face.

1 Sec. 7403. Obligation of warehouseman or carrier to deliver—  
2 excuse.

3 1. The bailee must deliver the goods to a person entitled  
4 under the document who complies with subsections 2 and 3, unless  
5 and to the extent that the bailee establishes any of the follow-  
6 ing:

7 a. delivery of the goods to a person whose receipt was

- 8   rightful as against the claimant;
- 9    b. damage to or delay, loss or destruction of the goods
- 10 for which the bailee is not liable;
- 11    c. previous sale or other disposition of the goods in
- 12 lawful enforcement of a lien or on warehouseman's lawful termi-
- 13 nation of storage;
- 14    d. the exercise by a seller of his right to stop delivery
- 15 pursuant to the provisions of the Article on Sales (Section 2705);
- 16    e. a diversion, reconsignment or other disposition pursu-
- 17 ant to the provisions of this Article (Section 7303) or tariff
- 18 regulating such right;
- 19    f. release, satisfaction or any other fact affording a
- 20 personal defense against the claimant;
- 21    g. any other lawful excuse.
- 22    2. A person claiming goods covered by a document of title
- 23 must satisfy the bailee's lien where the bailee so requests or
- 24 where the bailee is prohibited by law from delivering the goods
- 25 until the charges are paid.
- 26    3. Unless the person claiming is one against whom the docu-
- 27 ment confers no right under Section 7503 subsection 1, he must
- 28 surrender for cancellation or notation of partial deliveries
- 29 any outstanding negotiable document covering the goods, and the
- 30 bailee must cancel the document or conspicuously note the partial
- 31 delivery thereon or be liable to any person to whom the document
- 32 is duly negotiated.
- 33    4. "Person entitled under the document" means holder in the
- 34 case of a negotiable document, or the person to whom delivery is
- 35 to be made by the terms of or pursuant to written instructions
- 36 under a nonnegotiable document.

1     Sec. 7404. No liability for good faith delivery pursuant to  
2 receipt or bill. A bailee who in good faith including observance  
3 of reasonable commercial standards has received goods and deliv-  
4 ered or otherwise disposed of them according to the terms of the  
5 document of title or pursuant to this Article is not liable there-  
6 for. This rule applies even though the person from whom he re-  
7 ceived the goods had no authority to procure the document or to  
8 dispose of the goods and even though the person to whom he deliv-  
9 ered the goods had no authority to receive them.

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:

NEGOTIATION AND TRANSFER

1     Sec. 7501. Form of negotiation and requirements of "due  
2 negotiation".

3     1. negotiable document of title running to the order of a  
4 named person is negotiated by his indorsement and delivery.  
5 After his indorsement in blank or to bearer any person can ne-  
6 gotiate it by delivery alone.

7     2. a. A negotiable document of title is also negotiated by  
8 delivery alone when by its original terms it runs to bearer.

9     b. When a document running to the order of a named per-  
10 son is delivered to him the effect is the same as if the docu-  
11 ment had been negotiated.

12    3. Negotiations of a negotiable document of title after it  
13 has been indorsed to a specified person requires indorsement by  
14 the special indorsee as well as delivery.

15    4. A negotiable document of title is "duly negotiated" when  
16 it is negotiated in the manner stated in this section to a hold-  
17 er who purchases it in good faith without notice of any defense

18 against or claim to it on the part of any person and for value,  
19 unless it is established that the negotiation is not in the reg-  
20 ular course of business or financing or involves receiving the  
21 document in settlement or payment of a money obligation.

22 5. Indorsement of a nonnegotiable document neither makes it  
23 negotiable nor adds to the transferee's rights.

24 6. The naming in a negotiable bill of a person to be notified  
25 of the arrival of the goods does not limit the negotiability of  
26 the bill nor constitute notice to a purchaser thereof of any in-  
27 terest of such person in the goods.

1 Sec. 7502. Rights acquired by due negotiation.

2 1. Subject to the following section and to the provisions of  
3 Section 7205 on fungible goods, a holder to whom a negotiable  
4 document of title has been fully negotiated acquires thereby:

5 a. title to the document;

6 b. title to the goods;

7 c. all rights accruing under the law of agency or estop-  
8 pel, including rights to goods delivered to the bailee after  
9 the document was issued; and

10 d. the direct obligation of the issuer to hold or deliver  
11 the goods according to the terms of the document free of any  
12 defense or claim by him except those arising under the terms of  
13 the document or under this Article. In the case of a delivery  
14 order the bailee's obligation accrues only upon acceptance and  
15 the obligation acquired by the holder is that the issuer and  
16 any indorser will procure the acceptance of the bailee.

17 2. Subject to the following section, title and rights so ac-  
18 quired are not defeated by any stoppage of the goods represented  
19 by the document or by surrender of such goods by the bailee,

20 and are not impaired even though the negotiation or any prior  
21 negotiation constituted a breach of duty or even though any per-  
22 son has been deprived of possession of the document by misrep-  
23 resentation, fraud, accident, mistake, duress, loss, theft or  
24 conversion, or even though a previous sale or other transfer of  
25 the goods or document has been made to a third person.

1 Sec. 7503. Document of title to goods defeated in certain  
2 cases.

3 1. A document of title confers no right in goods against a  
4 person who before issuance of the document had a legal interest  
5 or a perfected security interest in them and who neither  
6 a. delivered or entrusted them or any document of title  
7 covering them to the bailor or his nominee with actual or appar-  
8 ent authority to ship, store or sell or with power to obtain  
9 delivery under this Article (Section 7403) or with power of dis-  
10 position under this Act (Sections 2403 and 9307) or other statute  
11 or rule of law; nor

12 b. acquiesced in the procurement by the bailor or his  
13 nominee of any document of title.

14 2. Title to goods based upon an unaccepted delivery order  
15 is subject to the rights of anyone to whom a negotiable ware-  
16 house receipt or bill of lading covering the goods has been duly  
17 negotiated. Such a title may be defeated under the next section  
18 to the same extent as the rights of the issuer or a transferee  
19 from the issuer.

20 3. Title to goods based upon a bill of lading issued to a  
21 freight forwarder is subject to the rights of anyone to whom a  
22 bill issued by the freight forwarder is duly negotiated; but de-

23 livery by the carrier in accordance with Part 4 of this Article  
24 pursuant to its own bill of lading discharges the carrier's ob-  
25 ligation to deliver.

1 Sec. 7504. Rights acquired in the absence of due negotiation—  
2 effect of diversion—seller's stoppage of delivery.

3 1. A transferee of a document, whether negotiable or nonnego-  
4 tiable, to whom the document has been delivered but not duly  
5 negotiated, acquires the title and rights which his transferor  
6 had or had actual authority to convey.

7 2. In the case of nonnegotiable document, until but not  
8 after the bailee receives notification of the transfer, the  
9 rights of the transferee may be defeated

10 a. by those creditors of the transferor who could treat  
11 the sale as void under Section 2402; or

12 b. by a buyer from the transferor in ordinary course of  
13 business if the bailee has delivered the goods to the buyer or  
14 received notification of his rights; or

15 c. as against the bailee by good faith dealings of the  
16 bailee with the transferor.

17 3. A diversion or other change of shipping instructions by  
18 the consignor in a nonnegotiable bill of lading which causes  
19 the bailee not to deliver to the consignee defeats the consignee's  
20 title to the goods if they have been delivered to a buyer in or-  
21 dinary course of business and in any event defeats the consignee's  
22 rights against the bailee.

23 4. Delivery pursuant to a nonnegotiable document may be stopped  
24 by a seller under Section 2705, and subject to the requirement  
25 of due notification there provided. A bailee honoring the seller's

26 instructions is entitled to be indemnified by the seller against  
27 any resulting loss or expense.

1     Sec. 7505. Indorser not a guarantor for other parties. The  
2 indorsement of a document of title issued by a bailee does not  
3 make the indorser liable for any default by the bailee or by  
4 previous indorsers.

1     Sec. 7506. Delivery without indorsement—right to compel  
2 indorsement. The transferee of a negotiable document of title  
3 has a specifically enforceable right to have his transferor sup-  
4 ply any necessary indorsement but the transfer becomes a nego-  
5 tiation only as of the time the indorsement is supplied.

1     Sec. 7507. Warranties on negotiation or transfer of receipt  
2 or bill. Where a person negotiates or transfers a document of  
3 title for value otherwise than as a mere intermediary under the  
4 next following section, then unless otherwise agreed he warrants  
5 to his immediate purchaser only in addition to any warranty made  
6 in selling the goods

7     a. that the document is genuine; and

8     b. that he has no knowledge of any fact which would im-  
9 pair its validity or worth; and

10     c. that his negotiation or transfer is rightful and fully  
11 effective with respect to the title to the document and the goods  
12 it represents.

1     Sec. 7508. Warranties of collecting bank as to documents. A  
2 collecting bank or other intermediary known to be entrusted with  
3 documents on behalf of another or with collection of a draft or  
4 other claim against delivery of documents warrants by such de-  
5 livery of the documents only its own good faith and authority.

6 This rule applies even though the intermediary has purchased or  
7 made advances against the claim or draft to be collected.

1 Sec. 7509. Receipt or bill: when adequate compliance with  
2 commercial contract. The question whether a document is ade-  
3 quate to fulfill the obligations of a contract for sale or the  
4 conditions of a credit is governed by the Articles on Sales  
5 (Article 2) and on Letters of Credit (Article 5).

#### PART 6

#### WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

1 Sec. 7601. Lost and missing documents.

2 1. If a document has been lost, stolen or destroyed, a court  
3 may order delivery of the goods or issuance of a substitute docu-  
4 ment and the bailee may without liability to any person comply  
5 with such order. If the document was negotiable the claimant  
6 must post security approved by the court to indemnify any per-  
7 son who may suffer loss as a result of nonsurrender of the docu-  
8 ment. If the document was not negotiable, such security may be  
9 required at the discretion of the court. The court may also in  
10 its discretion order payment of the bailee's reasonable costs  
11 and counsel fees.

12 2. A bailee who without court order delivery goods to a per-  
13 son claiming under a missing negotiable document is liable to  
14 any person injured thereby, and if the delivery is not in good  
15 faith becomes liable for conversion. Delivery in good faith is  
16 not conversion if made in accordance with a filed classification  
17 or tariff or, where no classification or tariff is filed, if the  
18 claimant posts security with the bailee in an amount at least

19 double the value of the goods at the time of posting to indem-  
 20 nify any person injured by the delivery who files a notice of  
 21 claim within one year after the delivery.

1 Sec. 7602. Attachment of goods covered by a negotiable docu-  
 2 ment. Except where the document was originally issued upon de-  
 3 livery of the goods by a person who had no power to dispose of  
 4 them, no lien attaches by virtue of any judicial process to  
 5 goods in the possession of a bailee for which a negotiable docu-  
 6 ment of title is outstanding unless the document be first sur-  
 7 rendered to the bailee or its negotiation enjoined, and the  
 8 bailee shall not be compelled to deliver the goods pursuant to  
 9 process until the document is surrendered to him or impounded  
 10 by the court. One who purchases the document for value without  
 11 notice of the process or injunction takes free of the lien im-  
 12 posed by judicial process.

1 Sec. 7603. Conflicting claims—interpleader. If more than  
 2 one person claims title or possession of the goods, the bailee  
 3 is excused from delivery until he has had a reasonable time to  
 4 ascertain the validity of the adverse claims or to bring an  
 5 action to compel all claimants to interplead and may compel  
 6 such interpleader, either in defending an action for nondeliv-  
 7 ery of the goods, or by original action, whichever is appro-  
 8 priate.

ARTICLE 8

INVESTMENT SECURITIES

PART 1

SHORT TITLE AND GENERAL MATTERS

1 Sec. 8101. Short title. This Article shall be known and  
 2 may be cited as Uniform Commercial Code—Investment Securities.

- 1     Sec. 8102. Definitions and index of definitions.
- 2     1. In this Article unless the context otherwise requires
- 3       a. A "security" is an instrument which
- 4         i. is issued in bearer or registered form; and
- 5         ii. is of a type commonly dealt in upon securities ex-
- 6         changes or markets or commonly recognized in any area in which
- 7         it is issued or dealt in as a medium for investment; and
- 8         iii. is either one of a class or series or by its terms
- 9         is divisible into a class or series of instruments; and
- 10        iv. evidences a share, participation or other interest
- 11        in property or in an enterprise or evidences an obligation of
- 12        the issuer.
- 13       b. A writing which is a security is governed by this Ar-
- 14        ticle and not by uniform commercial code—commercial paper even
- 15        though it also meets the requirements of that Article. This
- 16        Article does not apply to money.
- 17       c. A security is in "registered form" when it specifies
- 18        a person entitled to the security or to the rights it evidences
- 19        and when its transfer may be registered upon books maintained for
- 20        that purpose by or on behalf of an insurer or the security so
- 21        states.
- 22       d. A security is in "bearer form" when it runs to bearer
- 23        according to its terms and not by reason of any indorsement.
- 24     2. A "subsequent purchaser" is a person who takes other than
- 25     by original issue.
- 26     3. A "clearing corporation" is a corporation all of the cap-
- 27     ital stock of which is held by or for a national securities ex-
- 28     change or association registered under a statute of the United

29 States such as the Securities Exchange Act of 1934.

30 4. A "custodian bank" is any bank or trust company which is  
31 supervised and examined by state or federal authority having  
32 supervision over banks and which is acting as custodian for a  
33 clearing corporation.

34 5. Other definitions applying to this Article or to speci-  
35 fied Parts thereof and the sections in which they appear are:

36 "Adverse claim".	Section 8301.
37 "Bona fide purchaser".	Section 8302.
38 "Broker".	Section 8303.
39 "Guarantee of the signature".	Section 8402.
40 "Intermediary bank".	Section 4105.
41 "Issuer".	Section 8201.
42 "Overissue".	Section 8104.

43 6. In addition Article 1 contains general definitions and  
44 principles of construction and interpretation applicable through-  
45 out this Article.

1 Sec. 8103. Issuer's lien. A lien upon a security in favor  
2 of an issuer thereof is valid against a purchaser only if the  
3 right of the issuer to such lien is noted conspicuously on the  
4 security.

1 Sec. 8104. Effect of overissue—"overissue."

2 1. The provisions of this Article which validate a security  
3 or compel its issue or reissue do not apply to the extent that  
4 validation, issue or reissue would result in overissue; but

5 a. if an identical security which does not constitute an  
6 overissue is reasonably available for purchase, the person en-  
7 titled to issue or validation may compel the issuer to purchase

8 and deliver such a security to him against surrender of the secu-  
9 rity, if any, which he holds; or

10 b. if a security is not so available for purchase, the  
11 person entitled to issue or validation may recover from the is-  
12 suer the price he or the last purchaser for value paid for it  
13 with interest from the date of his demand.

14 2. "Overissue" means the issue of securities in excess of  
15 the amount which the issuer has corporate power to issue.

1 Sec. 8105. Securities negotiable—presumptions.

2 1. Securities governed by this Article are negotiable instru-  
3 ments.

4 2. In any action on a security

5 a. unless specifically denied in the pleadings, each sig-  
6 nature on the security or in a necessary indorsement is admitted;

7 b. when the effectiveness of a signature is put in issue  
8 the burden of establishing it is on the party claiming under the  
9 signature but the signature is presumed to be genuine or author-  
10 ized;

11 c. when signatures are admitted or established production  
12 of the instrument entitles a holder to recover on it unless  
13 the defendant establishes a defense or a defect going to the  
14 validity of the security; and

15 d. after it is shown that a defense or defect exists the  
16 plaintiff has the burden of establishing that he or some person  
17 under whom he claims is a person against whom the defense or  
18 defect is ineffective (Section 8202).

1 Sec. 8106. Applicability. The validity of a security and  
2 the rights and duties of the issuer with respect to registration

3 of transfer are governed by the law (including the conflict of  
4 laws rules) of the jurisdiction of organization of the issuer.

1 Sec. 8107. Securities deliverable—action for price.

2 1. Unless otherwise agreed and subject to any applicable law  
3 or regulation respecting short sales, a person obligated to de-  
4 liver securities may deliver any security of the specified issue  
5 in bearer form or registered in the name of the transferee or  
6 indorsed to him or in blank.

7 2. When the buyer fails to pay the price as it comes due un-  
8 der a contract of sale the seller may recover the price

9 a. of securities accepted by the buyer; and

10 b. of other securities if efforts at their resale would  
11 be unduly burdensome or if there is no readily available market  
12 for their resale.

## PART 2

### ISSUE—ISSUER

1 Sec. 8201. "Issuer."

2 1. With respect to obligations on or defenses to a security

3 "issuer" includes a person who

4 a. places or authorizes the placing of his name on a secu-  
5 rity (otherwise than as authenticating trustee, registrar, trans-  
6 fer agent or the like) to evidence that it represents a share,  
7 participation or other interest in his property or in an enter-  
8 prise or to evidence his duty to perform an obligation evidenced

9 by the security; or

10 b. directly or indirectly creates fractional interests

11 in his rights or property which fractional interests are evi-  
12 denced by securities; or

13 c. becomes responsible for or in place of any other per-  
14 son described as an issuer in this section.

15 2. With respect to obligations on or defenses to a security  
16 a guarantor is an issuer to the extent of his guaranty whether  
17 or not his obligation is noted on the security.

18 3. With respect to registration of transfer (Part 4 of this  
19 Article) "issuer" means a person on whose behalf transfer books  
20 are maintained.

1 Sec. 8202. Issuer's responsibility and defenses—notice of  
2 defect or defense.

3 1. Even against a purchaser for value and without notice,  
4 the terms of a security include those stated on the security  
5 and those made part of the security by reference to another in-  
6 strument, indenture or document or to a constitution, statute,  
7 ordinance, rule, regulation, order or the like to the extent  
8 that the terms so referred to do not conflict with the stated  
9 terms. Such a reference does not of itself charge a purchaser  
10 for value with notice of a defect going to the validity of the  
11 security even though the security expressly states that a person  
12 accepting it admits such notice.

13 2. a. A security other than one issued by a government or  
14 governmental agency or unit even though issued with a defect  
15 going to its validity is valid in the hands of a purchaser for  
16 value and without notice of the particular defect unless the de-  
17 fect involves a violation of constitutional provisions in which  
18 case the security is valid in the hands of a subsequent purchas-  
19 er for value and without notice of the defect.

20 b. The rule of subparagraph a applies to an issuer which

21 is a government or governmental agency or unit only if either  
22 there has been substantial compliance with the legal require-  
23 ments governing the issue or the issuer has received a substan-  
24 tial consideration for the issue as a whole or for the partic-  
25 ular security and a stated purpose of the issue is one for which  
26 the issuer has power to borrow money or issue the security.

27 3. Except as otherwise provided in the case of certain un-  
28 authorized signatures on issue (Section 8205), lack of genuine-  
29 ness of a security in a complete defense even against a pur-  
30 chaser for value and without notice.

31 4. All other defenses of the issuer including nondelivery  
32 and conditional delivery of the security are ineffective against  
33 a purchaser for value who has taken without notice of the partic-  
34 ular defense.

35 5. Nothing in this section shall be construed to affect  
36 the right of a party to a "when, as and if issued" or a "when  
37 distributed" contract to cancel the contract in the event of a  
38 material change in the character of the security which is the  
39 subject of the contract or in the plan or arrangement pursuant  
40 to which such security is to be issued or distributed.

1 Sec. 8203. Staleness as notice of defects or defenses.

2 1. After an act or event which creates a right to immediate  
3 performance of the principal obligation evidenced by the secu-  
4 rity or which sets a date on or after which the security is to  
5 be presented or surrendered for redemption or exchange, a pur-  
6 chaser is charged with notice of any defect in its issue or de-  
7 fense of the issuer

8 a. if the act or event is one requiring the payment of

9 money or the delivery of securities or both on presentation  
10 or surrender of the security and such funds or securities are  
11 available on the date set for payment or exchange and he takes  
12 the security more than one year after that date; and

13 b. if the act or event is not covered by paragraph a  
14 and he takes the security more than two years after the date  
15 set for surrender or presentation or the date on which such  
16 performance became due.

17 2. A call which has been revoked is not within subsection 1.

1 Sec. 8204. Effect of issuer's restriction on transfer.

2 Unless noted conspicuously on the security a restriction on  
3 transfer imposed by the issuer even though otherwise lawful  
4 is ineffective except against a person with actual knowledge  
5 of it.

1 Sec. 8205. Effect of unauthorized signature on issue. An  
2 unauthorized signature placed on a security prior to or in the  
3 course of issue is ineffective except that the signature is  
4 effective in favor of a purchaser for value and without notice  
5 of the lack of authority if the signing has been done by

6 a. an authenticating trustee, registrar, transfer agent  
7 or other person entrusted by the issuer with the signing of  
8 the security or of similar securities or their immediate prep-  
9 aration for signing; or

10 b. an employee of the issuer or of any of the foregoing  
11 entrusted with responsible handling of the security.

1 Sec. 8206. Completion or alteration of instrument.

2 1. Where a security contains the signatures necessary to its  
3 issue or transfer but is incomplete in any other respect

4 a. any person may complete it by filling in the blanks

5 as authorized; and

6 b. even though the blanks are incorrectly filled in,  
7 the security as completed is enforceable by a purchaser who  
8 took it for value and without notice of such incorrectness.

9 2. A complete security which has been improperly altered  
10 even though fraudulently remains enforceable but only accord-  
11 ing to its original terms.

1 Sec. 8207. Rights of issuer with respect to registered  
2 owners.

3 1. Prior to due presentment for registration of transfer of  
4 a security in registered form the issuer or indenture trustee  
5 may treat the registered owner as the person exclusively en-  
6 titled to vote, to receive notifications and otherwise to ex-  
7 ercise all the rights and powers of an owner.

8 2. Nothing in this Article shall be construed to affect the  
9 liability of the registered owner of a security for calls,  
10 assessments or the like.

1 Sec. 8208. Effect of signature of authenticating trustee,  
2 registrar or transfer agent.

3 1. A person placing his signature upon a security as au-  
4 thenticating trustee, registrar, transfer agent or the like  
5 warrants to a purchaser for value without notice of the par-  
6 ticular defect that

7 a. the security is genuine; and  
8 b. his own participation in the issue of the security is  
9 within his capacity and within the scope of the authorization  
10 received by him from the issuer; and

11 c. he has reasonable grounds to believe that the security  
12 is in the form and within the amount the issuer is authorized

13 to issue.

14 2. Unless otherwise agreed, a person by so placing his sig-  
15 nature does not assume responsibility for the validity of the  
16 security in other respects.

### PART 3

#### PURCHASE

1 Sec. 8301. Rights acquired by purchaser—"adverse claim"—  
2 title acquired by bona fide purchaser.

3 1. Upon delivery of a security the purchaser acquires the  
4 rights in the security which his transferor had or had actual  
5 authority to convey except that a purchaser who has himself been  
6 a party to any fraud or illegality affecting the security or who  
7 as a prior holder had notice of an adverse claim cannot improve  
8 his position by taking from a later bona fide purchaser. "Ad-  
9 verse claim" includes a claim that a transfer was or would be  
10 wrongful or that a particular adverse person is the owner of or  
11 has an interest in the security.

12 2. A bona fide purchaser in addition to acquiring the rights  
13 of a purchaser also acquires the security free of any adverse  
14 claim.

15 3. A purchaser of a limited interest acquires rights only  
16 to the extent of the interest purchased.

1 Sec. 8302. "Bona fide purchaser." A "bona fide purchaser"  
2 is a purchaser for value in good faith and without notice of any  
3 adverse claim who takes delivery of a security in bearer form  
4 or of one in registered form issued to him or indorsed to him or  
5 in blank.

1 Sec. 8303. "Broker." "Broker" means a person engaged for

2 all or part of his time in the business of buying and selling  
3 securities, who in the transaction concerned acts for, or buys  
4 a security from or sells a security to a customer. Nothing in  
5 this Article determines the capacity in which a person acts for  
6 purposes of any other statute or rule to which such person is  
7 subject.

1 Sec. 8304. Notice to purchaser of adverse claims.

2 1. A purchaser (including a broker for the seller or buyer  
3 but excluding an intermediary bank) of a security is charged  
4 with notice of adverse claims if

5 a. the security whether in bearer or registered form has  
6 been indorsed "for collection" or "for surrender" or for some  
7 other purpose not involving transfer; or

8 b. the security is in bearer form and has on it an unambig-  
9 uous statement that it is the property of a person other than the  
10 transferor. The mere writing of a name on a security is not such  
11 a statement.

12 2. The fact that the purchaser (including a broker for the  
13 seller or buyer) has notice that the security is held for a third  
14 person or is registered in the name of or indorsed by a fiduciary  
15 does not create a duty of inquiry into the rightfulness of the  
16 transfer or constitute notice of adverse claims. If, however,  
17 the purchaser (excluding an intermediary bank) has knowledge  
18 that the proceeds are being used or that the transaction is for  
19 the individual benefit of the fiduciary or otherwise in breach  
20 of duty, the purchaser is charged with notice of adverse claims.

1 Sec. 8305. Staleness as notice of adverse claims. An act or  
2 event which creates a right to immediate performance of the prin-  
3 cipal obligation evidenced by the security or which sets a date

4 on or after which the security is to be presented or surrendered  
5 for redemption or exchange does not of itself constitute any  
6 notice of adverse claims except in the case of a purchase  
7 a. after one year from any date set for such presentment  
8 or surrender for redemption or exchange; or  
9 b. after six months from any date set for payment of money  
10 against presentation or surrender of the security if funds are  
11 available for payment on that date.

1 Sec. 8306. Warranties on presentment and transfer.

2 1. A person who presents a security for registration of trans-  
3 fer or for payment or exchange warrants to the issuer that he is  
4 entitled to the registration, payment or exchange. But a pur-  
5 chaser for value without notice of adverse claims who receives  
6 a new, reissued or reregistered security on registration of  
7 transfer warrants only that he has no knowledge of any unauthor-  
8 ized signature (Section 8311) in a necessary indorsement.

9 2. A person by transferring a security to a purchaser for  
10 value warrants only that

11 a. his transfer is effective and rightful; and

12 b. the security is genuine and has not been materially  
13 altered; and

14 c. he knows no fact which might impair the validity of  
15 the security.

16 3. Where a security is delivered by an intermediary known to  
17 be entrusted with delivery of the security on behalf of another  
18 or with collection of a draft or other claim against such deliv-  
19 ery, the intermediary by such delivery warrants only his own  
20 good faith and authority even though he has purchased or made

21 advances against the claim to be collected against the delivery.

22 4. A pledgee or other holder for security who redelivers the  
23 security received, or after payment and on order of the debtor  
24 delivers that security to a third person makes only the warran-  
25 ties of an intermediary under subsection 3.

26 5. A broker gives to his customer and to the issuer and a  
27 purchaser the warranties provided in this section and has the  
28 rights and privileges of a purchaser under this section. The  
29 warranties of and in favor of the broker acting as an agent are  
30 in addition to applicable warranties given by and in favor of  
31 his customer.

1 Sec. 8307. Effect of delivery without indorsement—right to  
2 compel indorsement. Where a security in registered form has been  
3 delivered to a purchaser without a necessary indorsement he may  
4 become a bona fide purchaser only as of the time the indorsement  
5 is supplied, but against the transferor the transfer is complete  
6 upon delivery and the purchaser has a specifically enforceable  
7 right to have any necessary indorsement supplied.

1 Sec. 8308. Indorsement, how made—special indorsement—in-  
2 dorser not a guarantor—partial assignment.

3 1. An indorsement of a security in registered form is made  
4 when an appropriate person signs on it or on a separate document  
5 an assignment or transfer of the security or a power to assign  
6 or transfer it or when the signature of such person is written  
7 without more upon the back of the security.

8 2. An indorsement may be in blank or special. An indorse-  
9 ment in blank includes an indorsement to bearer. A special in-  
10 dorsement specifies the person to whom the security is to be

11 transferred, or who has power to transfer it. A holder may con-  
12 vert a blank indorsement into a special indorsement.

13 3. "An appropriate person" in subsection 1 means

14 a. the person specified by the security or by special in-  
15 dorsement to be entitled to the security; or

16 b. where the person so specified is described as a fidu-  
17 ciary but is no longer serving in the describing capacity—either  
18 that person or his successor; or

19 c. where the security or indorsement so specifies more  
20 than one person as fiduciaries and one or more are no longer  
21 serving in the described capacity,—the remaining fiduciary or  
22 fiduciaries, whether or not a successor has been appointed or  
23 qualified; or

24 d. where the person so specified is an individual and is  
25 without capacity to act by virtue of death, incompetence, in-  
26 fancy or otherwise,—his executor, administrator, guardian or  
27 like fiduciary; or

28 e. where the security or indorsement so specifies more  
29 than one person as tenants by the entirety or with right of sur-  
30 vivorship and by reason of death all cannot sign,—the survivor  
31 or survivors; or

32 f. a person having power to sign under applicable law or  
33 controlling instrument; or

34 g. to the extent that any of the foregoing persons may  
35 act through an agent,—his authorized agent.

36 4. Unless otherwise agreed the indorser by his indorsement  
37 assumes no obligation that the security will be honored by the  
38 issuer.

39 5. An indorsement purporting to be only of part of a securi-  
40 ty representing units intended by the issuer to be separately  
41 transferable is effective to the extent of the indorsement.

42 6. Whether the person signing is appropriate is determined  
43 as of the date of signing and an indorsement by such a person  
44 does not become unauthorized for the purposes of this Article  
45 by virtue of any subsequent change of circumstances.

46 7. Failure of a fiduciary to comply with a controlling in-  
47 strument or with the law of the state having jurisdiction of the  
48 fiduciary relationship, including any law requiring the fiduciary  
49 to obtain court approval of the transfer, does not render his  
50 indorsement unauthorized for the purposes of this Article.

1 Sec. 8309. Effect of indorsement without delivery. An in-  
2 dorsement of a security whether special or in blank does not con-  
3 stitute a transfer until delivery of the security on which it  
4 appears or if the indorsement is on a separate document until  
5 delivery of both the document and the security.

1 Sec. 8310. Indorsement of security in bearer form. An in-  
2 dorsement of a security in bearer form may give notice of adverse  
3 claims (Section 8304) but does not otherwise affect any right to  
4 registration the holder may possess.

1 Sec. 8311. Effect of unauthorized indorsement. Unless the  
2 owner has ratified an unauthorized indorsement or is otherwise  
3 precluded from asserting its ineffectiveness

4 a. he may assert its ineffectiveness against the issuer  
5 or any purchaser other than a purchaser for value and without no-  
6 tice of adverse claims who has in good faith received a new, re-  
7 issued or reregistered security on registration of transfer; and

8 b. an issuer who registers the transfer of a security upon  
9 the unauthorized indorsement is subject to liability for improper  
10 registration (Section 8404).

1 Sec. 8312. Effect of guaranteeing signature or indorsement.

2 1. Any person guaranteeing a signature of an indorser of a  
3 security warrants that at the time of signing

4 a. the signature was genuine; and

5 b. the signer was an appropriate person to indorse (Sec-  
6 tion 8308); and

7 c. the signer had legal capacity to sign.

8 But the guarantor does not otherwise warrant the rightfulness  
9 of the particular transfer.

10 2. Any person may guarantee an indorsement of a security and  
11 by so doing warrants not only the signature (subsection 1) but  
12 also the rightfulness of the particular transfer in all respects.

13 But no issuer may require a guarantee of indorsement as a condi-  
14 tion to registration of transfer.

15 3. The foregoing warranties are made to any person taking or  
16 dealing with the security in reliance on the guarantee and the  
17 guarantor is liable to such person for any loss resulting from  
18 breach of the warranties.

1 Sec. 8313. When delivery to the purchaser occurs—purchaser's  
2 broker as holder.

3 1. Delivery to a purchaser occurs when

4 a. he or a person designated by him acquires possession  
5 of a security; or

6 b. his broker acquires possession of a security specially  
7 indorsed to or issued in the name of the purchaser; or

8 c. his broker sends him confirmation of the purchase and  
9 also by book entry or otherwise identifies a specific security  
10 in the broker's possession as belonging to the purchaser; or

11 d. with respect to an identified security to be delivered  
12 while still in the possession of a third person when that person  
13 acknowledges that he holds for the purchaser; or

14 e. appropriate entries on the books of a clearing corpo-  
15 ration are made under Section 8320.

16 2. The purchaser is the owner of a security held for him by  
17 his broker, but is not the holder except as specified in subpara-  
18 graphs b, c and e of subsection 1. Where a security is part of  
19 a fungible bulk the purchaser is the owner of a proportionate  
20 property interest in the fungible bulk.

21 3. Notice of an adverse claim received by the broker or by  
22 the purchaser after the broker takes delivery as a holder for  
23 value is not effective either as to the broker or as to the pur-  
24 chaser. However, as between the broker and the purchaser the  
25 purchaser may demand delivery of an equivalent security as to  
26 which no notice of an adverse claim has been received.

1 Sec. 8314. Duty to deliver, when completed.

2 1. Unless otherwise agreed where a sale of a security is made  
3 on an exchange or otherwise through brokers

4 a. the selling customer fulfills his duty to deliver when  
5 he places such a security in the possession of the selling broker  
6 or of a person designated by the broker or if requested causes  
7 an acknowledgment to be made to the selling broker that it is  
8 held for him; and

9 b. the selling broker including a correspondent broker  
10 acting for a selling customer fulfills his duty to deliver by

11 placing the security or a like security in the possession of  
12 the buying broker or a person designated by him or by effecting  
13 clearance of the sale in accordance with the rules of the ex-  
14 change on which the transaction took place.

15 2. Except as otherwise provided in this section and unless  
16 otherwise agreed, a transferor's duty to deliver a security un-  
17 der a contract of purchase is not fulfilled until he places the  
18 security in form to be negotiated by the purchaser in the pos-  
19 session of the purchaser or of a person designated by him or at  
20 the purchaser's request causes an acknowledgment to be made to  
21 the purchaser that it is held for him. Unless made on an ex-  
22 change a sale to a broker purchasing for his own account is with-  
23 in this subsection and not within subsection 1.

1 Sec. 8315. Action against purchaser based upon wrongful  
2 transfer.

3 1. Any person against whom the transfer of a security is  
4 wrongful for any reason, including his incapacity, may against  
5 anyone except a bona fide purchaser reclaim possession of the  
6 security or obtain possession of any new security evidencing all  
7 or part of the same rights or have damages.

8 2. If the transfer is wrongful because of an unauthorized  
9 indorsement, the owner may also reclaim or obtain possession of  
10 the security or new security even from a bona fide purchaser if  
11 the ineffectiveness of the purported indorsement can be asserted  
12 against him under the provisions of this Article on unauthorized  
13 indorsements (Section 8311).

14 3. The right to obtain or reclaim possession of a security  
15 may be specifically enforced and its transfer enjoined and the  
16 security impounded pending the litigation.

1    Sec. 8316. Purchaser's right to requisites for registration  
2 of transfer on books. Unless otherwise agreed the transferor  
3 must on due demand supply his purchaser with any proof of his  
4 authority to transfer or with any other requisite which may be  
5 necessary to obtain registration of the transfer of the security  
6 but if the transfer is not for value a transferor need not do so  
7 unless the purchaser furnishes the necessary expenses. Failure  
8 to comply with a demand made within a reasonable time gives the  
9 purchaser the right to reject or rescind the transfer.

1    Sec. 8317. Attachment or levy upon security.

2    1. No attachment or levy upon a security or any share or other  
3 interest evidenced thereby which is outstanding shall be valid  
4 until the security is actually seized by the officer making the  
5 attachment or levy but a security which has been surrendered to  
6 the issuer may be attached or levied upon at the source.

7    2. A creditor whose debtor is the owner of a security shall  
8 be entitled to such aid from courts of appropriate jurisdiction,  
9 by injunction or otherwise, in reaching such security or in sat-  
10 isfying the claim by means thereof as is allowed at law or in  
11 equity in regard to property which cannot readily be attached  
12 or levied upon by ordinary legal process.

1    Sec. 8318. No conversion by good faith delivery. An agent  
2 or bailee who in good faith (including observance of reasonable  
3 commercial standards if he is in the business of buying, selling  
4 or otherwise dealing with securities) has received securities  
5 and sold, pledged or delivered them according to the instructions  
6 of his principal is not liable for conversion or for participa-  
7 tion in breach of fiduciary duty although the principal had no  
8 right to dispose of them.

1     Sec. 8319. Statute of frauds. A contract for the sale of  
2 securities is not enforceable by way of action or defense unless  
3     a. there is some writing signed by the party against whom  
4 enforcement is sought or by his authorized agent or broker suffi-  
5 cient to indicate that a contract has been made for sale of a  
6 stated quantity of described securities at a defined or stated  
7 price; or  
8     b. delivery of the security has been accepted or payment  
9 has been made but the contract is enforceable under this provision  
10 only to the extent of such delivery or payment; or  
11     c. within a reasonable time a writing in confirmation of  
12 the sale or purchase and sufficient against the sender under  
13 paragraph a has been received by the party against whom enforce-  
14 ment is sought and he has failed to send written objection to  
15 its contents within ten days after its receipt; or  
16     d. the party against whom enforcement is sought admits  
17 in his pleading, testimony or otherwise in court that a contract  
18 was made for sale of a stated quantity of described securities  
19 at a defined or stated price.

1     Sec. 8320. Transfer or pledge within a central depository  
2 system.

3     1. If a security  
4     a. is in the custody of a clearing corporation or of a  
5 custodian bank or a nominee of either subject to the instruc-  
6 tions of the clearing corporation; and  
7     b. is in bearer form or indorsed in blank by an appro-  
8 priate person or registered in the name of the clearing corpora-  
9 tion or custodian bank or a nominee of either; and  
10     c. is shown on the account of a transferor or pledgor on

11 the books of the clearing corporation;  
12 then, in addition to other methods, a transfer or pledge of the  
13 security or any interest therein may be effected by the making  
14 of appropriate entries on the books of the clearing corporation  
15 reducing the account of the transferor or pledgor and increasing  
16 the account of the transferee or pledgee by the amount of the  
17 obligation or the number of shares or rights transferred or  
18 pledged.

19 2. Under this section entries may be with respect to like  
20 securities or interests therein as a part of a fungible bulk and  
21 may refer merely to a quantity of a particular security without  
22 reference to the name of the registered owner, certificate or  
23 bond number or the like and, in appropriate cases, may be on a  
24 net basis taking into account other transfers or pledges of the  
25 same security.

26 3. A transfer or pledge under this section has the effect of  
27 a delivery of a security in bearer form or duly indorsed in blank  
28 (Section 8301) representing the amount of the obligation or the  
29 number of shares or rights transferred or pledged. If a pledge  
30 or the creation of a security interest is intended, the making  
31 of entries has the effect of a taking of delivery by the pledgee  
32 or a secured party (Sections 9304 and 9305). A transferee or  
33 pledgee under this section is a holder.

34 4. A transfer or pledge under this section does not consti-  
35 tute a registration of transfer under Part 4 of this Article.

36 5. That entries made on the books of the clearing corpora-  
37 tion as provided in subsection 1 are not appropriate does not  
38 affect the validity or effect of the entries nor the liabilities

39 or obligations of the clearing corporation to any person adversely  
40 affected thereby.

## PART 4

## REGISTRATION

1 Sec. 8401. Duty of issuer to register transfer.

2 1. Where a security in registered form is presented to the  
3 issuer with a request to register transfer, the issuer is under  
4 a duty to register the transfer as requested if

5 a. the security is indorsed by the appropriate person or  
6 persons (Section 8308); and

7 b. reasonable assurance is given that those indorsements  
8 are genuine and effective (Section 8402); and

9 c. the issuer has no duty to inquire into adverse claims  
10 or has discharged any such duty (Section 8403); and

11 d. any applicable law relating to the collection of taxes  
12 has been complied with; and

13 e. the transfer is in fact rightful or is to a bona fide  
14 purchaser.

15 2. Where an issuer is under a duty to register a transfer of  
16 a security the issuer is also liable to the person presenting it  
17 for registration or his principal for loss resulting from any  
18 unreasonable delay in registration or from failure or refusal  
19 to register the transfer.

1 Sec. 8402. Assurance that indorsements are effective.

2 1. The issuer may require the following assurance that each  
3 necessary indorsement (Section 8309) is genuine and effective

4 a. in all cases, a guarantee of the signature (subsection  
5 1 of Section 8312) of the person indorsing; and

6 b. where the indorsement is by an agent, appropriate as-

7 surance of authority to sign;

8 c. where the indorsement is by a fiduciary, appropriate

9 evidence of appointment or incumbency;

10 d. where there is more than one fiduciary, reasonable as-

11 surance that all who are required to sign have done so;

12 e. where the indorsement is by a person not covered by

13 any of the foregoing, assurance appropriate to the case cor-

14 responding as nearly as may be to the foregoing.

15 2. A "guarantee of the signature" in subsection 1 means a

16 guarantee signed by or on behalf of a person reasonably believed

17 by the issuer to be responsible. The issuer may adopt standards

18 with respect to responsibility provided such standards are not

19 manifestly unreasonable.

20 3. "Appropriate evidence of appointment or incumbency" in

21 subsection 1 means

22 a. in the case of a fiduciary appointed or qualified by

23 a court, a certificate issued by or under the direction or super-

24 vision of that court or an officer thereof and dated within sixty

25 days before the date of presentation for transfer; or

26 b. in any other case, a copy of a document showing the

27 appointment or a certificate issued by or on behalf of a person

28 reasonably believed by the issuer to be responsible or, in the

29 absence of such a document or certificate, other evidence reason-

30 ably deemed by the issuer to be appropriate. The issuer may adopt

31 standards with respect to such evidence provided such standards

32 are not manifestly unreasonable. The issuer is not charged with

33 notice of the contents of any document obtained pursuant to this

34 paragraph b except to the extent that the contents relate direct-

35 ly to the appointment or incumbency.

36 4. The issuer may elect to require reasonable assurance be-  
37 yond that specified in this section but if it does so and for a  
38 purpose other than that specified in subsection 3 b both re-  
39 quires and obtains a copy of a will, trust, indenture, articles  
40 of copartnership, bylaws or other controlling instrument it is  
41 charged with notice of all matters contained therein affecting  
42 the transfer.

1 Sec. 8403. Limited duty of inquiry.

2 1. An issuer to whom a security is presented for registration  
3 is under a duty to inquire into adverse claims if

4 a. a written notification of an adverse claim is received  
5 at a time and in a manner which affords the issuer a reasonable  
6 opportunity to act on it prior to the issuance of a new, reissued  
7 or reregistered security and the notification identifies the  
8 claimant, the registered owner and the issue of which the secu-  
9 rity is a part and provides an address for communications direct-  
10 ed to the claimant; or

11 b. the issuer is charged with notice of an adverse claim  
12 from a controlling instrument which it has elected to require  
13 under subsection 4 of Section 8402.

14 2. The issuer may discharge any duty of inquiry by any rea-  
15 sonable means, including notifying an adverse claimant by reg-  
16 istered or certified mail at the address furnished by him or if  
17 there be no such address at his residence or regular place of  
18 business that the security has been presented for registration  
19 of transfer by a named person, and that the transfer will be reg-  
20 istered unless within thirty days from the date of mailing the

21 notification, either

22 a. an appropriate restraining order, injunction or other  
23 process issues from a court of competent jurisdiction; or

24 b. an indemnity bond sufficient in the issuer's judgment  
25 to protect the issuer and any transfer agent, registrar or other  
26 agent of the issuer involved, from any loss which it or they may  
27 suffer by complying with the adverse claim is filed with the  
28 issuer.

29 3. Unless an issuer is charged with notice of an adverse  
30 claim from a controlling instrument which it has elected to re-  
31 quire under subsection 4 of Section 8402 or receives notifica-  
32 tion of an adverse claim under subsection 1 of this section,  
33 where a security presented for registration is indorsed by the  
34 appropriate person or persons the issuer is under no duty to  
35 inquire into adverse claims. In particular

36 a. an issuer registering a security in the name of a per-  
37 son who is a fiduciary or who is described as a fiduciary is not  
38 bound to inquire into the existence, extent, or correct description  
39 of the fiduciary relationship and thereafter the issuer may as-  
40 sume without inquiry that the newly registered owner continues  
41 to be the fiduciary until the issuer receives written notice  
42 that the fiduciary is no longer acting as such with respect to  
43 the particular security;

44 b. an issuer registering transfer on an indorsement by a  
45 fiduciary is not bound to inquire whether the transfer is made  
46 in compliance with a controlling instrument or with the law of  
47 the state having jurisdiction of the fiduciary relationship, in-  
48 cluding any law requiring the fiduciary to obtain court approval

49 of the transfer; and

50 c. the issuer is not charged with notice of the contents  
51 of any court record or file or other recorded or unrecorded docu-  
52 ment even though the document is in its possession and even though  
53 the transfer is made on the indorsement of a fiduciary to the  
54 fiduciary himself or to his nominee.

1 Sec. 8404. Liability and nonliability for registration.

2 1. Except as otherwise provided in any law relating to the  
3 collection of taxes, the issuer is not liable to the owner or any  
4 other person suffering loss as a result of the registration of  
5 a transfer of a security if

6 a. there were on or with the security the necessary in-  
7 dorsements (Section 8308); and

8 b. the issuer had no duty to inquire into adverse claims  
9 or has discharged any such duty (Section 8403).

10 2. Where an issuer has registered a transfer of a security  
11 to a person not entitled to it the issuer on demand must deliver  
12 a like security to the true owner unless

13 a. the registration was pursuant to subsection 1; or

14 b. the owner is precluded from asserting any claim for  
15 registering the transfer under subsection 1 of the following

16 section; or

17 c. such delivery would result in overissue, in which case  
18 the issuer's liability is governed by Section 8104.

1 Sec. 8405. Lost, destroyed and stolen securities.

2 1. Where a security has been lost, apparently destroyed or  
3 wrongfully taken and the owner fails to notify the issuer of  
4 that fact within a reasonable time after he has notice of it and

5 the issuer registers a transfer of the security before receiving  
6 such a notification, the owner is precluded from asserting against  
7 the issuer any claim for registering the transfer under the pre-  
8 ceding section or any claim to a new security under this section.

9 2. Where the owner of a security claims that the security  
10 has been lost, destroyed or wrongfully taken, the issuer must  
11 issue a new security in place of the original security if the  
12 owner

13 a. so requests before the issuer has notice that the se-  
14 curity has been acquired by a bona fide purchaser; and

15 b. files with the issuer a sufficient indemnity bond; and

16 c. satisfies any other reasonable requirements imposed  
17 by the issuer.

18 3. If, after the issue of the new security, a bona fide pur-  
19 chaser of the original security presents it for registration of  
20 transfer, the issuer must register the transfer unless registra-  
21 tion would result in overissue, in which event the issuer's li-  
22 ability is governed by Section 8104. In addition to any rights  
23 on the indemnity bond, the issuer may recover the new security  
24 from the person to whom it was issued or any person taking under  
25 him except a bona fide purchaser.

1 Sec. 8406. Duty of authenticating trustee, transfer agent or  
2 registrar.

3 1. Where a person acts as authenticating trustee, transfer  
4 agent, registrar, or other agent for an issuer in the registra-  
5 tion of transfers of its securities or in the issue of new secu-  
6 rities or in the cancellation of surrendered securities

7 a. he is under a duty to the issuer to exercise good faith

8 and due diligence in performing his functions; and

9 b. he has with regard to the particular functions he per-  
10 forms the same obligation to the holder or owner of the security  
11 and has the same rights and privileges as the issuer has in regard  
12 to those functions.

13 2. Notice to an authenticating trustee, transfer agent, regis-  
14 trar or other such agent is notice to the issuer with respect to  
15 the functions performed by the agent.

## ARTICLE 9

### SECURED TRANSACTIONS—SALES OF ACCOUNTS

#### CONTRACT RIGHTS AND CHATTEL PAPER

##### PART 1

###### SHORT TITLE, APPLICABILITY AND DEFINITIONS

1 Sec. 9101. Short title. This Article shall be known and  
2 may be cited as Uniform Commercial Code—Secured Transactions.

1 Sec. 9102. Policy and scope of Article.

2 1. Except as otherwise provided in Section 9103 on multiple  
3 state transactions and in Section 9104 on excluded transactions,  
4 this Article applies so far as concerns any personal property  
5 and fixtures within the jurisdiction of this state.

6 a. to any transaction (regardless of its form) which is  
7 intended to create a security interest in personal property or  
8 fixtures including goods, documents, instruments, general in-  
9 tangibles, chattel paper, accounts or contract rights; and also

10 b. to any sale of accounts, contract rights or chattel  
11 paper.

12 2. This article applies to security interests created by con-  
13 tract including pledge, assignment, chattel mortgage, chattel

14 trust, trust deed, factor's lien, equipment trust, conditional  
15 sale, trust receipt, other lien or title retention contract and  
16 lease or consignment intended as security. This Article does  
17 not apply to statutory liens except as provided in Section 9310.

18 3. The application of this Article to a security interest in  
19 a secured obligation is not affected by the fact that the obliga-  
20 tion is itself secured by a transaction or interest to which  
21 this Article does not apply.

1 Sec. 9103. Accounts, contract rights, general intangibles and  
2 equipment relating to another jurisdiction—and incoming goods  
3 already subject to a security interest.

4 1. If the office where the assignor of accounts or contract  
5 rights keeps his records concerning them is in this state, the  
6 validity and perfection of a security interest therein and the  
7 possibility and effect of proper filing is governed by this Arti-  
8 cle; otherwise by the law (including the conflict of laws rules)  
9 of the jurisdiction where such office is located.

10 2. If the chief place of business of a debtor is in this  
11 state, this Article governs the validity and perfection of a se-  
12 curity interest and the possibility and effect of proper filing  
13 with regard to general intangibles or with regard to goods of a  
14 type which are normally used in more than one jurisdiction (such  
15 as automotive equipment, rolling stock, airplanes, road building  
16 equipment, commercial harvesting equipment, construction machin-  
17 ery and the like) if such goods are classified as equipment or  
18 classified as inventory by reason of their being leased by the  
19 debtor to others. Otherwise, the law (including the conflict of  
20 laws rules) of the jurisdiction where such chief place of busi-

21 ness is located shall govern. If the chief place of business is  
22 located in a jurisdiction which does not provide for perfection  
23 of the security interest by filing or recording in that jurisdic-  
24 tion, then the security interest may be perfected by filing in  
25 this state. For the purpose of determining the validity and per-  
26 fection of a security interest in an airplane, the chief place of  
27 business of a debtor who is a foreign air carrier under the Fed-  
28 eral Aviation Act of 1958, as amended, is the designated office  
29 of the agent upon whom service of process may be made on behalf  
30 of the debtor.

31 3. If personal property other than that governed by subsec-  
32 tions 1 and 2 is already subject to a security interest when it  
33 is brought into this state, the validity of the security interest  
34 in this state is to be determined by the law (including the con-  
35 flict of laws rules) of the jurisdiction where the property was  
36 when the security interest attached. However, if the parties to  
37 the transaction understood at the time that the security inter-  
38 est attached that the property would be kept in this state and  
39 it was brought into this state within thirty days after the secu-  
40 rity interest attached for purposes other than transportation  
41 through this state, then the validity of the security interest  
42 in this state is to be determined by the law of this state. If  
43 the security interest was already perfected under the law of the  
44 jurisdiction where the property was when the security interest  
45 attached and before being brought into this state, the security  
46 interest continues perfected in this state for four months and  
47 also thereafter if within the four month period it is perfected  
48 in this state. The security interest may also be perfected in  
49 this state after the expiration of the four month period; in

50 such case perfection dates from the time of perfection in this  
51 state. If the security interest was not perfected under the  
52 law of the jurisdiction where the property was when the secu-  
53 rity interest attached and before being brought into this state,  
54 it may be perfected in this state; in such case perfection dates  
55 from the time of perfection in this state.

56 4. Notwithstanding subsections 2 and 3, if personal property  
57 is covered by a certificate of title issued under a statute of  
58 this state or any other jurisdiction which requires indication  
59 on a certificate of title of any security interest in the proper-  
60 ty as a condition of perfection, then the perfection is governed  
61 by the law of the jurisdiction which issued the certificate.

62 5. Notwithstanding subsection 1 and Section 9302, if the of-  
63 fice where the assignor of accounts or contract rights keeps his  
64 records concerning them is not located in a jurisdiction which  
65 is a part of the United States, its territories or possessions,  
66 and the accounts or contract rights are within the jurisdiction  
67 of this state or the transaction which creates the security in-  
68 terest otherwise bears an appropriate relation to this state,  
69 this Article governs the validity and perfection of the security  
70 interest and the security interest may only be perfected by no-  
71 tification to the account debtor.

1 Sec. 9104. Transactions excluded from Article. This Article  
2 does not apply

3 a. to a security interest subject to any statute of the  
4 United States such as the Ship Mortgage Act, 1920, to the extent  
5 that such statute governs the rights of parties to and third  
6 parties affected by transactions in particular types of property;  
7 or

- 8     b. to a landlord's lien; or
- 9     c. to a lien given by statute or other rule of law for
- 10  services or materials except as provided in Section 9310 or pri-
- 11  ority of such liens; or
- 12     d. to a transfer of a claim for wages, salary or other
- 13  compensation of an employee; or
- 14     e. to an equipment trust covering railway rolling stock;
- 15  or
- 16     f. to a sale of accounts, contract rights or chattel paper
- 17  as part of a sale of the business out of which they arose, or an
- 18  assignment of accounts, contract rights or chattel paper which
- 19  is for the purpose of collection only, or a transfer of a con-
- 20  tract right to an assignee who is also to do the performance
- 21  under the contract; or
- 22     g. to a transfer of an interest or claim in or under any
- 23  policy of insurance; or
- 24     h. to a right represented by a judgment; or
- 25     i. to any right of setoff; or
- 26     j. except to the extent that provision is made for fixtures
- 27  in Section 9313, to the creation of an interest in or
- 28  lien on real estate (including a lease or rents thereunder; or
- 29     k. to a transfer in whole or in part of any of the follow-
- 30  ing: any claim arising out of tort; any deposit, savings, pass-
- 31  book or like account maintained with a bank, savings and loan
- 32  association, credit union or like organization.

1     Sec. 9105.  Definitions and index of definitions.

2     1.  In this Article unless the context otherwise requires:

- 3     a.  "Account debtor" means the person who is obligated on
- 4     an account, chattel paper, contract right or general intangible;

5     b. "Chattel paper" means a writing or writings which ev-  
6     idence both a monetary obligation and a security interest in or  
7     a lease of specific goods. When a transaction is evidenced  
8     both by such a security agreement or a lease and by an instrument  
9     or a series of instruments, the group of writings taken together  
10    constitutes chattel paper;

11    c. "Collateral" means the property subject to a security  
12    interest, and includes accounts, contract rights and chattel  
13    paper which have been sold;

14    d. "Debtor" means the person who owes payment or other  
15    performance of the obligation secured, whether or not he owns or  
16    has rights in the collateral, and includes the seller of accounts,  
17    contract rights or chattel paper. Where the debtor and the owner  
18    of the collateral are not the same person, the term "debtor"  
19    means the owner of the collateral in any provision of the Article  
20    dealing with the collateral, the obligor in any provision dealing  
21    with the obligation, and may include both where the context so  
22    requires;

23    e. "Document" means document of title as defined in the  
24    general definitions of Article 1 (Section 1201);

25    f. "Goods" includes all things which are movable at the  
26    time the security interest attaches or which are fixtures (Sec-  
27    tion 9313), but does not include money, documents, instruments,  
28    accounts, chattel paper, general intangibles, contract rights  
29    and other things in action. "Goods" also include the unborn  
30    young of animals and growing crops;

31    g. "Instrument" means a negotiable instrument (defined in  
32    Section 3104), or a security (defined in Section 8102) or any

33 other writing which evidences a right to the payment of money  
34 and is not itself a security agreement or lease and is of a type  
35 which is in ordinary course of business transferred by delivery  
36 with any necessary indorsement or assignment;

37 h. "Security agreement" means an agreement which creates  
38 or provides for a security interest;

39 i. "Secured party" means a lender, seller or other person  
40 in whose favor there is a security interest, including a person  
41 to whom accounts, contract rights or chattel paper have been sold.  
42 When the holders of obligations issued under an indenture of  
43 trust, equipment trust agreement or the like are represented by  
44 a trustee or other person, the representative is the secured  
45 party.

46 2. Other definitions applying to this Article and the sections  
47 in which they appear are:

48 "Account".	Section 9106.
49 "Consumer goods".	Section 9190. sub. 1.
50 "Contract right".	Section 9106.
51 "Equipment".	Section 9109. sub. 2.
52 "Farm products".	Section 9109. sub. 3.
53 "General intangibles".	Section 9106.
54 "Inventory".	Section 9109. sub. 4.
55 "Lien creditor".	Section 9301. sub. 3.
56 "Proceeds".	Section 9306. sub. 1.
57 "Purchase money security interest".	Section 9107.

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

60 "Check".	Section 3104.
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- 61 "Contract for sale". Section 2106.
- 62 "Holder in due course". Section 3302.
- 63 "Note". Section 3104.
- 64 "Sale". Section 2106.

65 4. In addition Article 1 contains general definitions and  
 66 principles of construction and interpretation applicable through-  
 67 out this Article.

1 Sec. 9106. Definitions: "Account"—"contract right"—"gen-  
 2 eral intangibles". "Account" means any right to payment for goods  
 3 sold or leased or for services rendered which is not evidenced  
 4 by an instrument or chattel paper. "Contract right" means any  
 5 right to payment under a contract not yet earned by performance  
 6 and not evidenced by an instrument or chattel paper. "General  
 7 intangibles" means any personal property (including things in  
 8 action) other than goods, accounts, contract rights, chattel  
 9 paper, documents and instruments.

1 Sec. 9107. Definitions: "Purchase money security interest".  
 2 A security interest is a "purchase money security interest" to  
 3 the extent that it is

- 4 a. taken or retained by the seller of the collateral to
- 5 secure all or part of its price; or
- 6 b. taken by a person who by making advances or incurring
- 7 an obligation gives value to enable the debtor to acquire rights
- 8 in or the use of collateral if such value is in fact so used.

1 Sec. 9108. When after-acquired collateral not security for  
 2 antecedent debt. Where a secured party makes an advance, incurs  
 3 an obligation, releases a perfected security interest, or other-  
 4 wise gives new value which is to be secured in whole or in part  
 5 by after-acquired property his security interest in the after-

6 acquired collateral shall be deemed to be taken for new value  
7 and not as security for an antecedent debt if the debtor acquires  
8 his rights in such collateral either in the ordinary course of  
9 his business or under a contract of purchase made pursuant to  
10 the security agreement within a reasonable time after new value  
11 is given.

1 Sec. 9109. Classification of goods—"consumer goods"—"equip-  
2 ment"—"farm products"—"inventory". Goods are

3 1. "consumer goods" if they are used or bought for use pri-  
4 marily for personal, family or household purposes;

5 2. "equipment" if they are used or bought for use primarily  
6 in business (including farming or a profession) or by a debtor  
7 who is a nonprofit organization or a governmental subdivision  
8 or agency or if the goods are not included in the definitions  
9 of inventory, farm products or consumer goods;

10 3. "farm products" if they are crops or livestock or supplies  
11 used or produced in farming operations or if they are products  
12 of crops or livestock in their unmanufactured states (such as  
13 ginned cotton, wool clip, maple syrup, milk and eggs), and if  
14 they are in the possession of a debtor engaged in raising, fat-  
15 tening, grazing or other farming operations. If goods are farm  
16 products they are neither equipment nor inventory;

17 4. "inventory" if they are held by a person who holds them  
18 for sale or lease or to be furnished under contracts of service  
19 or if he has so furnished them, or if they are raw materials,  
20 work in process or materials used or consumed in a business. In-  
21 ventory of a person is not to be calculated as his equipment.

1 Sec. 9110. Sufficiency of description. For the purposes of

2 this Article any description of personal property or real estate  
3 is sufficient whether or not it is specific if it reasonably  
4 identifies what is described.

1 Sec. 9111. Applicability of bulk transfer laws. The creation  
2 of a security interest is not a bulk transfer under Article 6  
3 (see Section 6103).

1 Sec. 9112. Where collateral is not owned by debtor. Unless  
2 otherwise agreed, when a secured party knows that collateral is  
3 owned by a person who is not the debtor, the owner of the collat-  
4 eral is entitled to receive from the secured party any surplus  
5 under Section 9502 subsection 2 or under Section 9504 subsection  
6 1, and is not liable for the debt or for any deficiency after re-  
7 sale, and he has the same right as the debtor

8 a. to receive statements under Section 9208;

9 b. to receive notice of and to object to a secured party's  
10 proposal to retain the collateral in satisfaction of the indebt-  
11 edness under Section 9505;

12 c. to redeem the collateral under Section 9506;

13 d. to obtain injunctive or other relief under Section  
14 9507 subsection 1; and

15 e. to recover losses caused to him under Section 9208  
16 subsection 2.

1 Sec. 9113. Security interests arising under Article on sales.

2 A security interest arising solely under the Article on Sales  
3 (Article 2) is subject to the provisions of this Article except  
4 that to the extent that and so long as debtor does not have  
5 or does not lawfully obtain possession of the goods

6 a. no security agreement is necessary to make the security

7 interest enforceable; and

8 b. no filing is required to perfect the security interest;

9 and

10 c. the rights of the secured party on default by the

11 debtor are governed by the Article on Sales (Article 2).

## PART 2

### VALIDITY OF SECURITY AGREEMENT AND RIGHTS

#### OF PARTIES THERETO

1 Sec. 9201. General validity of security agreement. Except  
2 as otherwise provided by this Act a security agreement is effec-  
3 tive according to its terms between the parties, against purchasers  
4 of the collateral and against creditors. Nothing in this Article  
5 validates any charge or practice illegal under any statute or  
6 regulation thereunder governing usury, small loans, retail in-  
7 stallment sales, or the like, or extends the application of any  
8 such statute or regulation to any transaction not otherwise sub-  
9 ject thereto.

1 Sec. 9202. Title to collateral immaterial. Each provision  
2 of this Article with regard to rights, obligations and remedies  
3 applies whether title to collateral is in the secured party or  
4 in the debtor.

1 Sec. 9203. Enforceability of security interest—proceeds,  
2 formal requisites.

3 1. Subject to the provisions of Section 4208 on the security  
4 interest of a collecting bank and Section 9113 on a security in-  
5 terest arising under the Article on Sales, a security interest  
6 is not enforceable against the debtor or third parties unless

7 a. the collateral is in the possession of the secured

8 party; or

9 b. the debtor has signed a security agreement which con-  
10 tains a description of the collateral and in addition, when the  
11 security interest covers crops or oil, gas or minerals to be ex-  
12 tracted or timber to be cut, a description of the land concerned.  
13 In describing collateral, the word "proceeds" is sufficient with-  
14 out further description to cover proceeds of any character.

15 2. A transaction, although subject to this Article, is also  
16 subject to chapters three hundred twenty-two (322), five hundred  
17 twenty-nine (529), five hundred thirty-five (535) and five hundred  
18 thirty-six (536) of the Code and in the case of conflict between  
19 the provisions of this Article and any such statute, the provi-  
20 sions of such statute control. Failure to comply with any appli-  
21 cable statute has only the effect which is specified therein.

1 Sec. 9204. When security interest attaches—after-acquired  
2 property—future advances.

3 1. A security interest cannot attach until there is agreement  
4 (subsection 3 of Section 1201) that it attach and value is given  
5 and the debtor has rights in the collateral. It attaches as soon  
6 as all of the events in the preceding sentence have taken place  
7 unless explicit agreement postpones the time of attaching.

8 2. For the purposes of this section the debtor has no rights

9 a. in crops until they are planted or otherwise become  
10 growing crops, in the young of livestock until they are conceived;

11 b. in fish until caught, in oil, gas or minerals until  
12 they are extracted, in timber until it is cut;

13 c. in a contract right until the contract has been made;

14 d. in an account until it comes into existence.

15 3. Except as provided in subsection 4 a security agreement  
16 may provide that collateral, whenever acquired, shall secure all  
17 obligations covered by the security agreement.

18 4. No security interest attaches under an after-acquired  
19 property clause to consumer goods other than accessions (Section  
20 9314) when given as additional security unless the debtor acquires  
21 rights in them within ten days after the secured party gives  
22 value.

23 5. Obligations covered by a security agreement may include  
24 future advances or other value whether or not the advances or  
25 value are given pursuant to commitment.

1 Sec. 9205. Use or disposition of collateral without account-  
2 ing permissible. A security interest is not invalid or fraudulent  
3 against creditors by reason of liberty in the debtor to use, com-  
4 mingle or dispose of all or part of the collateral (including  
5 returned or repossessed goods) or to collect or compromise ac-  
6 counts, contract rights or chattel paper, or to accept the return  
7 of goods or make repossessions, or to use, commingle or dispose  
8 of proceeds, or by reason of the failure of the secured party to  
9 require the debtor to account for proceeds or replace collateral.  
10 This section does not relax the requirements of possession where  
11 perfection of a security interest depends upon possession of the  
12 collateral by the secured party or by a bailee.

1 Sec. 9206. Agreement not to assert defenses against assignee—  
2 modification of sales warranties where security agreement exists.

3 1. Subject to any statute or decision which establishes a  
4 different rule for buyers or lessees of consumer goods, an agree-  
5 ment by a buyer or lessee that he will not assert against an as-

6 signee any claim or defense which he may have against the sell-  
7 er or lessor is enforceable by an assignee who takes his assign-  
8 ment for value, in good faith and without notice of a claim or  
9 defense, except as to defenses of a type which may be asserted  
10 against a holder in due course of a negotiable instrument under  
11 the Article on Commercial Paper (Article 3). A buyer who as part  
12 of one transaction signs both a negotiable instrument and a secu-  
13 rity agreement makes such an agreement.

14 2. When a seller retains a purchase money security interest  
15 in goods the Article on Sales (Article 2) governs the sale and  
16 any disclaimer, limitation or modification of the seller's war-  
17 ranties.

1 Sec. 9207. Rights and duties when collateral is in secured  
2 party's possession.

3 1. A secured party must use reasonable care in the custody  
4 and preservation of collateral in his possession. In the case  
5 of an instrument or chattel paper reasonable care includes taking  
6 necessary steps to preserve rights against prior parties unless  
7 otherwise agreed.

8 2. Unless otherwise agreed, when collateral is in the secured  
9 party's possession.

10 a. reasonable expenses (including the cost of any insur-  
11 ance and payment of taxes or other charges) incurred in the cus-  
12 tody, preservation, use or operation of the collateral are charge-  
13 able to the debtor and are secured by the collateral;

14 b. the risk of accidental loss or damage is on the debtor  
15 to the extent of any deficiency in any effective insurance cover-  
16 age;

17 c. the secured party may hold as additional security any  
18 increase or profits (except money) received from the collateral,  
19 but money so received, unless remitted to the debtor, shall be  
20 applied in reduction of the secured obligation;

21 d. the secured party must keep the collateral identifiable  
22 but fungible collateral may be commingled;

23 e. the secured party may repledge the collateral upon  
24 terms which do not impair the debtor's right to redeem it.

25 3. A secured party is liable for any loss caused by his fail-  
26 ure to meet any obligation imposed by the preceding subsections  
27 but does not lose his security interest.

28 4. A secured party may use or operate the collateral for the  
29 purpose of preserving the collateral or its value or pursuant to  
30 the order of a court of appropriate jurisdiction or, except in  
31 the case of consumer goods, in the manner and to the extent pro-  
32 vided in the security agreement.

1 Sec. 9208. Request for statement of account or list of collat-  
2 eral.

3 1. A debtor may sign a statement indicating what he believes  
4 to be the aggregate amount of unpaid indebtedness as of a speci-  
5 fied date and may send it to the secured party with a request  
6 that the statement be approved or corrected and returned to the  
7 debtor. When the security agreement or any other record kept by  
8 the secured party identifies the collateral a debtor may similar-  
9 ly request the secured party to approve or correct a list of the  
10 collateral.

11 2. The secured party must comply with such a request with-  
12 in two weeks after receipt by sending a written correction or

13 approval. If the secured party claims a security interest in  
14 all of a particular type of collateral owned by the debtor he  
15 may indicate that fact in his reply and need not approve or cor-  
16 rect an itemized list of such collateral. If the secured party  
17 without reasonable excuse fails to comply he is liable for any  
18 loss caused to the debtor thereby; and if the debtor has proper-  
19 ly included in his request a good faith statement of the obliga-  
20 tion or a list of the collateral or both the secured party may  
21 claim a security interest only as shown in the statement against  
22 persons misled by his failure to comply. If he no longer has an  
23 interest in the obligation or collateral at the time the request  
24 is received he must disclose the name and address of any succes-  
25 sor in interest known to him and he is liable for any loss caused  
26 to the debtor as a result of failure to disclose. A successor  
27 in interest is not subject to this section until a request is  
28 received by him.

29 3. A debtor is entitled to such a statement once every six  
30 months without charge. The secured party may require payment  
31 of a charge not exceeding ten dollars for each additional state-  
32 ment furnished.

### PART 3

#### RIGHTS OF THIRD PARTIES—PERFECTED AND UNPERFECTED

##### SECURITY INTERESTS—RULES OF PRIORITY

1 Sec. 9301. Persons who take priority over unperfected secu-  
2 rity interests—“lien creditor”.

3 1. Except as otherwise provided in subsection 2, an unper-  
4 fected security interest is subordinate to the rights of  
5 a. persons entitled to priority under Section 9312;

- 6 b. a person who becomes a lien creditor without knowledge  
7 of the security interest and before it is perfected;
- 8 c. in the case of goods, instruments, documents, and chat-  
9 tel paper, a person who is not a secured party and who is a trans-  
10 feree in bulk or otherwise buyer not in ordinary course of business  
11 to the extent that he gives value and receives delivery of the  
12 collateral without knowledge of the security interest and before  
13 it is perfected;
- 14 d. in the case of accounts, contract rights, and general  
15 intangibles, a person who is not a secured party and who is a  
16 transferee to the extent that he gives value without knowledge  
17 of the security interest and before it is perfected.

18 2. If the secured party files with respect to a purchase money  
19 security interest before or within ten days after the collateral  
20 comes into possession of the debtor, he takes priority over the  
21 rights of a transferee in bulk or of a lien creditor which arise  
22 between the time security interest attaches and the time of  
23 filing.

24 3. A "lien creditor" means a creditor who has acquired a lien  
25 on the property involved by attachment, levy or the like and in-  
26 cludes an assignee for benefit of creditors from the time of as-  
27 signment, and a trustee in bankruptcy from the date of the filing  
28 of the petition or a receiver in equity from the time of appoint-  
29 ment. Unless all the creditors represented had knowledge of the  
30 security interest such a representative of creditors is a lien  
31 creditor without knowledge even though he personally has knowl-  
32 edge of the security interest.

1 Sec. 9302. When filing is required to perfect security in-

2 terest—security interests to which filing provisions of this  
3 Article do not apply.

4 1. A financing statement must be filed to perfect all secu-  
5 rity interests except the following:

6 a. a security interest in collateral in possession of the  
7 secured party under Section 9305;

8 b. a security interest temporarily perfected in instru-  
9 ments or documents without delivery under Section 9304 or in  
10 proceeds for a ten-day period under Section 9306;

11 c. a purchase money security interest in farm equipment  
12 having a purchase price not in excess of twenty-five hundred  
13 dollars; but filing is required for a fixture under Section 9313  
14 or for a motor vehicle required to be licensed;

15 d. a purchase money security interest in consumer goods;  
16 but filing is required for a fixture under Section 9313 or for  
17 a motor vehicle required to be licensed;

18 e. an assignment of accounts or contract rights which  
19 does not alone or in conjunction with other assignments to the  
20 same assignee transfer a significant part of the outstanding  
21 accounts or contract rights of the assignor;

22 f. a security interest of a collecting bank (Section 4208)  
23 or arising under the Article on Sales (see Section 9113) or cov-  
24 ered in subsection 3 of this section.

25 2. If a secured party assigns a perfected security interest,  
26 no filing under this Article is required in order to continue  
27 the perfected status of the security interest against creditors  
28 of and transferees from the original debtor.

29 3. The filing provisions of this Article do not apply to a

30 security interest in property subject to a statute

31 a. of the United States which provides for a national reg-  
32 istration or filing of all security interests in such property;  
33 or

34 b. of this state which provides for central filing of  
35 security interests in such property, or in a motor vehicle which  
36 is not inventory held for sale for which a certificate of title  
37 is required under the statutes of this state if a notation of  
38 such a security interest can be indicated by a public official  
39 on a certificate or a duplicate thereof.

40 4. A security interest in property covered by a statute de-  
41 scribed in subsection 3 can be perfected only by registration or  
42 filing under that statute or by indication of the security inter-  
43 est on a certificate of title or a duplicate thereof by a public  
44 official.

1 Sec. 9303. When security interest is perfected—continuity  
2 of perfection.

3 1. A security interest is perfected when it has attached and  
4 when all of the applicable steps required for perfection have  
5 been taken. Such steps are specified in Sections 9302, 9304,  
6 9305 and 9306. If such steps are taken before the security in-  
7 terest attaches, it is perfected at the time when it attaches.

8 2. If a security interest is originally perfected in any way  
9 permitted under this Article and is subsequently perfected in  
10 some other way under this Article, without an intermediate period  
11 when it was unperfected, the security interest shall be deemed  
12 to be perfected continuously for the purposes of this Article.

1 Sec. 9304. Perfection of security interest in instruments,

2 documents, and goods covered by documents—perfection by per-  
3 missive filing—temporary perfection without filing or transfer  
4 of possession.

5 1. A security interest in chattel paper or negotiable docu-  
6 ments may be perfected by filing. A security interest in  
7 instruments (other than instruments which constitute part of  
8 chattel paper) can be perfected only by the secured party's  
9 taking possession, except as provided in subsections 4 and 5.

10 2. During the period that goods are in the possession of the  
11 issuer of a negotiable document therefor, a security interest in  
12 the goods is perfected by perfecting a security interest in the  
13 document, and any security interest in the goods otherwise per-  
14 fected during such period is subject thereto.

15 3. A security interest in goods in the possession of a bailee  
16 other than one who has issued a negotiable document therefor  
17 is perfected by issuance of a document in the name of the se-  
18 cured party or by the bailee's receipt of notification of the  
19 secured party's interest or by filing as to the goods.

20 4. A security interest in instruments or negotiable docu-  
21 ments is perfected without filing or the taking of possession  
22 for a period of twenty-one days from the time it attaches to  
23 the extent that it arises for new value given under a written  
24 security agreement.

25 5. A security interest remains perfected for a period of  
26 twenty-one days without filing where a secured party having a  
27 perfected security interest in an instrument, a negotiable docu-  
28 ment or goods in possession of a bailee other than one who has  
29 issued a negotiable document therefor

30 a. makes available to the debtor the goods or documents  
31 representing the goods for the purpose of ultimate sale or  
32 exchange or for the purpose of loading, unloading, storing,  
33 shipping, transshipping, manufacturing, processing or otherwise  
34 dealing with them in a manner preliminary to their sale or ex-  
35 change; or

36 b. delivers the instrument to the debtor for the purpose  
37 of ultimate sale or exchange or of presentation, collection, re-  
38 newal or registration of transfer.

39 6. After the twenty-one day period in subsections 4 and 5  
40 perfection depends upon compliance with applicable provisions  
41 of this Article.

1 Sec. 9305. When possession by secured party perfects security  
2 interest without filing. A security interest in letters of cred-  
3 it and advices of credit (subsection 2 a of Section 5116), goods,  
4 instruments, negotiable documents or chattel paper may be per-  
5 fected by the secured party's taking possession of the collater-  
6 al. If such collateral other than goods covered by a negotiable  
7 document is held by a bailee, the secured party is deemed to  
8 have possession from the time the bailee receives notification  
9 of the secured party's interest. A security is perfect-  
10 ed by possession from the time possession is taken without re-  
11 lation back and continues only so long as possession is retained,  
12 unless otherwise specified in this Article. The security inter-  
13 est may be otherwise perfected as provided in this Article before  
14 or after the period of possession by the secured party.

1 Sec. 9306. "Proceeds"—secured party's rights on disposition  
2 of collateral.

3 1. "Proceeds" includes whatever is received when collateral  
4 or proceeds is sold, exchanged, collected or otherwise disposed  
5 of. The term also includes the account arising when the right  
6 to payment is earned under a contract right. Money, checks and  
7 the like are "cash proceeds". All other proceeds are "noncash  
8 proceeds".

9 2. Except where this Article otherwise provides, a security  
10 interest continues in collateral notwithstanding sale, exchange  
11 or other disposition thereof by the debtor unless his action was  
12 authorized by the secured party in the security agreement or oth-  
13 erwise, and also continues in any identifiable proceeds including  
14 collections received by the debtor.

15 3. The security interest in proceeds is a continuously per-  
16 fected security interest if the interest in the original collat-  
17 eral was perfected but it ceases to be a perfected security in-  
18 terest and becomes unperfected ten days after receipt of the  
19 proceeds by the debtor unless

20 a. a filed financing statement covering the original col-  
21 lateral also covers proceeds; or

22 b. the security interest in the proceeds is perfected  
23 before the expiration of the ten-day period.

24 4. In the event of insolvency proceedings instituted by or  
25 against a debtor, a secured party with a perfected security  
26 interest in proceeds has a perfected security interest

27 a. in identifiable noncash proceeds;

28 b. in identifiable cash proceeds in the form of money

29 which is not commingled with other money or deposited in a bank  
30 account prior to the insolvency proceedings;

- 31 c. in identifiable cash proceeds in the form of checks  
32 and the like which are not deposited in a bank account prior to  
33 the insolvency proceedings; and
- 34 d. in all cash and bank accounts of the debtor, if other  
35 cash proceeds have been commingled or deposited in a bank account,  
36 but the perfected security interest under this paragraph d is
- 37 i. subject to any right of setoff; and
- 38 ii. limited to an amount not greater than the amount  
39 of any cash proceeds received by the debtor within ten days be-  
40 fore the institution of the insolvency proceedings and commingled  
41 or deposited in a bank account prior to the insolvency proced-  
42 ings less the amount of cash proceeds received by the debtor  
43 and paid over to the secured party during the ten-day period.
- 44 5. If a sale of goods results in an account or chattel paper  
45 which is transferred by the seller to a secured party, and if  
46 the goods are returned to or are repossessed by the seller or the  
47 secured party, the following rules determine priorities.
- 48 a. If the goods were collateral at the time of sale for  
49 an indebtedness of the seller which is still unpaid, the original  
50 security interest attaches again to the goods and continues as  
51 a perfected security interest if it was perfected at the time  
52 when the goods were sold. If the security interest was orig-  
53 inally perfected by a filing which is still effective, nothing  
54 further is required to continue the perfected status; in any  
55 other case, the secured party must take possession of the re-  
56 turned or repossessed goods or must file.
- 57 b. An unpaid transferee of the chattel paper has a secu-  
58 rity interest in the goods against the transferor. Such secu-

59 rity interest is prior to a security interest asserted under  
60 paragraph a to the extent that the transferee of the chattel  
61 paper was entitled to priority under Section 9308.

62 c. An unpaid transferee of the account has a security in-  
63 terest in the goods against the transferor. Such security in-  
64 terest is subordinate to a security interest asserted under para-  
65 graph a.

66 d. A security interest of an unpaid transferee asserted  
67 under paragraph b or c must be perfected for protection against  
68 creditors of the transferor and purchasers of the returned or  
69 repossessed goods.

1 Sec. 9307. Protection of buyers of goods.

2 1. A buyer in ordinary course of business (subsection 9 of  
3 Section 1201) other than a person buying farm products from a  
4 person engaged in farming operations takes free of a security  
5 interest created by his seller even though the security interest  
6 is perfected and even though the buyer knows of its existence.

7 2. In the case of consumer goods and in the case of farm  
8 equipment having an original purchase price not in excess of  
9 twenty-five hundred dollars (other than fixtures, see Section  
10 9313), a buyer takes free of a security interest even though  
11 perfected if he buys without knowledge of the security interest,  
12 for value and for his own personal, family or household pur-  
13 poses or his own farming operations unless prior to the purchase  
14 the secured party has filed a financing statement covering such  
15 goods.

1 Sec. 9308. Purchase of chattel paper and nonnegotiable  
2 instruments. A purchaser of chattel paper or a nonnegotiable

3 instrument who gives new value and takes possession of it in the  
4 ordinary course of his business and without knowledge that the  
5 specific paper or instrument is subject to a security interest  
6 has priority over a security interest which is perfected under  
7 Section 9304 (permissive filing and temporary perfection). A  
8 purchaser of chattel paper who gives new value and takes posses-  
9 sion of it in the ordinary course of his business has priority  
10 over a security interest in chattel paper which is claimed merely  
11 as proceeds of inventory subject to a security interest (Section  
12 9306), even though he knows that the specific paper is subject  
13 to the security interest.

1 Sec. 9309. Protection of purchasers of instruments and docu-  
2 ments. Nothing in this Article limits the rights of a holder in  
3 due course of a negotiable instrument (Section 3302) or a holder  
4 to whom a negotiable document of title has been duly negotiated  
5 (Section 7501) or a bona fide purchaser of a security (Section  
6 8301) and such holders or purchasers take priority over an ear-  
7 lier security interest even though perfected. Filing under this  
8 Article does not constitute notice of the security interest to  
9 such holders or purchasers.

1 Sec. 9310. Priority of certain liens arising by operation of  
2 law. When a person in the ordinary course of his business fur-  
3 nishes services or materials with respect to goods subject to a  
4 security interest, a lien upon goods in the possession of such  
5 person given by statute or rule of law for such materials or ser-  
6 vices takes priority over a perfected security interest unless  
7 the lien is statutory and the statute expressly provides other-  
8 wise.

1     Sec. 9311. Alienability of debtor's rights: judicial process.  
2     The debtor's rights in collateral may be voluntarily or invol-  
3     untarily transferred (by way of sale, creation of a security in-  
4     terest, attachment, levy, garnishment or other judicial process)  
5     notwithstanding a provision in the security agreement prohibiting  
6     any transfer or making the transfer constitute a default.

1     Sec. 9312. Priorities among conflicting security interests  
2     in the same collateral.

3     1. The rules of priority stated in the following sections  
4     shall govern where applicable: Section 4208 with respect to the  
5     security interest of collecting banks in items being collected,  
6     accompanying documents and proceeds; Section 9301 on certain  
7     priorities; Section 9304 on goods covered by documents; Section  
8     9306 on proceeds and repossessions; Section 9307 on buyers of  
9     goods; Section 9308 on possessory against nonpossessory interests  
10    in chattel paper or nonnegotiable instruments; Section 9309 on  
11    security interests in negotiable instruments, documents or secu-  
12    rities; Section 9310 on priorities between perfected security  
13    interests and liens by operation of law; Section 9313 on secu-  
14    rity interests in fixtures as against interests in real estate;  
15    Section 9314 on security interests in accessions as against in-  
16    terest in goods; Section 9315 on conflicting security interests  
17    where goods lose their identity or become part of a product; and  
18    Section 9316 on contractual subordination.

19    2. A perfected security interest in crops for new value given  
20    to enable the debtor to produce the crops during the production  
21    season and given not more than three months before the crops be-  
22    come growing crops by planting or otherwise takes priority over

23 an earlier perfected security interest to the extent that such  
24 earlier interest secures obligations due more than six months  
25 before the crops become growing crops by planting or otherwise,  
26 even though the person giving new value had knowledge of the  
27 earlier security interest.

28 3. A purchase money security interest in inventory collateral  
29 has priority over a conflicting security interest in the same  
30 collateral if

31 a. the purchase money security interest is perfected at  
32 the time the debtor receives possession of the collateral; and

33 b. any secured party whose security interest is known to  
34 the holder of the purchase money security interest or who, prior  
35 to the date of the filing made by the holder of the purchase  
36 money security interest, had filed a financing statement cover-  
37 ing the same items or type of inventory, has received notifica-  
38 tion of the purchase money security interest before the debtor  
39 receives possession of the collateral covered by the purchase  
40 money security interest; and

41 c. such notification states that the person giving the no-  
42 tice has or expects to acquire a purchase money security interest  
43 in inventory of the debtor, describing such inventory by item or  
44 type.

45 4. A purchase money security interest in collateral other  
46 than inventory has priority over a conflicting security interest  
47 in the same collateral if the purchase money security interest  
48 is perfected at the time the debtor receives possession of the  
49 collateral or within ten days thereafter.

50 5. In all cases not governed by other rules stated in this

51 section (including cases of purchase money security interests  
52 which do not qualify for the special priorities set forth in  
53 subsections 3 and 4 of this section), priority between conflict-  
54 ing security interests in the same collateral shall be determin-  
55 ed as follows:

56 a. in the order of filing if both are perfected by filing,  
57 regardless of which security interest attached first under Sec-  
58 tion 9204 subsection 1 and whether it attached before or after  
59 filing;

60 b. in the order of perfection unless both are perfected  
61 by filing, regardless of which security interest attached first  
62 under Section 9204 subsection 1 and, in the case of a filed secu-  
63 rity interest, whether it attached before or after filing; and

64 c. in the order of attachment under Section 9204 subsec-  
65 tion 1 so long as neither is perfected.

66 6. For the purpose of the priority rules of the immediately  
67 preceding subsection, a continuously perfected security interest  
68 shall be treated at all times as if perfected by filing if it  
69 was originally so perfected and it shall be treated at all times  
70 as if perfected otherwise than by filing if it was originally  
71 perfected otherwise than by filing.

1 Sec. 9313. Priority of security interests in fixtures.

2 1. The rules of this section do not apply to goods incorpo-  
3 rated into a structure in the manner of lumber, bricks, tile,  
4 cement, glass, metal work and the like and no security interest  
5 in them exists under this Article unless the structure remains  
6 personal property under applicable law. The law of this state  
7 other than this Act determines whether and when other goods be-

8 come fixtures. This Act does not prevent creation of an encum-  
9 brance upon fixtures or real estate pursuant to the law appli-  
10 cable to real estate.

11 2. A security interest which attaches to goods before they  
12 become fixtures takes priority as to the goods over the claims  
13 of all persons who have an interest in the real estate except  
14 as stated in subsection 4.

15 3. A security interest which attaches to goods after they  
16 become fixtures is valid against all persons subsequently acquir-  
17 ing interests in the real estate except as stated in subsection  
18 4 but is invalid against any person with an interest in the real  
19 estate at the time the security interest attaches to the goods  
20 who has not in writing consented to the security interest or  
21 disclaimed an interest in the goods as fixtures.

22 4. The security interests described in subsections 2 and 3  
23 do not take priority over

24 a. a subsequent purchaser for value of any interest in  
25 the real estate; or

26 b. a creditor with a lien on the real estate subsequently  
27 obtained by judicial proceedings; or

28 c. a creditor with a prior encumbrance of record on the  
29 real estate to the extent that he makes subsequent advances;  
30 if the subsequent purchase is made, the lien by judicial proceed-  
31 ings is obtained, or the subsequent advance under the prior en-  
32 cumbrance is made or contracted for without knowledge of the  
33 security interest and before it is perfected. A purchaser of the  
34 real estate at a foreclosure sale other than an encumbrancer pur-  
35 chasing at his own foreclosure sale is a subsequent purchaser

36 within this section.

37 5. When under subsections 2 or 3 and 4 a secured party has  
38 priority over the claims of all persons who have interests in  
39 the real estate, he may, on default, subject to the provisions  
40 of Part 5, remove his collateral from the real estate but he  
41 must reimburse any encumbrances or owner of the real estate who  
42 is not the debtor and who has not otherwise agreed for the cost  
43 of repair of any physical injury, but not for diminution in  
44 value of the real estate caused by the absence of the goods re-  
45 moved or by any necessity for replacing them. A person entitled  
46 to reimbursement may refuse permission to remove until the secured  
47 party gives adequate security for the performance of this obliga-  
48 tion.

1 Sec. 9314. Accessions.

2 1. A security interest in goods which attaches before they  
3 are installed in or affixed to other goods takes priority as to  
4 the goods installed or affixed (called in this section "acces-  
5 sions") over the claims of all persons to the whole except as  
6 stated in subsection 3 and subject to Section 9315 subsection 1.

7 2. A security interest which attaches to goods after they be-  
8 come part of a whole is valid against all persons subsequently  
9 acquiring interests in the whole except as stated in subsection  
10 3 but is invalid against any person with an interest in the whole  
11 at the time the security interest attaches to the goods who has  
12 not in writing consented to the security interest or disclaimed  
13 an interest in the goods as part of the whole.

14 3. The security interests described in subsections 1 and 2  
15 do not take priority over

16 a. a subsequent purchaser for value of any interest in  
17 the whole; or  
18 b. a creditor with a lien on the whole subsequently ob-  
19 tained by judicial proceedings; or  
20 c. a creditor with a prior perfected security interest  
21 in the whole to the extent that he makes subsequent advances;  
22 if the subsequent purchase is made, the lien by judicial pro-  
23 ceedings obtained or the subsequent advance under the prior per-  
24 fected security interest is made or contracted for without knowl-  
25 edge of the security interest and before it is perfected. A  
26 purchaser of the whole at a foreclosure sale other than the  
27 holder of a perfected security interest purchasing at his own  
28 foreclosure sale is a subsequent purchaser within this section.  
29 4. When under subsections 1 or 2 and 3 a secured party has  
30 an interest in accessions which has priority over the claims of  
31 all persons who have interests in the whole, he may on default  
32 subject to the provisions of Part 5 remove his collateral from  
33 the whole but he must reimburse any encumbrance or owner of the  
34 whole who is not the debtor and who has not otherwise agreed for  
35 the cost of repair of any physical injury but not for any diminu-  
36 tion in value of the whole caused by the absence of the goods re-  
37 moved or by any necessity for replacing them. A person entitled  
38 to reimbursement may refuse permission to remove until the secured  
39 party gives adequate security for the performance of this  
40 obligation.

1 Sec. 9315. Priority when goods are commingled or processed.

2 1. If a security interest in goods was perfected and subse-  
3 quently the goods or a part thereof have become part of a prod-  
4 uct or mass, the security interest continues in the product or

5 mass if

6 a. the goods are so manufactured, processed, assembled or  
7 commingled that their identity is lost in the product or mass; or

8 b. a financing statement covering the original goods also  
9 covers the product into which the goods have been manufactured,  
10 processed or assembled.

11 In a case to which paragraph b applies, no separate security in-  
12 terest in that part of the original goods which has been manu-  
13 factured, processed or assembled into the product may be claim-  
14 ed under Section 9314.

15 2. When under subsection 1 more than one security interest  
16 attaches to the product or mass, they rank equally according to  
17 the ratio that the cost of the goods to which each interest orig-  
18 inally attached bears to the cost of the total product or mass.

1 Sec. 9316. Priority subject to subordination. Nothing in  
2 this Article prevents subordination by agreement by any person  
3 entitled to priority.

1 Sec. 9317. Secured party not obligated on contract of debtor.  
2 The mere existence of a security interest or authority given to  
3 the debtor to dispose of or use collateral does not impose con-  
4 tract or tort liability upon the secured party for the debtor's  
5 acts or omissions.

1 Sec. 9318. Defenses against assignee—modification of contract  
2 after notification of assignment—term prohibiting assignment in-  
3 effective—identification and proof of assignment.

4 1. Unless an account debtor has made an enforceable agree-  
5 ment not to assert defenses or claims arising out of a sale as  
6 provided in Section 9206 the rights of an assignee are subject to

7 a. all the terms of the contract between the account debt-

8 or and assignor and any defense or claim arising therefrom; and

9 b. any other defense or claim of the account debtor against  
10 the assignor which accrues before the account debtor receives  
11 notification of the assignment.

12 2. So far as the right to payment under an assigned contract  
13 right has not already become an account, and notwithstanding  
14 notification of the assignment, any modification of or substitu-  
15 tion for the contract made in good faith and in accordance with  
16 reasonable commercial standards is effective against an assignee  
17 unless the account debtor has otherwise agreed but the assignee  
18 acquires corresponding rights under the modified or substituted  
19 contract. The assignment may provide that such modification or  
20 substitution is a breach by the assignor.

21 3. The account debtor is authorized to pay the assignor un-  
22 til the account debtor receives notification that the account  
23 has been assigned and that payment is to be made to the assignee.  
24 A notification which does not reasonably identify the rights  
25 assigned is ineffective. If requested by the account debtor,  
26 the assignee must seasonably furnish reasonable proof that the  
27 assignment has been made and unless he does so the account debt-  
28 or may pay the assignor.

29 4. A term in any contract between an account debtor and an  
30 assignor which prohibits assignment of an account or contract  
31 right to which they are parties is ineffective.

#### PART 4

#### FILING

1 Sec. 9401. Place of filing—erroneous filing—removal of  
2 collateral.

3 1. The proper place to file in order to perfect a security

4 interest is as follows:

5 a. when the collateral is equipment used in farming op-  
6 erations, or farm products, or accounts, contract rights or  
7 general intangibles arising from or relating to the sale of farm  
8 products by a farmer, or consumer goods, then in the office of  
9 the Recorder in the county of the debtor's residence or if the  
10 debtor is not a resident of this state then in the office of the  
11 Recorder in the county where the goods are kept, and in addition  
12 when the collateral is crops in the office of the Recorder in  
13 the county where the land on which the crops are growing or to  
14 to be grown is located;

15 b. when the collateral is goods which at the time the se-  
16 curity interest attaches are or are to become fixtures, then in  
17 the office where a mortgage on the real estate concerned would  
18 be filed or recorded;

19 c. in all other cases, in the office of the Secretary of  
20 state.

21 2. A filing which is made in good faith in an improper place  
22 or not in all of the places required by this section is neverthe-  
23 less effective with regard to any collateral as to which the fil-  
24 ing complied with the requirements of this Article and is also  
25 effective with regard to collateral covered by the financing  
26 statement against any person who has knowledge of the contents  
27 of such financing statement.

28 3. A filing which is made in the proper place in this state  
29 continues effective even though the debtor's residence or place  
30 of business or the location of the collateral or its use, which-  
31 ever controlled the original filing, is thereafter changed.

32 4. If collateral is brought into this state from another ju-

33 jurisdiction, the rules stated in Section 9103 determine whether  
34 filing is necessary in this state.

1 Sec. 9402. Formal requisites of financing statement—amend-  
2 ments.

3 1. A financing statement is sufficient if it is signed by the  
4 debtor and the secured party, gives an address of the secured  
5 party from which information concerning the security interest  
6 may be obtained, gives a mailing address of the debtor, contains  
7 a statement indicating the types, or describing the items, of  
8 collateral, and, if the collateral is crops or goods which are  
9 or are to become fixtures, contains the name of the record owner  
10 of the real estate if different from the debtor. A financing  
11 statement may be filed before a security agreement is made or a  
12 security interest otherwise attaches. When the financing state-  
13 ment covers crops growing or to be grown which are or  
14 are to become fixtures, the statement must also contain a de-  
15 scription of the real estate concerned. A copy of the security  
16 agreement is sufficient as a financing statement if it contains  
17 the above information and is signed by both parties.

18 2. A financing statement which otherwise complies with sub-  
19 section 1 is sufficient although it is signed only by the secured  
20 party when it is filed to perfect a security interest in

21 a. collateral already subject to a security interest in  
22 another jurisdiction when it is brought into this state. Such  
23 a financing statement must state that the collateral was brought  
24 into this state under such circumstances.

25 b. proceeds under Section 9306 if the security interest  
26 in the original collateral was perfected. Such a financing  
27 statement must describe the original collateral.

28 3. A form substantially as follows is sufficient to comply  
29 with subsection 1:

30 Name of debtor (or assignor).....

31 Address .....

32 Name of secured party (or assignee).....

33 Address .....

34 (If collateral is crops or goods which are or are to be-  
35 come fixtures)

36 Name of record owner of the real estate.....

37 (1) This financing statement covers the following types  
38 (or items) of property:

39 (Describe) .....

40 (2) (If collateral is crops) The above described crops  
41 are growing or are to be grown on:

42 (Describe Real Estate).....

43 (3) (If collateral is goods which are or are to become  
44 fixtures) The above described goods are affixed or to be affix-  
45 ed to:

46 (Describe Real Estate).....

47 (4) (If proceeds or products of collateral are claimed)  
48 Proceeds—Products of the collateral are also covered.

49 Signature of Debtor (or Assignor).....

50 Signature of Secured Party (or Assignee).....

51 4. The term "financing statement" as used in this Article  
52 means the original financing statement and any amendments but if  
53 any amendment adds collateral, it is effective as to the added  
54 collateral only from the filing date of the amendment.

55 5. A financing statement substantially complying with the  
56 requirements of this section is effective even though it contains

57 minor errors which are not seriously misleading.

1 Sec. 9403. What constitutes filing—duration of filing—ef-  
2 fect of lapsed filing—duties of filing officer.

3 1. Presentation for filing of a financial statement and ten-  
4 der of the filing fee or acceptance of the statement by the fil-  
5 ing officer constitutes filing under this Article.

6 2. A filed financing statement which states a maturity date  
7 of the obligation secured of five years or less is effective un-  
8 til such maturity date and thereafter for a period of sixty days.  
9 Any other filed financing statement is effective for a period of  
10 five years from the date of filing. The effectiveness of a filed  
11 financing statement lapses on the expiration of such sixty day  
12 period after a stated maturity date or on the expiration of such  
13 five-year period, as the case may be, unless a continuation state-  
14 ment is filed prior to the lapse. Upon such lapse the security  
15 interest becomes unperfected. A filed financing statement which  
16 states that the obligation secured is payable on demand is ef-  
17 fective for five years from the date of filing.

18 3. A continuation statement may be filed by the secured party  
19 (i) within six months before and sixty days after a stated matu-  
20 rity date of five years or less, and (ii) otherwise within six  
21 months prior to the expiration of the five-year period specified  
22 in subsection 2. Any such continuation statement must be signed  
23 by the secured party, identify the original statement by file  
24 number and state that the original statement is still effective.  
25 Upon timely filing of the continuation statement, the effective-  
26 ness of the original statement is continued for five years after  
27 the last date to which the filing was effective whereupon it  
28 lapses in the same manner as provided in subsection 2 unless

29 another continuation statement is filed prior to such lapse.  
30 Succeeding continuation statements may be filed in the same  
31 manner to continue the effectiveness of the original statement.  
32 Unless a statute on disposition of public records provides other-  
33 wise, the filing officer may remove a lapsed statement from the  
34 files and destroy it.

35 4. A filing officer shall mark each statement with a con-  
36 secutive number and with the date and hour of filing and  
37 shall hold the statement for public inspection. In addition  
38 the filing officer shall index the statements according to the  
39 name of the debtor and, if the collateral is crops or goods  
40 which are or are to become fixtures, according to the name of  
41 the record owner of the real estate, and shall note in the in-  
42 dex the file number and the address of the debtor given in the  
43 statement.

44 5. The uniform fee for filing, indexing and furnishing data  
45 for an original or a continuation statement shall be one dollar.

1 Sec. 9404. Termination statement.

2 1. Whenever there is no outstanding secured obligation and  
3 no commitment to make advances, incur obligations or otherwise  
4 give value, the secured party must on written demand by the debt-  
5 or send the debtor a statement that he no longer claims a secu-  
6 rity interest under the financing statement, which shall be iden-  
7 tified by file number. A termination statement, signed by a  
8 person other than the secured party of record must include or  
9 be accompanied by the assignment or a statement by the secured  
10 party of record that he has assigned the security interest to  
11 the signer of the termination statement. The uniform fee for  
12 filing and indexing such an assignment or statement thereof

13 shall be one dollar. If the affected secured party fails to  
14 send such a termination statement within ten days after proper  
15 demand therefor he shall be liable to the debtor for one hundred  
16 dollars, and in addition for any loss caused to the debtor by  
17 such failure.

18 2. On presentation to the filing officer of such a termina-  
19 tion statement he must note it in the index. The filing officer  
20 shall remove from the files, mark "terminated" and send or de-  
21 liver to the secured party the financing statement and any con-  
22 tinuation statement, statement of assignment or statement of  
23 release pertaining thereto.

24 3. The uniform fee for filing and indexing a termination  
25 statement including sending or delivering the financing state-  
26 ment shall be one dollar.

1 Sec. 9405. Assignment of security interest—duties of filing  
2 officer—fees.

3 1. A financing statement may disclose an assignment of a  
4 security interest in the collateral described in the statement  
5 by indication in the statement of the name and address of the as-  
6 signee or by an assignment itself or a copy thereof on the face  
7 or back of the statement. Either the original secured party or  
8 the assignee may sign this statement as the secured party. On  
9 presentation to the filing officer of such a financing statement  
10 the filing officer shall mark the same as provided in Section  
11 9403 subsection 4. The uniform fee for filing, indexing and  
12 furnishing filing data for a financing statement so indicating  
13 an assignment shall be one dollar.

14 2. A secured party may assign of record all or a part of his  
15 rights under a financing statement by the filing of a separate

16 written statement of assignment signed by the secured party of  
17 record and setting forth the name of the secured party of record  
18 and the debtor, the file number and the date of filing of the  
19 financing statement and the name and address of the assignee  
20 and containing a description of the collateral assigned. A  
21 copy of the assignment is sufficient as a separate statement if  
22 it complies with the preceding sentence. On presentation to the  
23 filing officer of such a separate statement, the filing officer  
24 shall mark such separate statement with the date and hour of  
25 the filing. He shall note the assignment on the index of the  
26 financing statement. The uniform fee for filing, indexing and  
27 furnishing filing data about such a separate statement of assign-  
28 ment shall be one dollar.

29 3. After the disclosure or filing of an assignment under  
30 this section, the assignee is the secured party of record.

1 Sec. 9406. Release of collateral—duties of filing officer—  
2 fees. A secured party of record may by his signed statement re-  
3 lease all or a part of any collateral described in a filed fi-  
4 nancing statement. The statement of release is sufficient if it  
5 contains a description of the collateral being released, the  
6 name and address of the debtor, the same and address of the se-  
7 cured party, and the file number of the financing statement.  
8 Upon presentation of such a statement to the filing officer he  
9 shall mark the statement with the hour and date of filing and  
10 shall note the same upon the margin of the index of the filing  
11 of the financing statement. The uniform fee for filing and  
12 noting such a statement of release shall be one dollar.

1 Sec. 9407. Information from filing officer.

- 2 1. If the person filing any financing statement, termination  
3 statement, statement of assignment, or statement of release, fur-  
4 nishes the filing officer a copy thereof, the filing officer shall  
5 upon request note upon the copy the file number and date and hour  
6 of the filing of the original and deliver or send the copy to  
7 such person.
- 8 2. Upon request of any person, the filing officer shall issue  
9 his certificate showing whether there is on file on the date and  
10 hour stated therein, any presently effective financing statement  
11 naming a particular debtor and any statement of assignment there-  
12 of and if there is, giving the date and hour of filing of each  
13 such statement and the names and addresses of each secured party  
14 therein. The uniform fee for such a certificate shall be one  
15 dollar plus fifty cents for each financing statement and for  
16 each statement of assignment reported therein. Upon request  
17 the filing officer shall furnish a certified copy of any filed  
18 financing statement or statement of assignment for a uniform  
19 fee of one dollar per page.

## PART 5

### DEFAULT

- 1 Sec. 9501. Default—procedure when security agreement covers  
2 both real and personal property.
- 3 1. When a debtor is in default under a security agreement,  
4 a secured party has the rights and remedies provided in this  
5 Part and except as limited by subsection 3 those provided in  
6 the security agreement. He may reduce his claim to judgment,  
7 foreclose or otherwise enforce the security interest by any  
8 available judicial procedure. If the collateral is documents

9 the secured party may proceed either as to the documents or as  
10 to the goods covered thereby. A secured party in possession  
11 has the rights, remedies and duties provided in Section 9207.  
12 The rights and remedies referred to in this subsection are cu-  
13 mulative.

14 2. After default, the debtor has the rights and remedies  
15 provided in this Part, those provided in the security agreement  
16 and those provided in Section 9207.

17 3. To the extent that they give rights to the debtor and  
18 impose duties on the secured party, the rules stated in the  
19 subsections referred to below may not be waived or varied ex-  
20 cept as provided with respect to compulsory disposition of  
21 collateral (subsection 1 of Section 9505) and with respect to  
22 redemption of collateral (Section 9506) but the parties may by  
23 agreement determine the standards by which the fulfillment of  
24 these rights and duties is to be measured if such standards are  
25 not manifestly unreasonable:

26 a. subsection 2 of Section 9502 and subsection 2 of Sec-  
27 tion 9504 insofar as they require accounting for surplus pro-  
28 ceeds of collateral;

29 b. subsection 3 of Section 9504 and subsection 1 of Sec-  
30 tion 9505 which deal with disposition of collateral;

31 c. subsection 2 of Section 9505 which deals with accept-  
32 ance of collateral as discharge of obligation;

33 d. Section 9506 which deals with redemption of collat-  
34 eral; and

35 e. subsection 1 of Section 9507 which deals with the  
36 secured party's liability for failure to comply with this Part.

37 4. If the security agreement covers both real and personal  
38 property, the secured party may proceed under this Part as to  
39 the personal property or he may proceed as to both the real and  
40 the personal property in accordance with his rights and remedies  
41 in respect of the real property in which case the provisions of  
42 this Part do not apply.

43 5. When a secured party has reduced his claim to judgment  
44 the lien of any levy which may be made upon his collateral by  
45 virtue of any execution based upon the judgment shall relate  
46 back to the date of the perfection of the security interest in  
47 such collateral. A judicial sale, pursuant to such execution,  
48 is a foreclosure of the security interest by judicial procedure  
49 within the meaning of this section, and the secured party may  
50 purchase at the sale and thereafter hold the collateral free  
51 of any other requirements of this Article.

1 Sec. 9502. Collection rights of secured party.

2 1. When so agreed and in any event on default the secured  
3 party is entitled to notify an account debtor or the obligor on  
4 an instrument to make payment to him whether or not the assignor  
5 was theretofore making collections on the collateral, and also  
6 to take control of any proceeds to which he is entitled under  
7 Section 9306.

8 2. A secured party who by agreement is entitled to charge  
9 back uncollected collateral or otherwise to full or limited re-  
10 course against the debtor and who undertakes to collect from  
11 the account debtors or obligors must proceed in a commercially  
12 reasonable manner and may deduct his reasonable expenses of re-  
13 alization from the collections. If the security agreement se-

14 cures an indebtedness, the secured party must account to the  
15 debtor for any surplus, and unless otherwise agreed, the debtor  
16 is liable for any deficiency. But, if the underlying transaction  
17 was a sale of accounts, contract rights, or chattel paper, the  
18 debtor is entitled to any surplus or is liable for any deficiency  
19 only if the security agreement so provides.

1 Sec. 9503. Secured party's right to take possession after  
2 default. Unless otherwise agreed a secured party has on default  
3 the right to take possession of the collateral. In taking pos-  
4 session a secured party may proceed without judicial process  
5 if this can be done without breach of the peace or may proceed  
6 by action. If the security agreement so provides the secured  
7 party may require the debtor to assemble the collateral and  
8 make it available to the secured party at a place to be des-  
9 igned by the secured party which is reasonably convenient to  
10 both parties. Without removal a secured party may render equip-  
11 ment unusable, and may dispose of collateral on the debtor's  
12 premises under Section 9504.

1 Sec. 9504. Secured party's right to dispose of collateral  
2 after default—effect of disposition.

3 1. A secured party after default may sell, lease or other-  
4 wise dispose of any or all of the collateral in its then condi-  
5 tion or following any commercially reasonable preparation or  
6 processing. Any sale of goods is subject to the Article on  
7 Sales (Article 2). The proceeds of disposition shall be applied  
8 in the order following to

9 a. the reasonable expenses of retaking, holding, prepar-  
10 ing for sale, selling and the like and, to the extent provided

11 for in the agreement and not prohibited by law, the reasonable  
12 attorneys' fees and legal expenses incurred by the secured party;  
13 b. the satisfaction of indebtedness secured by the security  
14 interest under which the disposition is made;  
15 c. the satisfaction of indebtedness secured by any subor-  
16 dinate security interest in the collateral if written notifi-  
17 cation of demand therefor is received before distribution of  
18 the proceeds is completed. If requested by the secured party,  
19 the holder of a subordinate security interest must seasonably  
20 furnish reasonable proof of his interest, and unless he does so,  
21 the secured party need not comply with his demand.

22 2. If the security interest secures an indebtedness, the se-  
23 cured party must account to the debtor for any surplus, and, un-  
24 less otherwise agreed, the debtor is liable for any deficiency.  
25 But if the underlying transaction was a sale of accounts, con-  
26 tract rights, or chattel paper, the debtor is entitled to any  
27 surplus or is liable for any deficiency only if the security  
28 agreement so provides.

29 3. Disposition of the collateral may be by public or private  
30 proceedings and may be made by way of one or more contracts.  
31 Sale or other disposition may be as a unit or in parcels and  
32 at any time and place and on any terms but every aspect of the  
33 disposition including the method, manner, time, place and terms  
34 must be commercially reasonable. Unless collateral is perish-  
35 able or threatens to decline speedily in value or is of a type  
36 customarily sold on a recognized market, reasonable notification  
37 of the time and place of any public sale or reasonable notifica-  
38 tion of the time after which any private sale or other intended

39 disposition is to be made shall be sent by the secured party to  
40 the debtor, and except in the case of consumer goods to any other  
41 person who has a security interest in the collateral and who has  
42 duly filed a financing statement indexed in the name of the debt-  
43 or in this state or who is known by the secured party to have  
44 a security interest in the collateral. The secured party may  
45 buy at any public sale and if the collateral is of a type cus-  
46 tomarily sold in a recognized market or is of a type which is  
47 the subject of widely distributed standard price quotations he  
48 may buy at private sale.

49 4. When collateral is disposed of by a secured party after  
50 default, the disposition transfers to a purchaser for value all  
51 of the debtor's rights therein, discharges the security interest  
52 under which it is made and any security interest or lien subor-  
53 dinate thereto. The purchaser takes free of all such rights and  
54 interests even though the secured party fails to comply with the  
55 requirements of this Part or of any judicial proceedings

56 a. in the case of a public sale, if the purchaser has no  
57 knowledge of any defects in the sale and if he does not buy in  
58 collusion with the secured party, other bidders or the person  
59 conducting the sale; or

60 b. in any other case, if the purchaser acts in good faith.

61 5. A person who is liable to a secured party under a guar-  
62 anty, indorsement, repurchase agreement or the like and who re-  
63 ceives a transfer of collateral from the secured party or is  
64 subrogated to his rights has thereafter the rights and duties of  
65 the secured party. Such a transfer of collateral is not a sale  
66 or disposition of the collateral under this Article.

1     Sec. 9505. Compulsory disposition of collateral—acceptance  
2 of the collateral as discharge of obligation.

3     1. If the debtor has paid sixty per cent of the cash price  
4 in the case of a purchase money security interest in consumer  
5 goods or sixty per cent of the loan in the case of another secu-  
6 rity interest in consumer goods, and has not signed after default  
7 a statement renouncing or modifying his rights under this Part  
8 a secured party who has taken possession of collateral must dis-  
9 pose of it under Section 9504 and if he fails to do so within  
10 ninety days after he takes possession the debtor at his option  
11 may recover in conversion or under Section 9507 subsection 1 on  
12 secured party's liability.

13     2. In any other case involving consumer goods or any other  
14 collateral a secured party in possession may, after default, pro-  
15 pose to retain the collateral in satisfaction of the obligation.  
16 Written notice of such proposal shall be sent to the debtor and  
17 except in the case of consumer goods to any other secured party  
18 who has a security interest in the collateral and who has duly  
19 filed a financing statement indexed in the name of the debtor  
20 in this state or is known by the secured party in possession to  
21 have a security interest in it. If the debtor or other person  
22 entitled to receive notification objects in writing within thirty  
23 days from the receipt of the notification or if any other secured  
24 party objects in writing within thirty days after the secured  
25 party obtains possession the secured party must dispose of the  
26 collateral under Section 9504. In the absence of such written  
27 objection the secured party may retain the collateral in satis-  
28 faction of the debtor's obligation.

1     Sec. 9506. Debtor's right to redeem collateral. At any time  
2 before the secured party has disposed of collateral or entered  
3 into a contract for its disposition under Section 9504 or before  
4 the obligation has been discharged under Section 9505 subsection  
5 2 the debtor or any other secured party may unless otherwise  
6 agreed in writing after default redeem the collateral by tender-  
7 ing fulfillment of all obligations secured by the collateral as  
8 well as the expenses reasonably incurred by the secured party in  
9 retaking, holding and preparing the collateral for disposition,  
10 in arranging for the sale, and to the extent provided in the  
11 agreement and not prohibited by law, his reasonable attorneys'  
12 fees and legal expenses.

1     Sec. 9507. Secured party's liability for failure to comply  
2 with this Part.

3     1. If it is established that the secured party is not pro-  
4 ceeding in accordance with the provisions of this Part disposi-  
5 tion may be ordered or restrained on appropriate terms and con-  
6 ditions. If the disposition has occurred the debtor or any  
7 person entitled to notification or whose security interest has  
8 been made known to the secured party prior to the disposition  
9 has a right to recover from the secured party any loss caused  
10 by a failure to comply with the provisions of this Part. If the  
11 collateral is consumer goods, the debtor has a right to recover  
12 in any event an amount not less than the credit service charge  
13 plus ten per cent of the principal amount of the debt or the  
14 time price differential plus ten per cent of the cash price.

15     2. The fact that a better price could have been obtained by  
16 a sale at a different time or in a different method from that

17 selected by the secured party is not of itself sufficient to  
18 establish that the sale was not made in a commercially reason-  
19 able manner. If the secured party either sells the collateral  
20 in the usual manner in any recognized market therefor or if he  
21 sells at the price current in such market at the time of his  
22 sale or if he has otherwise sold in conformity with reasonable  
23 commercial practices among dealers in the type of property sold  
24 he has sold in a commercially reasonable manner. The principles  
25 stated in the two preceding sentences with respect to sales also  
26 apply as may be appropriate to other types of disposition. A  
27 disposition which has been approved in any judicial proceeding  
28 or by any bona fide creditors' committee or representative of  
29 creditors shall conclusively be deemed to be commercially rea-  
30 sonable, but this sentence does not indicate that any such ap-  
31 proval must be obtained in any case nor does it indicate that  
32 any disposition not so approved is not commercially reasonable.

#### ARTICLE 10

##### EFFECTIVE DATE AND REPEALER

1 Sec. 10101. Effective date. This Act shall take effect and  
2 be in force on and after July 4, 1966. It applies to transac-  
3 tions entered into and events occurring after that date.

1 Sec. 10102. Specific repealer—provision for transition.

2 1. The following chapters of the 1962 Code are hereby re-  
3 pealed:

- 4 Chapter four hundred eighty-seven (487);
- 5 Chapter four hundred ninety-three A (493A);
- 6 Chapter five hundred forty-two (542);
- 7 Chapter five hundred fifty-four (554);

- 8 Chapter five hundred fifty-five (555) ;
  - 9 Chapter five hundred fifty-six (556) ;
  - 10 Chapter five hundred seventy-five (575) ;
  - 11 Chapter six hundred fifty-two (652) ; and
  - 12 Chapter six hundred fifty-three (653).
- 13 The following sections of the 1962 Code are hereby repealed:
- 14 Section four hundred ninety-one point forty-nine (491.49) ;
  - 15 Section four hundred ninety-one point fifty-one (491.51) ;
  - 16 Section four hundred ninety-one point fifty-two (491.52) ;
  - 17 Section four hundred ninety-one point fifty-three (491.53) ;
  - 18 Section five hundred twenty-eight point sixty-one (528.61) ;
  - 19 Section five hundred twenty-eight point sixty-two (528.62) ;
  - 20 Sections five hundred thirty-nine point seven (539.7) to
  - 21 five hundred thirty-nine point fifteen (539.15), inclusive ;
  - 22 Sections five hundred forty-one point one (541.1) to five
  - 23 hundred forty-one point two hundred one (541.201), inclusive ;
  - 24 Section five hundred forty-three point twenty (543.20) ;
  - 25 Section five hundred forty-three point twenty-one (543.21) ;
  - 26 Sections five hundred forty-three point twenty-three
  - 27 (543.23) to five hundred forty-three point twenty-six (543.26),
  - 28 inclusive ;
  - 29 Section five hundred forty-three point twenty-nine (543.29) ;
  - 30 Section five hundred forty-three point thirty-seven (543.37) ;
  - 31 Section five hundred forty-three point thirty-eight (543.38) ;
  - 32 Sections six hundred thirteen point three (613.3) to six
  - 33 hundred thirteen point six (613.6), inclusive ;
  - 34 Section six hundred twenty-two point thirty-one (622.31) ;
  - 35 and Section six hundred thirty-nine point twenty-two (639.22).

36 2. Transactions validly entered into before the effective  
37 date specified in section 10101 and the rights, duties and in-  
38 terests flowing from them remain valid thereafter and may be ter-  
39 minated, completed, consummated or enforced as required or per-  
40 mitted by any statute or other law amended or repealed by this  
41 Act as though such repeal or amendment had not occurred.

1 Sec. 10103. General repealer. Except as provided in the  
2 following section, all acts and parts of acts inconsistent with  
3 this Act are hereby repealed.

1 Section 10104. Laws not repealed.

2 1. The Article on Documents of Title (Article 7) does not  
3 repeal or modify any laws prescribing the form or contents of  
4 documents of title or the services or facilities to be afforded  
5 by bailees, or otherwise regulating bailees' businesses in re-  
6 spects not specifically dealt with herein; but the fact that  
7 such laws are violated does not affect the status of a document  
8 of title which otherwise complies with the definition of a docu-  
9 ment of title (Section 1201).

10 2. This Act does not repeal sections one hundred thirty (130)  
11 to one hundred thirty-eight (138), inclusive, chapter three hun-  
12 dred twenty-six (326), 60th General Assembly, and if in any re-  
13 spect there is any inconsistency between that Act and the Article  
14 of this Act on investment securities (Article 8) the provisions  
15 of the former Act shall control.

1 Sec. 10105. Section three point three (3.3), Code 1962, is  
2 amended by striking the word "but" in line six (6) and inserting  
3 in lieu thereof the words "but, except as provided in the Uniform  
4 Commercial Code, section 1109,".

1    Sec. 10106. Section one hundred eleven point six (111.6),  
2 Code 1962, is amended by striking the words "chattel mortgages  
3 in chapter 652." in line nine (9) and inserting in lieu thereof  
4 the words "security interests in Uniform Commercial Code, Article  
5 9, Part 5."

1    Sec. 10107. Section three hundred twenty-one point one  
2 (321.1), Code 1962, is amended by striking all of subsection  
3 thirty-six (36) and inserting in lieu thereof the following:  
4    " 'Owner' means a person who holds the legal title of a  
5 vehicle, or in the event a vehicle is the subject of a security  
6 agreement with an immediate right of possession vested in the  
7 debtor, then such debtor shall be deemed the owner for the pur-  
8 pose of this chapter."

1    Sec. 10108. Section three hundred twenty-one point forty-  
2 five (321.45), Code 1962, is amended by striking all of subsec-  
3 tion two (2) and inserting in lieu thereof the words "No person  
4 shall acquire any right, title, claim or interest in or to any  
5 vehicle subject to registration under this chapter from the own-  
6 er thereof except by virtue of a certificate of title issued or  
7 assigned to him for such vehicle or by virtue of a manufacturer's  
8 or importer's certificate delivered to him for such vehicle; nor  
9 shall any waiver or estoppel operate in favor of any person  
10 claiming title to or interest in any vehicle against a person  
11 having possession of the certificate of title or manufacturer's  
12 or importer's certificate for such vehicle for a valuable con-  
13 sideration except in case of  
14    1. the perfection of a lien or security interest by notation  
15 on the certificate of title as provided in section three hundred

16 twenty-one point fifty (321.50), of the Code, or  
17 2. the perfection of a security interest in new or used  
18 vehicles held as inventory for sale as provided in Uniform Com-  
19 mercial Code, Article 9, or  
20 3. a dispute between a buyer and the selling dealer who has  
21 failed to deliver or procure the certificate of title as promised,  
22 or  
23 4. except for the purposes of section three hundred twenty-  
24 one point four hundred ninety-three (321.493), of the Code.  
25 Except in the above enumerated cases, no court in any case at  
26 law or equity shall recognize the right, title, claim or inter-  
27 est of any person in or to any vehicle subject to registration  
28 sold or disposed of, or mortgaged or encumbered, unless evidenced  
29 by a certificate of title or manufacturer's or importer's cer-  
30 tificate duly issued or assigned in accordance with the provi-  
31 sions of this chapter."

1 Sec. 10109. Section three hundred twenty-one point forty-  
2 seven (321.47), Code 1962, is amended by striking the words "chat-  
3 tel mortgage, trust receipt, conditional sales contract or other  
4 like agreement," in lines thirteen (13) to fifteen (15), inclusive,  
5 and inserting in lieu thereof the words "security agreement," and  
6 by striking the remainder of the section commencing with the words  
7 "chattel mortgage" in line fifty-six (56) and inserting in lieu  
8 thereof the words "security interest was foreclosed as provided  
9 in Uniform Commercial Code, Article 9, Part 5."

1 Sec. 10110. Section three hundred twenty-one point fifty  
2 (321.50), Code 1962, is amended by repealing the entire section  
3 and inserting in lieu thereof the following:

4 "1. A security interest in a vehicle subject to registration  
5 under the laws of this state, except trailers whose empty weight  
6 is two thousand pounds or less, and wagon box trailers subject  
7 to a registration fee of five dollars or less, and new or used  
8 vehicles held by a dealer or manufacturer as inventory for sale,  
9 is perfected by the delivery to the county treasurer of the  
10 county where the certificate of title was issued or, in the  
11 case of a new certificate, to the county treasurer where the  
12 certificate will be issued of an application for certificate  
13 of title which lists such security interest, or an application  
14 for notation of security interest signed by the owner, or a  
15 certificate of title from another jurisdiction which shows such  
16 security interest, and a fee of one dollar for each security  
17 interest shown. If the owner or secured party is in possession  
18 of the certificate of title, it must also be delivered at this  
19 time in order to perfect the security interest. If a vehicle  
20 is subject to a security interest when brought into this state,  
21 the validity of the security interest and the date of perfection  
22 is determined by the Uniform Commercial Code, Section 9103.

23 2. Upon receipt of the application and the required fee,  
24 the county treasurer shall notify the holder of the certificate  
25 of title to deliver to the county treasurer, within five days  
26 from the receipt of notice, the certificate of title to permit  
27 notation of the security interest. If the holder of the cer-  
28 tificate of title shall fail to deliver it within the said five  
29 days, he shall be liable to anyone harmed by his failure.

30 3. Upon receipt of the application, the certificate of title,  
31 if any, and the required fee, the county treasurer shall note

32 such security interest, and the date thereof, on the certificate  
33 over the signature of such officer or deputy and the seal of of-  
34 fice. He shall also note such security interest and the date  
35 thereof on the duplicate of same on file. On that day he shall  
36 notify the department on forms provided by the department, which  
37 shall note such security interests on the duplicate title in its  
38 file. The county treasurer shall then mail the certificates of  
39 title to the first secured party as shown thereon.

40 4. When a security interest is discharged, the holder there-  
41 of shall execute a release within fifteen days after payment is  
42 received, such release to contain the certificate of title num-  
43 ber, the date of the notation thereof, and the name and address  
44 of the person to whom title shall be delivered when such  
45 delivery is requested as hereinafter provided. The holder shall  
46 also note a cancellation of same on the face of the certificate  
47 of title over his, her or its signature, and deliver the release  
48 and certificate of title to the county treasurer where title was  
49 issued. The county treasurer shall immediately note the cancel-  
50 lation of said security interest on the face of the certificate  
51 of title and on the duplicate of same on file in his office. On  
52 the same day he shall notify the department, which shall note  
53 such release on the duplicate title in its file. The county  
54 treasurer shall on the same day deliver the certificate of title  
55 to the then first secured party or, if there is no such person,  
56 to the person as directed on the lien release or, if there is no  
57 such person designated, then to the owner. Said cancellation of  
58 the security interest shall be noted on the certificate of title  
59 by the county treasurer without charge. The holder of a lien

60 discharged by payment who fails to release such lien as herein  
 61 provided within fifteen days after being requested in writing  
 62 to do so shall forfeit to the person making such payment the sum  
 63 of twenty-five dollars. Such request shall be on the release  
 64 form as prescribed by the department and shall contain a state-  
 65 ment signed by the owner setting forth the name and address of  
 66 the person to whom the title shall be delivered.

67 5. The Uniform Commercial Code, Article 9, shall apply to all  
 68 transactions intended to create a security in vehicles except as  
 69 provided in this chapter.

1 Sec. 10111. Section three hundred twenty-one point one hun-  
 2 dred nine (321.109), Code 1962, is amended by striking the last  
 3 sentence beginning at line forty-three (43).

1 Sec. 10112. Section three hundred twenty-one A point one  
 2 (321A.1), Code 1962, is amended by striking paragraph eight (8)  
 3 and inserting in lieu thereof the following:

4 "Owner. A person who holds the legal title of a motor  
 5 vehicle, or in the event a motor vehicle is the subject of a  
 6 security agreement with a right of possession in the debtor,  
 7 then such debtor shall be deemed the owner for the purpose of  
 8 this chapter."

1 Sec. 10113. Section three hundred twenty-one A point thirty  
 2 (321A.30), Code 1962, is amended by striking the words "condi-  
 3 tional vendor, chattel mortgagee," in line ten (10) and inserting  
 4 in lieu thereof the words "secured party."

1 Sec. 10114. Section five hundred twenty-eight point nine  
 2 (528.9), Code 1962, is amended by striking the words "to loans  
 3 against the stock which the bank has acknowledged by written  
 4 notice" in lines sixteen (16) to eighteen (18), inclusive, and

5 inserting in lieu thereof the words "to security interests in  
6 the stock which have been perfected."

1 Sec. 10115. Section five hundred twenty-eight point thirty-  
2 four (528.34), Code 1962, is amended by striking the words "Any  
3 draft drawn and issued by any bank or trust company prior to its  
4 failure or closing and given in payment of clearings and" in  
5 lines one (1) to three (3), inclusive.

1 Sec. 10116. Section five hundred thirty-two point nineteen  
2 (532.19), Code 1962, is amended by striking the words "and  
3 528.81 to 528.85, inclusive," in lines eleven (11) and twelve  
4 (12) and inserting in lieu thereof the words "528.81 to 528.85,  
5 inclusive, and Uniform Commercial Code, Article 4".

1 Sec. 10117. Section five hundred thirty-six point fourteen  
2 (536.14), Code 1962, is amended by striking the words "mortgage,  
3 restore any pledge," in lines twenty-seven (27) and twenty-eight  
4 (28) and inserting in lieu thereof the words "security interest,  
5 restore any collateral,".

1 Sec. 10118. Section five hundred thirty-six point seventeen  
2 (536.17), Code 1962, is amended by striking the words "chattel  
3 mortgage or other lien" in lines twenty-five (25) and twenty-  
4 six (26) and inserting in lieu thereof the words "security  
5 agreement".

1 Sec. 10119. Section five hundred thirty-seven point three  
2 (537.3), Code 1962, is amended by striking the words "negotiable  
3 instruments law." in line five (5) and inserting in lieu thereof  
4 the words "Uniform Commercial Code."

1 Sec. 10120. Section five hundred thirty-eight point five  
2 (538.5), Code 1962, is repealed and inserted in lieu thereof is  
3 the following:

4 "Tender when holder absent from state. When an instrument  
5 for the payment of money is due and the holder is absent from  
6 the state or his identity or whereabouts are unknown and the in-  
7 strument does not provide for a place of payment, the maker may  
8 tender payment at the last known residence or place of business  
9 of the last known holder, and if there be no person there au-  
10 thorized to receive payment and give proper credit therefor, the  
11 maker shall be deemed to have tendered payment and interest shall  
12 cease on the date of deposit if:

13 1. the maker deposits the amount due with the clerk of the  
14 district court in the county where the maker resided at the time  
15 of the making of the instrument, if he was then a resident of  
16 the state of Iowa, or if the maker was a nonresident of the  
17 state of Iowa at the time of making, with the clerk of the dis-  
18 trict court of Polk County, and

19 2. a. the maker files an affidavit with the clerk of the  
20 court that the identity or address of the holder is unknown and  
21 that he has made diligent inquiry to ascertain it, or

22 b. the maker within three days gives notice of such depos-  
23 it by ordinary mail to the holder, if his identity and address  
24 are known.

25 Upon presentment of the instrument by the holder to the clerk,  
26 the clerk shall pay the holder of such instrument the funds in  
27 his hands. If such deposit is in full payment of the instrument  
28 the clerk shall deliver the instrument to the maker. If such  
29 deposit is a partial payment thereof the clerk shall endorse  
30 such payment thereon and return the instrument to the holder."

1 Sec. 10121. Section five hundred thirty-nine point one

2 (539.1), Code 1962, is amended by adding thereto the words "In  
3 case of conflict between this section and Uniform Commercial  
4 Code, sections 3805, 5116 or 9318, those sections control."

1 Sec. 10122. Section five hundred thirty-nine point two  
2 (539.2), Code 1962, is amended by adding thereto the words "In  
3 case of conflict between this section and Uniform Commercial  
4 Code, sections 3805, 5116 or 9318, those sections control."

1 Sec. 10123. Section five hundred thirty-nine point three  
2 (539.3), Code 1962, is amended by adding thereto the following:  
3 "In case of conflict Uniform Commercial Code, section 9318,  
4 controls."

1 Sec. 10124. Section five hundred forty-three point eighteen  
2 (543.18), Code 1962, is amended by striking the words "sections  
3 542.2 and 542.3," in lines seven (7) and eight (8) and inserting  
4 in lieu thereof the words "Uniform Commercial Code, sections  
5 7202 and 7204," and by further striking the words "section 542.2"  
6 in lines ten (10) and eleven (11) and inserting in lieu thereof  
7 the words "Uniform Commercial Code, section 7202".

1 Sec. 10125. Section five hundred forty-three point nineteen  
2 (543.19), Code 1962, is repealed and the following words are en-  
3 acted in lieu thereof: "Insofar as not inconsistent with the  
4 provisions of this chapter, original or duplicate receipts issued  
5 by licensed warehousemen shall be deemed to have been issued un-  
6 der the provisions of Uniform Commercial Code, Article 7."

1 Sec. 10126. Section five hundred forty-three point twenty-two  
2 (543.22), Code 1962, is repealed and the following words are en-  
3 acted in lieu thereof:

4 "When requested by the depositor of other than fungible agri-  
5 cultural products, a nonnegotiable receipt may be issued omitting

6 the information specified in subsection 2 of section five hundred  
7 forty-three point eighteen (543.18), of the Code.”

1 Sec. 10127. Section five hundred forty-six point three (546.3),  
2 Code 1962, is amended by striking the words “of any chattel mort-  
3 gage,” in lines three (3) and four (4) and inserting in lieu  
4 thereof the words “the Uniform Commercial Code, section 9504, or  
5 of any”.

1 Sec. 10128. Section five hundred seventy-one point two  
2 (571.2), Code 1962, is amended by striking the words “mortgage  
3 lien” in line three (3) and inserting in lieu thereof the words  
4 “security interest”.

1 Sec. 10129. Section five hundred seventy-one point five  
2 (571.5), Code 1962, is repealed and inserted in lieu thereof is  
3 the following:

4 “Said lien may be foreclosed in the manner provided in Uniform  
5 Commercial Code, Article 9, Part 5.”

1 Sec. 10130. Section five hundred seventy-six point two (576.2),  
2 Code 1962, is repealed and inserted in lieu thereof is the follow-  
3 ing:

4 “Said lien may be foreclosed in the manner provided in the  
5 Uniform Commercial Code, section 7308.”

1 Sec. 10131. Section five hundred seventy-seven point two  
2 (577.2), Code 1962, is repealed and inserted in lieu thereof is  
3 the following:

4 “Said lien may be foreclosed in the manner provided in the  
5 Uniform Commercial Code, section 7308.”

1 Sec. 10132. Section five hundred seventy-eight point two  
2 (578.2), Code 1962, is repealed and inserted in lieu thereof is  
3 the following:

4 "Said lien may be foreclosed in the manner provided in the  
5 Uniform Commercial Code, section 7308."

1 Sec. 10133. Section six hundred twenty-six point twenty-five  
2 (626.25), Code 1962, is amended by striking the words "Stock or  
3 interest" in line one (1) and inserting in lieu thereof the  
4 words "Any interest which is not represented by a security as  
5 defined in the Uniform Commercial Code, section 8102".

1 Sec. 10134. Section six hundred twenty-six point thirty-four  
2 (626.34), Code 1962, is repealed and inserted in lieu thereof  
3 is the following:

4 "Personal property subject to a security interest not exempt  
5 from execution may be taken on attachment or execution issued  
6 against the debtor, if the officer, or the attachment or execu-  
7 tion creditor, within ten days after such levy, shall pay to the  
8 secured party the amount of the secured debt and interest accrued,  
9 or deposit the same with the clerk of the district court of the  
10 county from which the attachment or execution issued, for the  
11 use of the secured party, or secure the same as in this chapter  
12 provided."

1 Sec. 10135. Section six hundred twenty-six point thirty-five  
2 (626.35), Code 1962, is repealed and inserted in lieu thereof is  
3 the following: "When the secured debt is not due as shown by  
4 the security agreement, the officer or the attachment or execu-  
5 tion creditor, must also pay or deposit with the clerk interest  
6 on the principal sum at the rate specified in the security agree-  
7 ment for the term of sixty days from the date of the deposit,  
8 unless the debt secured falls due in a less time, in which case  
9 interest shall be deposited for such shorter period."

1     Sec. 10136. Section six hundred twenty-six point thirty-six  
2 (626.36), Code 1962, is amended by striking the words "holder  
3 of the mortgage" in lines seven (7) and eight (8) and inserting  
4 in lieu thereof the words "secured party".

1     Sec. 10137. Section six hundred twenty-six point thirty-  
2 seven (626.37), Code 1962, is amended by striking the words  
3 "holder of the mortgage" in line two (2) and inserting in lieu  
4 thereof the words "secured party" and by striking the words  
5 "mortgaged property" in line six (6) and inserting in lieu there-  
6 of the word "collateral".

1     Sec. 10138. Section six hundred twenty-six point thirty-eight  
2 (626.38), Code 1962, is repealed and inserted in lieu thereof  
3 is the following: "If, for any reason, the levy upon the collat-  
4 eral is discharged or released without a sale thereof, the attach-  
5 ment or execution creditor who has paid or deposited the amount  
6 of the secured debt shall have all the rights under such secu-  
7 rity agreement possessed by the secured party at the time of the  
8 levy. If the secured party thereof desires to be reinstated in  
9 his rights thereunder, he may repay the money received by him,  
10 with interest thereon at the rate borne by the secured debt for  
11 the time it has been held by him, and demand the return of the  
12 security agreement, whereupon his rights thereunder shall revest  
13 in him, and the attachment or execution creditor shall be en-  
14 titled to the deposit made, or any part thereof remaining in  
15 the hands of the clerk, or any money returned to the clerk by  
16 the secured party."

1     Sec. 10139. Section six hundred twenty-six point thirty-nine  
2 (626.39), Code 1962, is repealed and inserted in lieu thereof

3 is the following: "The secured party, before receiving the money  
4 tendered to him by the attaching or execution creditor or which  
5 was deposited with the clerk, shall state by a signed memorandum  
6 the amount due or to become due and deliver the same along with  
7 the security agreement, unless it has been filed as the financing  
8 statement, to the person paying the said amount or the clerk  
9 with whom the deposit is made, and the secured party shall only  
10 receive the amount so stated to be due, and the surplus, if any,  
11 shall be returned to the person making the deposit."

1 Sec. 10140. Section six hundred twenty-six point forty  
2 (626.40), Code 1962, is amended by striking the word "mortgage"  
3 in lines three (3) and six (6) and inserting in lieu thereof the  
4 words "security agreement".

1 Sec. 10141. Section six hundred twenty-six point forty-one  
2 (626.41), Code 1962, is repealed and inserted in lieu thereof  
3 is the following: "If under execution sale the collateral does  
4 not sell for enough to pay the secured debt, interest, and costs  
5 of sale, the judgment creditor shall be liable for all costs thus  
6 made, but if a greater sum is realized, the officer conducting  
7 the sale shall at once pay to the secured party the amount due  
8 thereunder, and apply the surplus on the execution."

1 Sec. 10142. Section six hundred twenty-six point forty-two  
2 (626.42), Code 1962, is amended by striking the words "mortgage  
3 debt" in lines six (6) and seven (7) and inserting in lieu there-  
4 of the words "secured debt".

1 Sec. 10143. Section six hundred twenty-six point forty-three  
2 (626.43), Code 1962, is amended by striking the word "mortgagee"  
3 in line two (2) and inserting in lieu thereof the words "secured

4 party” and by striking the word “mortgage” in lines nine (9) and  
5 twelve (12) and inserting in lieu thereof the words “security  
6 interest”.

1 Sec. 10144. Section six hundred twenty-six point forty-four  
2 (626.44), Code 1962, is amended by striking the word “mortgagee”  
3 in line one (1) and inserting in lieu thereof the word “secured  
4 party”.

1 Sec. 10145. Section six hundred twenty-six point forty-five  
2 (626.45), Code 1962, is amended by striking the word “mortgage”  
3 in line three (3) and inserting in lieu thereof the words “secu-  
4 rity agreement”.

1 Sec. 10146. Section six hundred twenty-six point forty-six  
2 (626.46), Code 1962, is amended by striking the word “mortgages”  
3 in lines two (2) and six (6) and inserting in lieu thereof the  
4 words “security agreements”.

1 Sec. 10147. Section six hundred twenty-six point forty-seven  
2 (626.47), Code 1962, is amended by striking the word “mortgage”  
3 in line five (5) and inserting in lieu thereof the words “secu-  
4 rity agreement”.

1 Sec. 10148. Section six hundred twenty-six point forty-eight  
2 (626.48), Code 1962, is amended by striking the words “lien of  
3 the mortgage” in line four (4) and inserting in lieu thereof the  
4 words “priority of the security interest”.

1 Sec. 10149. Section six hundred twenty-six point forty-nine  
2 (626.49), Code 1962, is repealed and inserted in lieu thereof is  
3 the following: “If the secured party, before the levy of a writ  
4 of attachment or execution, has been garnished at the suit of a  
5 creditor of a debtor, a creditor desiring to seize the collateral

6 under a writ of attachment or execution shall pay to the secured  
7 party, or deposit with the clerk, in addition to the secured  
8 debt, the sum claimed under the garnishment, and the provisions  
9 of this chapter, so far as applicable, in all respects shall  
10 govern proceedings relating thereto.”

1 Sec. 10150. Section six hundred thirty-nine point forty  
2 (639.40), Code 1962, is amended by striking the words “Mortgaged  
3 personal property” in lines one (1) and two (2) and inserting  
4 in lieu thereof the words “Personal property subject to a secu-  
5 rity interest”.

1 Sec. 10151. Section six hundred forty point one (640.1), Code  
2 1962, is amended by striking the words “mortgage of” in line two  
3 (2) and inserting in lieu thereof the words “security interest in”.

1 Sec. 10152. Section six hundred forty-two point seventeen  
2 (642.17), Code 1962, is amended by inserting after the words  
3 “negotiable paper” in line three (3) the words “other than nego-  
4 tiable documents of title, or securities as defined in Uniform  
5 Commercial Code, section 8102,”.

1 Sec. 10153. Section seven hundred ten point twelve (710.12),  
2 Code 1962, is repealed and inserted in lieu thereof is the follow-  
3 ing: “If any debtor who has given a security interest in collat-  
4 eral willfully and with intent to defraud, destroys, conceals,  
5 sells, or in any manner disposes of the collateral while the secu-  
6 rity interest remains unsatisfied and without the written consent  
7 of the secured party, he shall be guilty of larceny and punished  
8 accordingly.”

1 Sec. 10154. Section seven hundred ten point thirteen (710.13),  
2 Code 1962, is repealed and inserted in lieu thereof is the follow-

3 ing: "Failure to produce the property specifically described in  
 4 such security agreement and existing and owned by the debtor at  
 5 the time it was executed in accordance with the terms thereof,  
 6 shall be prima facie evidence that the property described in such  
 7 security agreement has been destroyed, concealed, sold, or other-  
 8 wise disposed of by the debtor. Nothing herein contained shall  
 9 relieve the debtor from making demand for satisfaction or return  
 10 of the collateral."

1 Sec. 10155. Notwithstanding any other provision of the 1962  
 2 Code of Iowa, this Act shall, insofar as possible, be included  
 3 in the Code of Iowa as chapter five hundred fifty-four (554)  
 4 with the section numbers of this Act as the section numbers of  
 5 chapter five hundred fifty-four (554), and the Articles, Parts  
 6 and descriptive word titles to be retained as in this Act.

SENATE FILE 227

1 Amend Senate File 227 as follows:

2 1. Amend section 1201, subsection 37, by adding the follow-  
 3 ing at the end of line 175:

4 "The term also includes any interest of an owner of  
 5 farm products whose possession is entrusted to a person engaged  
 6 in farming operations."

7 2. Amend section 2403, subsection 2, by adding the follow-  
 8 ing at the end of line 20:

9 "However, any entrusting of farm products to a person  
 10 engaged in farming operations shall not give the farmer the  
 11 power to transfer all rights of the entruster to a buyer in  
 12 the ordinary course of business if the entruster perfects a  
 13 security interest as provided in Article 9."

14 3. Amend section 9102, subsection 2, by adding the word  
 15 "bailment," after the words "trust receipt," in line 15.

16 4. Amend section 9302 by striking the words "under  
 17 Section 9313" in lines 13 and 16.

18 5. Amend section 9307, subsection 1, by adding the words  
 19 "subject to a perfected security interest" after the words  
 20 "farm products" in line 3.

21 6. Amend section 9307, subsection 2, by striking the words  
 22 ", see Section 9313" in lines 9 and 10.

23 7. Strike all of section 9313 and insert the following  
 24 in lieu thereof:

25 "Sec. 9313. Priority of security interests in fixtures.  
 26 Nothing in this Act governs the priority between a security  
 27 interest in goods which are or are to become fixtures and the  
 28 claims of any person who has an interest in the real estate."

29 8. Amend section 9402, subsection 1, by striking the words  
 30 "and, if the collateral is crops or goods which are or are to  
 31 become fixtures, contains the name of the record owner of the  
 32 real estate if different from the debtor" in lines 8 through 10.

33 9. Amend section 9402, subsection 3, by striking lines  
 34 34 through 36.

35 10. Amend section 9403, subsection 4, by striking the words  
 36 "and, if the collateral is crops or goods which are or are to  
 37 become fixtures, according to the name of the record owner of  
 38 the real estate," in lines 39 through 41.

Filed *adopted 2/26*  
 February 23, 1965.

By STANLEY and O'MALLEY.

SENATE FILE 227

- 1 Amend Senate File 227, section 9104 by adding the
- 2 following new subsection: "any security interest
- 3 issued by public utility as defined in section one (1),
- 4 Chapter 286, Acts of the Sixtieth General Assembly."

Filed *withdrawn 2/25*  
February 23, 1965.

By COLEMAN and PATTON.

SENATE FILE 227

- 1 Amend Senate File 227 as follows:
- 2 1. Amend section 7403, subsection 1, paragraph b., by
- 3 striking the semi-colon ";" in line 2 of said paragraph
- 4 and adding the following: "(, but the burden of establishing
- 5 negligence in such cases is on the person entitled under the
- 6 document);".

Filed *adopted 2/25*  
February 23, 1965.

By O'MALLEY.

SENATE FILE 227

- 1 Amend Senate File 227 by adding the following to section 9302
- 2 as subsection 5 thereof:
- 3 "5. Except as provided in this subsection, the filing provisions
- 4 of this article do not apply to a security interest in property
- 5 of any description or any interest therein created by a mortgage
- 6 made by a corporation which is engaged in this state in the
- 7 business of constructing, acquiring, owning or operating a
- 8 railroad or union depot or transmitting, conveying, manufacturing,
- 9 distributing or supplying steam, electricity, gas, natural or
- 10 manufactured, crude oil or petroleum or products derived there-
- 11 from by pipeline, or telephonic or telegraphic communication,
- 12 but a mortgage made by any of the corporations aforesaid shall
- 13 be recorded and filed in accordance with the following require-
- 14 ments:
- 15 (a) the mortgage shall be recorded in the office of
- 16 the county recorder of each county in this state in which any
- 17 real estate described in the mortgage is situated; and
- 18 (b) shall be filed in the office of the Secretary of
- 19 State if the mortgage includes any rolling stock, movable equip-
- 20 ment, machinery or any other personal property or fixtures.
- 21 In lieu of recording or filing an original copy of
- 22 any mortgage or of any supplement or amendment thereto, a copy
- 23 thereof may be recorded or filed when there is annexed thereto
- 24 an affidavit of the mortgagor or the mortgagee or an agent of
- 25 either that it is a true copy. Any mortgage filed in the office
- 26 of the Secretary of State shall perfect a security interest in
- 27 the rolling stock, movable equipment, machinery and other personal
- 28 property or fixtures included therein from the date of filing.
- 29 If any mortgage filed or recorded as provided herein by its terms
- 30 provides for a security interest in any property which may there-
- 31 after be acquired by the mortgagor, the mortgage shall perfect
- 32 a security interest in the after acquired property. For each
- 33 mortgage and for each supplement and amendment to a mortgage and
- 34 each satisfaction thereof filed with the Secretary of State, he
- 35 shall charge and collect a fee of one dollar. The Secretary of
- 36 State shall endorse on each such instrument filed the date and
- 37 time of filing thereof in his office and shall maintain an
- 38 appropriate index of the filing thereof. The Secretary of State
- 39 shall furnish a certificate of filing to the person filing any
- 40 mortgage, supplement or amendment thereto or evidence of satis-
- 41 faction or cancellation thereof.
- 42 To the extent that any mortgage has been filed or
- 43 recorded as provided therein, it need not be re-filed or re-
- 44 recorded under the provisions of any other statute and nothing
- 45 herein shall be deemed to impair the lien or effect of any
- 46 mortgage heretofore filed or recorded in accordance with the
- 47 laws applicable thereto prior to the effective date of this Act."

Filed *withdrawn 2/25*  
February 24, 1965.

By REPPERT.

SENATE FILE 227

- 1 Amend Senate File 227 as follows:
- 2 1. Amend Sec. 9302, line 12, by striking the words "twenty-five
- 3 hundred", and insert in lieu thereof the words "one thousand".
- 4 2. Amend Sec. 9307, line 9, by striking the words "twenty-five
- 5 hundred", and inserting in lieu thereof the words "one thousand".

Filed and adopted  
February 25, 1965.

By RIGLER, WALKER and BENDA.