

Substituted by SF 2270
3-25-96 (P.940)

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Place On Calendar

HOUSE FILE 2402
BY COMMITTEE ON JUDICIARY

WITHDRAWN
3-25-96
(P.941)

(SUCCESSOR TO HSB 613)

(COMPANION TO SF 2270)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act amending the uniform commercial code relating to letters
2 of credit and providing an effective date.

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

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WITHDRAWN

HF 2402

1 Section 1. Section 554.5102, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 554.5102 DEFINITIONS.

5 1. In this Article unless the context otherwise requires:

6 a. "Adviser" means a person who, at the request of the
7 issuer, a confirmer, or another adviser, notifies or requests
8 another adviser to notify the beneficiary that a letter of
9 credit has been issued, confirmed, or amended.

10 b. "Applicant" means a person at whose request or for
11 whose account a letter of credit is issued. The term includes
12 a person who requests an issuer to issue a letter of credit on
13 behalf of another if the person making the request undertakes
14 an obligation to reimburse the issuer.

15 c. "Beneficiary" means a person who under the terms of a
16 letter of credit is entitled to have its complying
17 presentation honored. The term includes a person to whom
18 drawing rights have been transferred under a transferable
19 letter of credit.

20 d. "Confirmer" means a nominated person who undertakes, at
21 the request or with the consent of the issuer, to honor a
22 presentation under a letter of credit issued by another.

23 e. "Dishonor" of a letter of credit means failure timely
24 to honor or to take an interim action, such as acceptance of a
25 draft, that may be required by the letter of credit.

26 f. "Document" means a draft or other demand, document of
27 title, investment security, certificate, invoice, or other
28 record, statement, or representation of fact, law, right, or
29 opinion (i) which is presented in a written or other medium
30 permitted by the letter of credit or, unless prohibited by the
31 letter of credit, by the standard practice referred to in
32 section 554.5108, subsection 5, and (ii) which is capable of
33 being examined for compliance with the terms and conditions of
34 the letter of credit. A document may not be oral.

35 g. "Good faith" means honesty in fact in the conduct or

1 transaction concerned.

2 h. "Honor" of a letter of credit means performance of the
3 issuer's undertaking in the letter of credit to pay or deliver
4 an item of value. Unless the letter of credit otherwise
5 provides, "honor" occurs

6 (1) upon payment,

7 (2) if the letter of credit provides for acceptance, upon
8 acceptance of a draft and, at maturity, its payment, or

9 (3) if the letter of credit provides for incurring a
10 deferred obligation, upon incurring the obligation and, at
11 maturity, its performance.

12 i. "Issuer" means a bank or other person that issues a
13 letter of credit, but does not include an individual who makes
14 an engagement for personal, family, or household purposes.

15 j. "Letter of credit" means a definite undertaking that
16 satisfies the requirements of section 554.5104 by an issuer to
17 a beneficiary at the request or for the account of an
18 applicant or, in the case of a financial institution, to
19 itself or for its own account, to honor a documentary
20 presentation by payment or delivery of an item of value.

21 k. "Nominated person" means a person whom the issuer (i)
22 designates or authorizes to pay, accept, negotiate, or
23 otherwise give value under a letter of credit and (ii)
24 undertakes by agreement or custom and practice to reimburse.

25 l. "Presentation" means delivery of a document to an
26 issuer or nominated person for honor or giving of value under
27 a letter of credit.

28 m. "Presenter" means a person making a presentation as or
29 on behalf of a beneficiary or nominated person.

30 n. "Record" means information that is inscribed on a
31 tangible medium, or that is stored in an electronic or other
32 medium and is retrievable in perceivable form.

33 o. "Successor of a beneficiary" means a person who
34 succeeds to substantially all of the rights of a beneficiary
35 by operation of law, including a corporation with or into

1 which the beneficiary has been merged or consolidated, an
2 administrator, executor, personal representative, trustee in
3 bankruptcy, debtor in possession, liquidator, and receiver.

4 2. Definitions in other Articles applying to this Article
5 and the sections in which they appear are:

6 "Accept" or "Acceptance" Section 554.3409

7 "Value" Sections 554.3303, 554.4211

8 3. Article 1 contains certain additional general
9 definitions and principles of construction and interpretation
10 applicable throughout this Article.

11 Sec. 2. Section 554.5103, Code 1995, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 554.5103 SCOPE.

15 1. This Article applies to letters of credit and to
16 certain rights and obligations arising out of transactions
17 involving letters of credit.

18 2. The statement of a rule in this Article does not by
19 itself require, imply, or negate application of the same or a
20 different rule to a situation not provided for, or to a person
21 not specified, in this Article.

22 3. With the exception of this subsection, subsections 1
23 and 4, section 554.5102, subsection 1, paragraphs "i" and "j",
24 section 554.5106, subsection 4, and section 554.5114,
25 subsection 4, and except to the extent prohibited in section
26 554.1102, subsection 3, and section 554.5117, subsection 4,
27 the effect of this Article may be varied by agreement or by a
28 provision stated or incorporated by reference in an
29 undertaking. A term in an agreement or undertaking generally
30 excusing liability or generally limiting remedies for failure
31 to perform obligations is not sufficient to vary obligations
32 prescribed by this Article.

33 4. Rights and obligations of an issuer to a beneficiary or
34 a nominated person under a letter of credit are independent of
35 the existence, performance, or nonperformance of a contract or

1 arrangement out of which the letter of credit arises or which
2 underlies it, including contracts or arrangements between the
3 issuer and the applicant and between the applicant and the
4 beneficiary.

5 Sec. 3. Section 554.5104, Code 1995, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 554.5104 FORMAL REQUIREMENTS.

9 A letter of credit, confirmation, advice, transfer,
10 amendment, or cancellation may be issued in any form that is a
11 record and is authenticated (i) by a signature or (ii) in
12 accordance with the agreement of the parties or the standard
13 practice referred to in section 554.5108, subsection 5.

14 Sec. 4. Section 554.5105, Code 1995, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 554.5105 CONSIDERATION.

18 Consideration is not required to issue, amend, transfer, or
19 cancel a letter of credit, advice, or confirmation.

20 Sec. 5. Section 554.5106, Code 1995, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 554.5106 ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION.

24 1. A letter of credit is issued and becomes enforceable
25 according to its terms against the issuer when the issuer
26 sends or otherwise transmits it to the person requested to
27 advise or to the beneficiary. A letter of credit is revocable
28 only if it so provides.

29 2. After a letter of credit is issued, rights and
30 obligations of a beneficiary, applicant, confirmer, and issuer
31 are not affected by an amendment or cancellation to which that
32 person has not consented except to the extent the letter of
33 credit provides that it is revocable or that the issuer may
34 amend or cancel the letter of credit without that consent.

35 3. If there is no stated expiration date or other

1 provision that ~~specifies its duration~~, a letter of credit,
2 expires one year ~~after~~ its stated date of issuance or, if none
3 is stated, after the date on which it is issued.

4 4. A letter of credit that states that it is perpetual
5 expires five years after its stated date of issuance or, if
6 none is stated, after the date on which it is issued.

7 Sec. 6. Section 554.5107, Code 1995, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 554.5107 CONFIRMER, NOMINATED PERSON, AND ADVISER.

11 1. A confirmer is directly obligated on a letter of credit
12 and has the rights and obligations of an issuer to the extent
13 of its confirmation. The confirmer also has rights against
14 and obligations to the issuer as if the issuer were an
15 applicant and the confirmer had issued the letter of credit at
16 the request and for the account of the issuer.

17 2. A nominated person who is not a confirmer is not
18 obligated to honor or otherwise give value for a presentation.

19 3. A person requested to advise may decline to act as an
20 adviser. An adviser that is not a confirmer is not obligated
21 to honor or give value for a presentation. An adviser
22 undertakes to the issuer and to the beneficiary accurately to
23 advise the terms of the letter of credit, confirmation,
24 amendment, or advice received by that person and undertakes to
25 the beneficiary to check the apparent authenticity of the
26 request to advise. Even if the advice is inaccurate, the
27 letter of credit, confirmation, or amendment is enforceable as
28 issued.

29 4. A person who notifies a transferee beneficiary of the
30 terms of a letter of credit, confirmation, amendment, or
31 advice has the rights and obligations of an adviser under
32 subsection 3. The terms in the notice to the transferee
33 beneficiary may differ from the terms in any notice to the
34 transferor beneficiary to the extent permitted by the letter
35 of credit, confirmation, amendment, or advice received by the

1 person who so notifies.

2 Sec. 7. Section 554.5108, Code 1995, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 554.5108 ISSUER'S RIGHTS AND OBLIGATIONS.

6 1. Except as otherwise provided in section 554.5109, an
7 issuer shall honor a presentation that, as determined by the
8 standard practice referred to in subsection 5, appears on its
9 face strictly to comply with the terms and conditions of the
10 letter of credit. Except as otherwise provided in section
11 554.5113 and unless otherwise agreed with the applicant, an
12 issuer shall dishonor a presentation that does not appear so
13 to comply.

14 2. An issuer has a reasonable time after presentation, but
15 not beyond the end of the seventh business day of the issuer
16 after the day of its receipt of documents:

17 a. to honor,

18 b. if the letter of credit provides for honor to be
19 completed more than seven business days after presentation, to
20 accept a draft or incur a deferred obligation, or

21 c. to give notice to the presenter of discrepancies in the
22 presentation.

23 3. Except as otherwise provided in subsection 4, an issuer
24 is precluded from asserting as a basis for dishonor any
25 discrepancy if timely notice is not given, or any discrepancy
26 not stated in the notice if timely notice is given.

27 4. Failure to give the notice specified in subsection 2 or
28 to mention fraud, forgery, or expiration in the notice does
29 not preclude the issuer from asserting as a basis for dishonor
30 fraud or forgery as described in section 554.5109, subsection
31 1, or expiration of the letter of credit before presentation.

32 5. An issuer shall observe standard practice of financial
33 institutions that regularly issue letters of credit.

34 Determination of the issuer's observance of the standard
35 practice is a matter of interpretation for the court. The

1 court shall offer the parties a reasonable opportunity to
2 present evidence of the standard practice.

3 6. An issuer is not responsible for:

4 a. the performance or nonperformance of the underlying
5 contract, arrangement, or transaction,

6 b. an act or omission of others, or

7 c. observance or knowledge of the usage of a particular
8 trade other than the standard practice referred to in
9 subsection 5.

10 7. If an undertaking constituting a letter of credit under
11 section 554.5102, subsection 1, paragraph "j", contains
12 nondocumentary conditions, an issuer shall disregard the
13 nondocumentary conditions and treat them as if they were not
14 stated.

15 8. An issuer that has dishonored a presentation shall
16 return the documents or hold them at the disposal of, and send
17 advice to that effect to, the presenter.

18 9. An issuer that has honored a presentation as permitted
19 or required by this Article:

20 a. is entitled to be reimbursed by the applicant in
21 immediately available funds not later than the date of its
22 payment of funds;

23 b. takes the documents free of claims of the beneficiary
24 or presenter;

25 c. is precluded from asserting a right of recourse on a
26 draft under sections 554.3414 and 554.3415;

27 d. except as otherwise provided in sections 554.5110 and
28 554.5117, is precluded from restitution of money paid or other
29 value given by mistake to the extent the mistake concerns
30 discrepancies in the documents or tender which are apparent on
31 the face of the presentation; and

32 e. is discharged to the extent of its performance under
33 the letter of credit unless the issuer honored a presentation
34 in which a required signature of a beneficiary was forged.

35 Sec. 8. Section 554.5109, Code 1995, is amended by

1 striking the section and inserting in lieu thereof the
2 following:

3 554.5109 FRAUD AND FORGERY.

4 1. If a presentation is made that appears on its face
5 strictly to comply with the terms and conditions of the letter
6 of credit, but a required document is forged or materially
7 fraudulent, or honor of the presentation would facilitate a
8 material fraud by the beneficiary on the issuer or applicant:

9 a. the issuer shall honor the presentation, if honor is
10 demanded by (i) a nominated person who has given value in good
11 faith and without notice of forgery or material fraud, (ii) a
12 confirmer who has honored its confirmation in good faith,
13 (iii) a holder in due course of a draft drawn under the letter
14 of credit which was taken after acceptance by the issuer or
15 nominated person, or (iv) an assignee of the issuer's or
16 nominated person's deferred obligation that was taken for
17 value and without notice of forgery or material fraud after
18 the obligation was incurred by the issuer or nominated person;
19 and

20 b. the issuer, acting in good faith, may honor or dishonor
21 the presentation in any other case.

22 2. If an applicant claims that a required document is
23 forged or materially fraudulent or that honor of the
24 presentation would facilitate a material fraud by the
25 beneficiary on the issuer or applicant, a court of competent
26 jurisdiction may temporarily or permanently enjoin the issuer
27 from honoring a presentation or grant similar relief against
28 the issuer or other persons only if the court finds that:

29 a. the relief is not prohibited under the law applicable
30 to an accepted draft or deferred obligation incurred by the
31 issuer;

32 b. a beneficiary, issuer, or nominated person who may be
33 adversely affected is adequately protected against loss that
34 it may suffer because the relief is granted;

35 c. all of the conditions to entitle a person to the relief

1 under the law of this state have been met; and

2 d. on the basis of the information submitted to the court,
3 the applicant is more likely than not to succeed under its
4 claim of forgery or material fraud and the person demanding
5 honor does not qualify for protection under subsection 1,
6 paragraph "a".

7 Sec. 9. Section 554.5110, Code 1995, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 554.5110 WARRANTIES.

11 1. If its presentation is honored, the beneficiary
12 warrants:

13 a. to the issuer, any other person to whom presentation is
14 made, and the applicant that there is no fraud or forgery of
15 the kind described in section 554.5109, subsection 1; and

16 b. to the applicant that the drawing does not violate any
17 agreement between the applicant and beneficiary or any other
18 agreement intended by them to be augmented by the letter of
19 credit.

20 2. The warranties in subsection 1 are in addition to
21 warranties arising under Article 3, 4, 7, and 8 because of the
22 presentation or transfer of documents covered by any of those
23 articles.

24 Sec. 10. Section 554.5111, Code 1995, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 554.5111 REMEDIES.

28 1. If an issuer wrongfully dishonors or repudiates its
29 obligation to pay money under a letter of credit before
30 presentation, the beneficiary, successor, or nominated person
31 presenting on its own behalf may recover from the issuer the
32 amount that is the subject of the dishonor or repudiation. If
33 the issuer's obligation under the letter of credit is not for
34 the payment of money, the claimant may obtain specific
35 performance or, at the claimant's election, recover an amount

1 equal to the value of performance from the issuer. In either
2 case, the claimant may also recover incidental but not
3 consequential damages. The claimant is not obligated to take
4 action to avoid damages that might be due from the issuer
5 under this subsection. If, although not obligated to do so,
6 the claimant avoids damages, the claimant's recovery from the
7 issuer must be reduced by the amount of damages avoided. The
8 issuer has the burden of proving the amount of damages
9 avoided. In the case of repudiation the claimant need not
10 present any document.

11 2. If an issuer wrongfully dishonors a draft or demand
12 presented under a letter of credit or honors a draft or demand
13 in breach of its obligation to the applicant, the applicant
14 may recover damages resulting from the breach, including
15 incidental but not consequential damages, less any amount
16 saved as a result of the breach.

17 3. If an adviser or nominated person other than a
18 confirmer breaches an obligation under this Article or an
19 issuer breaches an obligation not covered in subsection 1 or
20 2, a person to whom the obligation is owed may recover damages
21 resulting from the breach, including incidental but not
22 consequential damages, less any amount saved as a result of
23 the breach. To the extent of the confirmation, a confirmer
24 has the liability of an issuer specified in this subsection
25 and subsections 1 and 2.

26 4. An issuer, nominated person, or adviser who is found
27 liable under subsection 1, 2, or 3 shall pay interest on the
28 amount owed thereunder from the date of wrongful dishonor or
29 other appropriate date.

30 5. Reasonable attorney's fees and other expenses of
31 litigation must be awarded to the prevailing party in an
32 action in which a remedy is sought under this Article.

33 6. Damages that would otherwise be payable by a party for
34 breach of an obligation under this Article may be liquidated
35 by agreement or undertaking, but only in an amount or by a

1 formula that is reasonable in light of the harm anticipated.

2 Sec. 11. Section 554.5112, Code 1995, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 554.5112 TRANSFER OF LETTER OF CREDIT.

6 1. Except as otherwise provided in section 554.5113,
7 unless a letter of credit provides that it is transferable,
8 the right of a beneficiary to draw or otherwise demand
9 performance under a letter of credit may not be transferred.

10 2. Even if a letter of credit provides that it is
11 transferable, the issuer may refuse to recognize or carry out
12 a transfer if:

13 a. the transfer would violate applicable law; or

14 b. the transferor or transferee has failed to comply with
15 any requirement stated in the letter of credit or any other
16 requirement relating to transfer imposed by the issuer which
17 is within the standard practice referred to in section
18 554.5108, subsection 5, or is otherwise reasonable under the
19 circumstances.

20 Sec. 12. Section 554.5113, Code 1995, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 554.5113 TRANSFER BY OPERATION OF LAW.

24 1. A successor of a beneficiary may consent to amendments,
25 sign and present documents, and receive payment or other items
26 of value in the name of the beneficiary without disclosing its
27 status as a successor.

28 2. A successor of a beneficiary may consent to amendments,
29 sign and present documents, and receive payment or other items
30 of value in its own name as the disclosed successor of the
31 beneficiary. Except as otherwise provided in subsection 5, an
32 issuer shall recognize a disclosed successor of a beneficiary
33 as beneficiary in full substitution for its predecessor upon
34 compliance with the requirements for recognition by the issuer
35 of a transfer of drawing rights by operation of law under the

1 standard practice referred to in section 554.5108, subsection
2 5, or, in the absence of such a practice, compliance with
3 other reasonable procedures sufficient to protect the issuer.

4 3. An issuer is not obliged to determine whether a
5 purported successor is a successor of a beneficiary or whether
6 the signature of a purported successor is genuine or
7 authorized.

8 4. Honor of a purported successor's apparently complying
9 presentation under subsection 1 or 2 has the consequences
10 specified in section 554.5108, subsection 9, even if the
11 purported successor is not the successor of a beneficiary.
12 Documents signed in the name of the beneficiary or of a
13 disclosed successor by a person who is neither the beneficiary
14 nor the successor of the beneficiary are forged documents for
15 the purposes of section 554.5109.

16 5. An issuer whose rights of reimbursement are not covered
17 by subsection 4 or substantially similar law and any confirmer
18 or nominated person may decline to recognize a presentation
19 under subsection 2.

20 6. A beneficiary whose name is changed after the issuance
21 of a letter of credit has the same rights and obligations as a
22 successor of a beneficiary under this section.

23 Sec. 13. Section 554.5114, Code 1995, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 554.5114 ASSIGNMENT OF PROCEEDS.

27 1. In this section, "proceeds of a letter of credit" means
28 the cash, check, accepted draft, or other item of value paid
29 or delivered upon honor or giving of value by the issuer or
30 any nominated person under the letter of credit. The term
31 does not include a beneficiary's drawing rights or documents
32 presented by the beneficiary.

33 2. A beneficiary may assign its right to part or all of
34 the proceeds of a letter of credit. The beneficiary may do so
35 before presentation as a present assignment of its right to

1 receive proceeds contingent upon its compliance with the terms
2 and conditions of the letter of credit.

3 3. An issuer or nominated person need not recognize an
4 assignment of proceeds of a letter of credit until it consents
5 to the assignment.

6 4. An issuer or nominated person has no obligation to give
7 or withhold its consent to an assignment of proceeds of a
8 letter of credit, but consent may not be unreasonably withheld
9 if the assignee possesses and exhibits the letter of credit
10 and presentation of the letter of credit is a condition to
11 honor.

12 5. Rights of a transferee beneficiary or nominated person
13 are independent of the beneficiary's assignment of the
14 proceeds of a letter of credit and are superior to the
15 assignee's right to the proceeds.

16 6. Neither the rights recognized by this section between
17 an assignee and an issuer, transferee beneficiary, or
18 nominated person nor the issuer's or nominated person's
19 payment of proceeds to an assignee or a third person affect
20 the rights between the assignee and any person other than the
21 issuer, transferee beneficiary, or nominated person. The mode
22 of creating and perfecting a security interest in or granting
23 an assignment of a beneficiary's rights to proceeds is
24 governed by Article 9 or other law. Against persons other
25 than the issuer, transferee beneficiary, or nominated person,
26 the rights and obligations arising upon the creation of a
27 security interest or other assignment of a beneficiary's right
28 to proceeds and its perfection are governed by Article 9 or
29 other law.

30 Sec. 14. Section 554.5115, Code 1995, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 554.5115 STATUTE OF LIMITATIONS.

34 An action to enforce a right or obligation arising under
35 this Article must be commenced within one year after the

1 expiration date of the relevant letter of credit or one year
2 after the cause of action accrues, whichever occurs later. A
3 cause of action accrues when the breach occurs, regardless of
4 the aggrieved party's lack of knowledge of the breach.

5 Sec. 15. Section 554.5116, Code 1995, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 554.5116 CHOICE OF LAW AND FORUM.

9 1. The liability of an issuer, nominated person, or
10 adviser for action or omission is governed by the law of the
11 jurisdiction chosen by an agreement in the form of a record
12 signed or otherwise authenticated by the affected parties in
13 the manner provided in section 554.5104 or by a provision in
14 the person's letter of credit, confirmation, or other
15 undertaking. The jurisdiction whose law is chosen need not
16 bear any relation to the transaction.

17 2. Unless subsection 1 applies, the liability of an
18 issuer, nominated person, or adviser for action or omission is
19 governed by the law of the jurisdiction in which the person is
20 located. The person is considered to be located at the
21 address indicated in the person's undertaking. If more than
22 one address is indicated, the person is considered to be
23 located at the address from which the person's undertaking was
24 issued. For the purpose of jurisdiction, choice of law, and
25 recognition of interbranch letters of credit, but not
26 enforcement of a judgment, all branches of a bank are
27 considered separate juridical entities and a bank is
28 considered to be located at the place where its relevant
29 branch is considered to be located under this subsection.

30 3. Except as otherwise provided in this subsection, the
31 liability of an issuer, nominated person, or adviser is
32 governed by any rules of custom or practice, such as the
33 uniform customs and practice for documentary credits, to which
34 the letter of credit, confirmation, or other undertaking is
35 expressly made subject. If (i) this Article would govern the

1 liability of an issuer, nominated person, or adviser under
2 subsection 1 or 2, (ii) the relevant undertaking incorporates
3 rules of custom or practice, and (iii) there is conflict
4 between this Article and those rules as applied to that
5 undertaking, those rules govern except to the extent of any
6 conflict with the nonvariable provisions specified in section
7 554.5103, subsection 3.

8 4. If there is conflict between this Article and Article
9 3, 4, or 9, this Article governs.

10 5. The forum for settling disputes arising out of an
11 undertaking within this Article may be chosen in the manner
12 and with the binding effect that governing law may be chosen
13 in accordance with subsection 1.

14 Sec. 16. Section 554.5117, Code 1995, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 554.5117 SUBROGATION OF ISSUER, APPLICANT, AND NOMINATED
18 PERSON.

19 1. An issuer that honors a beneficiary's presentation is
20 subrogated to the rights of the beneficiary to the same extent
21 as if the issuer were a secondary obligor of the underlying
22 obligation owed to the beneficiary and of the applicant to the
23 same extent as if the issuer were the secondary obligor of the
24 underlying obligation owed to the applicant.

25 2. An applicant that reimburses an issuer is subrogated to
26 the rights of the issuer against any beneficiary, presenter,
27 or nominated person to the same extent as if the applicant
28 were the secondary obligor of the obligations owed to the
29 issuer and has the rights of subrogation of the issuer to the
30 rights of the beneficiary stated in subsection 1.

31 3. A nominated person who pays or gives value against a
32 draft or demand presented under a letter of credit is
33 subrogated to the rights of:

34 a. the issuer against the applicant to the same extent as
35 if the nominated person were a secondary obligor of the

1 obligation owed to the issuer by the applicant;

2 b. the beneficiary to the same extent as if the nominated
3 person were a secondary obligor of the underlying obligation
4 owed to the beneficiary; and

5 c. the applicant to the same extent as if the nominated
6 person were a secondary obligor of the underlying obligation
7 owed to the applicant.

8 4. Notwithstanding any agreement or term to the contrary,
9 the rights of subrogation stated in subsections 1 and 2 do not
10 arise until the issuer honors the letter of credit or
11 otherwise pays and the rights in subsection 3 do not arise
12 until the nominated person pays or otherwise gives value.
13 Until then, the issuer, nominated person, and the applicant do
14 not derive under this section present or prospective rights
15 forming the basis of a claim, defense, or excuse.

16 Sec. 17. Section 539.1, Code 1995, is amended to read as
17 follows:

18 539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

19 Bonds, due bills, and all instruments by which the maker
20 promises to pay another, without words of negotiability, a sum
21 of money, or by which the maker promises to pay a sum of money
22 in property or labor, or to pay or deliver any property or
23 labor, or acknowledges any money, labor, or property to be
24 due, are assignable by endorsement on the instrument, or by
25 other writing. The assignee, including a person who takes
26 assignment for collection in the regular course of business,
27 has a right of action on them in the assignee's own name,
28 subject to any defense or counterclaim which the maker or
29 debtor had against an assignor of the instrument before notice
30 of the assignment. In case of conflict between this section
31 and sections ~~554.5116~~ 554.5112, 554.5113, 554.5114, and
32 554.9318, sections ~~554.5116~~ 554.5112, 554.5113, 554.5114, and
33 554.9318 control.

34 Sec. 18. Section 539.2, Code 1995, is amended to read as
35 follows:

1 539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

2 When by the terms of an instrument its assignment is
3 prohibited, an assignment thereof shall nevertheless be valid,
4 but the maker may make use of any defense or counterclaim
5 against the assignee which the maker may have against any
6 assignor thereof before notice of such assignment is given to
7 the maker in writing. In case of conflict between this
8 section and sections ~~554.5116~~ 554.5112, 554.5113, 554.5114,
9 and 554.9318, sections ~~554.5116~~ 554.5112, 554.5113, 554.5114,
10 and 554.9318 control.

11 Sec. 19. Section 554.1105, subsection 2, Code 1995, is
12 amended to read as follows:

13 2. Where one of the following provisions of this chapter
14 specifies the applicable law, that provision governs and a
15 contrary agreement is effective only to the extent permitted
16 by the law (including the conflict of laws rules) so
17 specified:

18 Rights of creditors against sold goods. Section 554.2402.

19 Applicability of the Article on Bank Deposits and
20 Collections. Section 554.4102.

21 Applicability of the Article on Investment Securities.
22 Section 554.8106.

23 Perfection provisions of the Article on Secured
24 Transactions. Section 554.9103.

25 Governing law in the Article on Funds Transfers. Section
26 554.12507.

27 Letters of Credit. Section 554.5116.

28 Applicability of the Article on Leases. Sections 554.13105
29 and 554.13106.

30 Sec. 20. Section 554.2512, subsection 1, paragraph b, Code
31 1995, is amended to read as follows:

32 b. despite tender of the required documents the
33 circumstances would justify injunction against honor under the
34 provisions of this chapter (section ~~554.5114~~ 554.5109,
35 subsection 2).

1 Sec. 21. Section 554.9103, subsection 1, paragraph a, Code
2 1995, is amended to read as follows:

3 a. This subsection applies to documents, and instruments,
4 rights to proceeds of written letters of credit, and ~~to~~ goods
5 other than those covered by a certificate of title described
6 in subsection 2, mobile goods described in subsection 3, and
7 minerals described in subsection 5.

8 Sec. 22. Section 554.9104, paragraph 1, Code 1995, is
9 amended to read as follows:

10 1. to a transfer of an interest in any deposit account
11 (section 554.9105, subsection 1), except as provided with
12 respect to proceeds (section 554.9306) and priorities in
13 proceeds (section 554.9312); or

14 Sec. 23. Section 554.9104, Code 1995, is amended by adding
15 the following new paragraph:

16 NEW PARAGRAPH. m. to a transfer of an interest in a
17 letter of credit other than the rights to proceeds of a
18 written letter of credit.

19 Sec. 24. Section 554.9105, subsection 3, Code 1995, is
20 amended to read as follows:

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

23	"Check"	Section 554.3104
24	"Contract for sale"	Section 554.2106
25	"Holder in due course"	Section 554.3302
26	<u>"Letter of credit"</u>	<u>Section 554.5102</u>
27	"Note"	Section 554.3104
28	<u>"Proceeds of a letter of credit"</u>	<u>Section 554.5114(1)</u>
29	"Sale"	Section 554.2106

30 Sec. 25. Section 554.9106, Code 1995, is amended to read
31 as follows:

32 554.9106 DEFINITIONS: "ACCOUNT" -- "GENERAL INTANGIBLES."

33 "Account" means any right to payment for goods sold or
34 leased or for services rendered which is not evidenced by an
35 instrument or chattel paper, whether or not it has been earned

1 by performance. "General intangibles" means any personal
2 property (including things in action) other than goods,
3 accounts, chattel paper, documents, instruments, rights to
4 proceeds of written letters of credit, and money. All rights
5 to payment earned or unearned under a charter or other
6 contract involving the use or hire of a vessel and all rights
7 incident to the charter or contract are accounts.

8 Sec. 26. Section 554.9304, Code 1995, is amended to read
9 as follows:

10 554.9304 PERFECTION OF SECURITY INTEREST IN INSTRUMENTS,
11 DOCUMENTS, PROCEEDS OF A WRITTEN LETTER OF CREDIT, AND GOODS
12 COVERED BY DOCUMENTS -- PERFECTION BY PERMISSIVE FILING --
13 TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.

14 1. A security interest in chattel paper or negotiable
15 documents may be perfected by filing. A security interest in
16 the rights to proceeds of a written letter of credit can be
17 perfected only by the secured party's taking possession of the
18 letter of credit. A security interest in money or instruments
19 (other than certificated securities or instruments which
20 constitute part of chattel paper) can be perfected only by the
21 secured party's taking possession, except as provided in
22 subsections 4 and 5 of this section and section 554.9306,
23 subsections 2 and 3, on proceeds.

24 2. During the period that goods are in the possession of
25 the issuer of a negotiable document therefor, a security
26 interest in the goods is perfected by perfecting a security
27 interest in the document, and any security interest in the
28 goods otherwise perfected during such period is subject
29 thereto.

30 3. A security interest in goods in the possession of a
31 bailee other than one who has issued a negotiable document
32 therefor is perfected by issuance of a document in the name of
33 the secured party or by the bailee's receipt of notification
34 of the secured party's interest or by filing as to the goods.

35 4. A security interest in instruments (other than

1 certificated securities) or negotiable documents is perfected
2 without filing or the taking of possession for a period of
3 twenty-one days from the time it attaches to the extent that
4 it arises for new value given under a written security
5 agreement.

6 5. A security interest remains perfected for a period of
7 twenty-one days without filing where a secured party having a
8 perfected security interest in an instrument (other than
9 certificated securities), a negotiable document or goods in
10 possession of a bailee other than one who has issued a
11 negotiable document therefor

12 a. makes available to the debtor the goods or documents
13 representing the goods for the purpose of ultimate sale or
14 exchange or for the purpose of loading, unloading, storing,
15 shipping, transshipping, manufacturing, processing or
16 otherwise dealing with them in a manner preliminary to their
17 sale or exchange, but priority between conflicting security
18 interests in the goods is subject to section 554.9312,
19 subsection 3; or

20 b. delivers the instrument to the debtor for the purpose
21 of ultimate sale or exchange or of presentation, collection,
22 renewal, or registration of transfer.

23 6. After the twenty-one day period in subsections 4 and 5
24 perfection depends upon compliance with applicable provisions
25 of this Article.

26 Sec. 27. Section 554.9305, Code 1995, is amended to read
27 as follows:

28 554.9305 WHEN POSSESSION BY SECURED PARTY PERFECTS
29 SECURITY INTEREST WITHOUT FILING.

30 A security interest in letters of credit ~~and advices of~~
31 ~~credit (subsection 2-"a"-of section 554.5116~~ 554.5114), goods,
32 instruments (other than certificated securities), money,
33 negotiable documents or chattel paper may be perfected by the
34 secured party's taking possession of the collateral. A
35 security interest in the right to proceeds of a written letter

1 of credit may be perfected by the secured party's taking
2 possession of the letter of credit. If such collateral other
3 than goods covered by a negotiable document is held by a
4 bailee, the secured party is deemed to have possession from
5 the time the bailee receives notification of the secured
6 party's interest. A security interest is perfected by
7 possession from the time possession is taken without relation
8 back and continues only so long as possession is retained,
9 unless otherwise specified in this Article. The security
10 interest may be otherwise perfected as provided in this
11 Article before or after the period of possession by the
12 secured party.

13 Sec. 28. APPLICABILITY. This Act applies to a letter of
14 credit that is issued on or after the effective date of this
15 Act. This Act does not apply to a transaction, event,
16 obligation, or duty arising out of or associated with a letter
17 of credit that was issued before the effective date of this
18 Act.

19 EXPLANATION

20 This bill amends chapter 554, the Uniform Commercial Code,
21 by rewriting Article 5 relating to letters of credit in
22 conformance with recommendations by the American law institute
23 and the national conference of commissioners on uniform state
24 laws, and provides conforming amendments to various other
25 sections in chapter 554.

26 Section 554.5102 establishes definitions used in the
27 Article.

28 Section 554.5103 establishes the scope of the Article,
29 which is to apply to letters of credit and to certain rights
30 and obligations arising out of transactions involving letters
31 of credit.

32 Section 554.5104 sets forth the formal requirements of a
33 letter of credit.

34 Section 554.5105 provides that consideration is not
35 required to issue, amend, transfer, or cancel a letter of

1 credit.

2 Section 554.5106 governs the effect of the issuance of,
3 amendment to, cancellation of, and duration of a letter of
4 credit.

5 Section 554.5107 sets forth the rights and obligations of a
6 person who acts as a confirmer, nominated person, and adviser
7 with respect to a letter of credit.

8 Section 554.5108 sets forth the rights and obligations of
9 an issuer of a letter of credit.

10 Section 554.5109 sets forth options for honoring or
11 dishonoring a letter of credit for an issuer and an applicant
12 when either of these parties claims that a required document
13 is fraudulent or forged.

14 Section 554.5110 establishes the warranties of a
15 beneficiary if a letter of credit is presented and honored.

16 Section 554.5111 provides for the remedies of the parties
17 associated with the wrongful dishonor of a letter of credit or
18 a breach of an obligation associated with the letter of
19 credit.

20 Section 554.5112 provides for the transfer of a letter of
21 credit.

22 Section 554.5113 provides for the transfer of a letter of
23 credit by operation of law.

24 Section 554.5114 provides for the assignment of the
25 proceeds of a letter of credit.

26 Section 554.5115 establishes the statute of limitations for
27 an action to enforce a right or obligation under the letter of
28 credit.

29 Section 554.5116 provides for the choice of law governing
30 the letter of credit and the forum in which an action may be
31 brought.

32 Section 554.5117 provides for the subrogation of rights
33 under a letter of credit with respect to an issuer, applicant,
34 and nominated person.

35 The remaining sections of the bill provide conforming

1 amendments to other sections of chapter 554, and provide for
2 the Act's applicability.

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HSB 613

JUDICIARY

Succeeded By

SF/HF 2402

HOUSE FILE

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIRPERSON
HURLEY)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act amending the uniform commercial code relating to letters
2 of credit and providing an effective date.

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

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1 Section 1. Section 554.5102, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 554.5102 DEFINITIONS.

5 1. In this Article unless the context otherwise requires:

6 a. "Adviser" means a person who, at the request of the
7 issuer, a confirmer, or another adviser, notifies or requests
8 another adviser to notify the beneficiary that a letter of
9 credit has been issued, confirmed, or amended.

10 b. "Applicant" means a person at whose request or for
11 whose account a letter of credit is issued. The term includes
12 a person who requests an issuer to issue a letter of credit on
13 behalf of another if the person making the request undertakes
14 an obligation to reimburse the issuer.

15 c. "Beneficiary" means a person who under the terms of a
16 letter of credit is entitled to have its complying
17 presentation honored. The term includes a person to whom
18 drawing rights have been transferred under a transferable
19 letter of credit.

20 d. "Confirmer" means a nominated person who undertakes, at
21 the request or with the consent of the issuer, to honor a
22 presentation under a letter of credit issued by another.

23 e. "Dishonor" of a letter of credit means failure timely
24 to honor or to take an interim action, such as acceptance of a
25 draft, that may be required by the letter of credit.

26 f. "Document" means a draft or other demand, document of
27 title, investment security, certificate, invoice, or other
28 record, statement, or representation of fact, law, right, or
29 opinion (i) which is presented in a written or other medium
30 permitted by the letter of credit or, unless prohibited by the
31 letter of credit, by the standard practice referred to in
32 section 554.5108, subsection 5, and (ii) which is capable of
33 being examined for compliance with the terms and conditions of
34 the letter of credit. A document may not be oral.

35 g. "Good faith" means honesty in fact in the conduct or

1 transaction concerned.

2 h. "Honor" of a letter of credit means performance of the
3 issuer's undertaking in the letter of credit to pay or deliver
4 an item of value. Unless the letter of credit otherwise
5 provides, "honor" occurs

6 (1) upon payment,

7 (2) if the letter of credit provides for acceptance, upon
8 acceptance of a draft and, at maturity, its payment, or

9 (3) if the letter of credit provides for incurring a
10 deferred obligation, upon incurring the obligation and, at
11 maturity, its performance.

12 i. "Issuer" means a bank or other person that issues a
13 letter of credit, but does not include an individual who makes
14 an engagement for personal, family, or household purposes.

15 j. "Letter of credit" means a definite undertaking that
16 satisfies the requirements of section 554.5104 by an issuer to
17 a beneficiary at the request or for the account of an
18 applicant or, in the case of a financial institution, to
19 itself or for its own account, to honor a documentary
20 presentation by payment or delivery of an item of value.

21 k. "Nominated person" means a person whom the issuer (i)
22 designates or authorizes to pay, accept, negotiate, or
23 otherwise give value under a letter of credit and (ii)
24 undertakes by agreement or custom and practice to reimburse.

25 l. "Presentation" means delivery of a document to an
26 issuer or nominated person for honor or giving of value under
27 a letter of credit.

28 m. "Presenter" means a person making a presentation as or
29 on behalf of a beneficiary or nominated person.

30 n. "Record" means information that is inscribed on a
31 tangible medium, or that is stored in an electronic or other
32 medium and is retrievable in perceivable form.

33 o. "Successor of a beneficiary" means a person who
34 succeeds to substantially all of the rights of a beneficiary
35 by operation of law, including a corporation with or into

1 which the beneficiary has been merged or consolidated, an
2 administrator, executor, personal representative, trustee in
3 bankruptcy, debtor in possession, liquidator, and receiver.

4 2. Definitions in other Articles applying to this Article
5 and the sections in which they appear are:

6 "Accept" or "Acceptance" Section 554.3409

7 "Value" Sections 554.3303, 554.4211

8 3. Article 1 contains certain additional general
9 definitions and principles of construction and interpretation
10 applicable throughout this Article.

11 Sec. 2. Section 554.5103, Code 1995, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 554.5103 SCOPE.

15 1. This Article applies to letters of credit and to
16 certain rights and obligations arising out of transactions
17 involving letters of credit.

18 2. The statement of a rule in this Article does not by
19 itself require, imply, or negate application of the same or a
20 different rule to a situation not provided for, or to a person
21 not specified, in this Article.

22 3. With the exception of this subsection, subsections 1
23 and 4, section 554.5102, subsection 1, paragraphs "i" and "j",
24 section 554.5106, subsection 4, and section 554.5114,
25 subsection 4, and except to the extent prohibited in section
26 554.1102, subsection 3, and section 554.5117, subsection 4,
27 the effect of this Article may be varied by agreement or by a
28 provision stated or incorporated by reference in an
29 undertaking. A term in an agreement or undertaking generally
30 excusing liability or generally limiting remedies for failure
31 to perform obligations is not sufficient to vary obligations
32 prescribed by this Article.

33 4. Rights and obligations of an issuer to a beneficiary or
34 a nominated person under a letter of credit are independent of
35 the existence, performance, or nonperformance of a contract or

1 arrangement out of which the letter of credit arises or which
2 underlies it, including contracts or arrangements between the
3 issuer and the applicant and between the applicant and the
4 beneficiary.

5 Sec. 3. Section 554.5104, Code 1995, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 554.5104 FORMAL REQUIREMENTS.

9 A letter of credit, confirmation, advice, transfer,
10 amendment, or cancellation may be issued in any form that is a
11 record and is authenticated (i) by a signature or (ii) in
12 accordance with the agreement of the parties or the standard
13 practice referred to in section 554.5108, subsection 5.

14 Sec. 4. Section 554.5105, Code 1995, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 554.5105 CONSIDERATION.

18 Consideration is not required to issue, amend, transfer, or
19 cancel a letter of credit, advice, or confirmation.

20 Sec. 5. Section 554.5106, Code 1995, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 554.5106 ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION.

24 1. A letter of credit is issued and becomes enforceable
25 according to its terms against the issuer when the issuer
26 sends or otherwise transmits it to the person requested to
27 advise or to the beneficiary. A letter of credit is revocable
28 only if it so provides.

29 2. After a letter of credit is issued, rights and
30 obligations of a beneficiary, applicant, confirmer, and issuer
31 are not affected by an amendment or cancellation to which that
32 person has not consented except to the extent the letter of
33 credit provides that it is revocable or that the issuer may
34 amend or cancel the letter of credit without that consent.

35 3. If there is no stated expiration date or other

S.F. _____ H.F. _____

1 provision that determines its duration, a letter of credit
2 expires one year after its stated date of issuance or, if none
3 is stated, after the date on which it is issued.

4 4. A letter of credit that states that it is perpetual
5 expires five years after its stated date of issuance or, if
6 none is stated, after the date on which it is issued.

7 Sec. 6. Section 554.5107, Code 1995, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 554.5107 CONFIRMER, NOMINATED PERSON, AND ADVISER.

11 1. A confirmer is directly obligated on a letter of credit
12 and has the rights and obligations of an issuer to the extent
13 of its confirmation. The confirmer also has rights against
14 and obligations to the issuer as if the issuer were an
15 applicant and the confirmer had issued the letter of credit at
16 the request and for the account of the issuer.

17 2. A nominated person who is not a confirmer is not
18 obligated to honor or otherwise give value for a presentation.

19 3. A person requested to advise may decline to act as an
20 adviser. An adviser that is not a confirmer is not obligated
21 to honor or give value for a presentation. An adviser
22 undertakes to the issuer and to the beneficiary accurately to
23 advise the terms of the letter of credit, confirmation,
24 amendment, or advice received by that person and undertakes to
25 the beneficiary to check the apparent authenticity of the
26 request to advise. Even if the advice is inaccurate, the
27 letter of credit, confirmation, or amendment is enforceable as
28 issued.

29 4. A person who notifies a transferee beneficiary of the
30 terms of a letter of credit, confirmation, amendment, or
31 advice has the rights and obligations of an adviser under
32 subsection 3. The terms in the notice to the transferee
33 beneficiary may differ from the terms in any notice to the
34 transferor beneficiary to the extent permitted by the letter
35 of credit, confirmation, amendment, or advice received by the

1 person who so notifies.

2 Sec. 7. Section 554.5108, Code 1995, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 554.5108 ISSUER'S RIGHTS AND OBLIGATIONS.

6 1. Except as otherwise provided in section 554.5109, an
7 issuer shall honor a presentation that, as determined by the
8 standard practice referred to in subsection 5, appears on its
9 face strictly to comply with the terms and conditions of the
10 letter of credit. Except as otherwise provided in section
11 554.5113 and unless otherwise agreed with the applicant, an
12 issuer shall dishonor a presentation that does not appear so
13 to comply.

14 2. An issuer has a reasonable time after presentation, but
15 not beyond the end of the seventh business day of the issuer
16 after the day of its receipt of documents:

17 a. to honor,

18 b. if the letter of credit provides for honor to be
19 completed more than seven business days after presentation, to
20 accept a draft or incur a deferred obligation, or

21 c. to give notice to the presenter of discrepancies in the
22 presentation.

23 3. Except as otherwise provided in subsection 4, an issuer
24 is precluded from asserting as a basis for dishonor any
25 discrepancy if timely notice is not given, or any discrepancy
26 not stated in the notice if timely notice is given.

27 4. Failure to give the notice specified in subsection 2 or
28 to mention fraud, forgery, or expiration in the notice does
29 not preclude the issuer from asserting as a basis for dishonor
30 fraud or forgery as described in section 554.5109, subsection
31 1, or expiration of the letter of credit before presentation.

32 5. An issuer shall observe standard practice of financial
33 institutions that regularly issue letters of credit.

34 Determination of the issuer's observance of the standard
35 practice is a matter of interpretation for the court. The

1 court shall offer the parties a reasonable opportunity to
2 present evidence of the standard practice.

3 6. An issuer is not responsible for:

4 a. the performance or nonperformance of the underlying
5 contract, arrangement, or transaction,

6 b. an act or omission of others, or

7 c. observance or knowledge of the usage of a particular
8 trade other than the standard practice referred to in
9 subsection 5.

10 7. If an undertaking constituting a letter of credit under
11 section 554.5102, subsection 1, paragraph "j", contains
12 nondocumentary conditions, an issuer shall disregard the
13 nondocumentary conditions and treat them as if they were not
14 stated.

15 8. An issuer that has dishonored a presentation shall
16 return the documents or hold them at the disposal of, and send
17 advice to that effect to, the presenter.

18 9. An issuer that has honored a presentation as permitted
19 or required by this Article:

20 a. is entitled to be reimbursed by the applicant in
21 immediately available funds not later than the date of its
22 payment of funds;

23 b. takes the documents free of claims of the beneficiary
24 or presenter;

25 c. is precluded from asserting a right of recourse on a
26 draft under sections 554.3414 and 554.3415;

27 d. except as otherwise provided in sections 554.5110 and
28 554.5117, is precluded from restitution of money paid or other
29 value given by mistake to the extent the mistake concerns
30 discrepancies in the documents or tender which are apparent on
31 the face of the presentation; and

32 e. is discharged to the extent of its performance under
33 the letter of credit unless the issuer honored a presentation
34 in which a required signature of a beneficiary was forged.

35 Sec. 8. Section 554.5109, Code 1995, is amended by

1 striking the section and inserting in lieu thereof the
2 following:

3 554.5109 FRAUD AND FORGERY.

4 1. If a presentation is made that appears on its face
5 strictly to comply with the terms and conditions of the letter
6 of credit, but a required document is forged or materially
7 fraudulent, or honor of the presentation would facilitate a
8 material fraud by the beneficiary on the issuer or applicant:

9 a. the issuer shall honor the presentation, if honor is
10 demanded by (i) a nominated person who has given value in good
11 faith and without notice of forgery or material fraud, (ii) a
12 confirmer who has honored its confirmation in good faith,
13 (iii) a holder in due course of a draft drawn under the letter
14 of credit which was taken after acceptance by the issuer or
15 nominated person, or (iv) an assignee of the issuer's or
16 nominated person's deferred obligation that was taken for
17 value and without notice of forgery or material fraud after
18 the obligation was incurred by the issuer or nominated person;
19 and

20 b. the issuer, acting in good faith, may honor or dishonor
21 the presentation in any other case.

22 2. If an applicant claims that a required document is
23 forged or materially fraudulent or that honor of the
24 presentation would facilitate a material fraud by the
25 beneficiary on the issuer or applicant, a court of competent
26 jurisdiction may temporarily or permanently enjoin the issuer
27 from honoring a presentation or grant similar relief against
28 the issuer or other persons only if the court finds that:

29 a. the relief is not prohibited under the law applicable
30 to an accepted draft or deferred obligation incurred by the
31 issuer;

32 b. a beneficiary, issuer, or nominated person who may be
33 adversely affected is adequately protected against loss that
34 it may suffer because the relief is granted;

35 c. all of the conditions to entitle a person to the relief

1 under the law of this state have been met; and

2 d. on the basis of the information submitted to the court,
3 the applicant is more likely than not to succeed under its
4 claim of forgery or material fraud and the person demanding
5 honor does not qualify for protection under subsection 1,
6 paragraph "a".

7 Sec. 9. Section 554.5110, Code 1995, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 554.5110 WARRANTIES.

11 1. If its presentation is honored, the beneficiary
12 warrants:

13 a. to the issuer, any other person to whom presentation is
14 made, and the applicant that there is no fraud or forgery of
15 the kind described in section 554.5109, subsection 1; and

16 b. to the applicant that the drawing does not violate any
17 agreement between the applicant and beneficiary or any other
18 agreement intended by them to be augmented by the letter of
19 credit.

20 2. The warranties in subsection 1 are in addition to
21 warranties arising under Article 3, 4, 7, and 8 because of the
22 presentation or transfer of documents covered by any of those
23 articles.

24 Sec. 10. Section 554.5111, Code 1995, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 554.5111 REMEDIES.

28 1. If an issuer wrongfully dishonors or repudiates its
29 obligation to pay money under a letter of credit before
30 presentation, the beneficiary, successor, or nominated person
31 presenting on its own behalf may recover from the issuer the
32 amount that is the subject of the dishonor or repudiation. If
33 the issuer's obligation under the letter of credit is not for
34 the payment of money, the claimant may obtain specific
35 performance or, at the claimant's election, recover an amount

1 equal to the value of performance from the issuer. In either
2 case, the claimant may also recover incidental but not
3 consequential damages. The claimant is not obligated to take
4 action to avoid damages that might be due from the issuer
5 under this subsection. If, although not obligated to do so,
6 the claimant avoids damages, the claimant's recovery from the
7 issuer must be reduced by the amount of damages avoided. The
8 issuer has the burden of proving the amount of damages
9 avoided. In the case of repudiation the claimant need not
10 present any document.

11 2. If an issuer wrongfully dishonors a draft or demand
12 presented under a letter of credit or honors a draft or demand
13 in breach of its obligation to the applicant, the applicant
14 may recover damages resulting from the breach, including
15 incidental but not consequential damages, less any amount
16 saved as a result of the breach.

17 3. If an adviser or nominated person other than a
18 confirmer breaches an obligation under this Article or an
19 issuer breaches an obligation not covered in subsection 1 or
20 2, a person to whom the obligation is owed may recover damages
21 resulting from the breach, including incidental but not
22 consequential damages, less any amount saved as a result of
23 the breach. To the extent of the confirmation, a confirmer
24 has the liability of an issuer specified in this subsection
25 and subsections 1 and 2.

26 4. An issuer, nominated person, or adviser who is found
27 liable under subsection 1, 2, or 3 shall pay interest on the
28 amount owed thereunder from the date of wrongful dishonor or
29 other appropriate date.

30 5. Reasonable attorney's fees and other expenses of
31 litigation must be awarded to the prevailing party in an
32 action in which a remedy is sought under this Article.

33 6. Damages that would otherwise be payable by a party for
34 breach of an obligation under this Article may be liquidated
35 by agreement or undertaking, but only in an amount or by a

1 formula that is reasonable in light of the harm anticipated.

2 Sec. 11. Section 554.5112, Code 1995, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 554.5112 TRANSFER OF LETTER OF CREDIT.

6 1. Except as otherwise provided in section 554.5113,
7 unless a letter of credit provides that it is transferable,
8 the right of a beneficiary to draw or otherwise demand
9 performance under a letter of credit may not be transferred.

10 2. Even if a letter of credit provides that it is
11 transferable, the issuer may refuse to recognize or carry out
12 a transfer if:

13 a. the transfer would violate applicable law; or

14 b. the transferor or transferee has failed to comply with
15 any requirement stated in the letter of credit or any other
16 requirement relating to transfer imposed by the issuer which
17 is within the standard practice referred to in section
18 554.5108, subsection 5, or is otherwise reasonable under the
19 circumstances.

20 Sec. 12. Section 554.5113, Code 1995, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 554.5113 TRANSFER BY OPERATION OF LAW.

24 1. A successor of a beneficiary may consent to amendments,
25 sign and present documents, and receive payment or other items
26 of value in the name of the beneficiary without disclosing its
27 status as a successor.

28 2. A successor of a beneficiary may consent to amendments,
29 sign and present documents, and receive payment or other items
30 of value in its own name as the disclosed successor of the
31 beneficiary. Except as otherwise provided in subsection 5, an
32 issuer shall recognize a disclosed successor of a beneficiary
33 as beneficiary in full substitution for its predecessor upon
34 compliance with the requirements for recognition by the issuer
35 of a transfer of drawing rights by operation of law under the

1 standard practice referred to in section 554.5108, subsection
2 5, or, in the absence of such a practice, compliance with
3 other reasonable procedures sufficient to protect the issuer.

4 3. An issuer is not obliged to determine whether a
5 purported successor is a successor of a beneficiary or whether
6 the signature of a purported successor is genuine or
7 authorized.

8 4. Honor of a purported successor's apparently complying
9 presentation under subsection 1 or 2 has the consequences
10 specified in section 554.5108, subsection 9, even if the
11 purported successor is not the successor of a beneficiary.
12 Documents signed in the name of the beneficiary or of a
13 disclosed successor by a person who is neither the beneficiary
14 nor the successor of the beneficiary are forged documents for
15 the purposes of section 554.5109.

16 5. An issuer whose rights of reimbursement are not covered
17 by subsection 4 or substantially similar law and any confirmer
18 or nominated person may decline to recognize a presentation
19 under subsection 2.

20 6. A beneficiary whose name is changed after the issuance
21 of a letter of credit has the same rights and obligations as a
22 successor of a beneficiary under this section.

23 Sec. 13. Section 554.5114, Code 1995, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 554.5114 ASSIGNMENT OF PROCEEDS.

27 1. In this section, "proceeds of a letter of credit" means
28 the cash, check, accepted draft, or other item of value paid
29 or delivered upon honor or giving of value by the issuer or
30 any nominated person under the letter of credit. The term
31 does not include a beneficiary's drawing rights or documents
32 presented by the beneficiary.

33 2. A beneficiary may assign its right to part or all of
34 the proceeds of a letter of credit. The beneficiary may do so
35 before presentation as a present assignment of its right to

1 receive proceeds contingent upon its compliance with the terms
2 and conditions of the letter of credit.

3 3. An issuer or nominated person need not recognize an
4 assignment of proceeds of a letter of credit until it consents
5 to the assignment.

6 4. An issuer or nominated person has no obligation to give
7 or withhold its consent to an assignment of proceeds of a
8 letter of credit, but consent may not be unreasonably withheld
9 if the assignee possesses and exhibits the letter of credit
10 and presentation of the letter of credit is a condition to
11 honor.

12 5. Rights of a transferee beneficiary or nominated person
13 are independent of the beneficiary's assignment of the
14 proceeds of a letter of credit and are superior to the
15 assignee's right to the proceeds.

16 6. Neither the rights recognized by this section between
17 an assignee and an issuer, transferee beneficiary, or
18 nominated person nor the issuer's or nominated person's
19 payment of proceeds to an assignee or a third person affect
20 the rights between the assignee and any person other than the
21 issuer, transferee beneficiary, or nominated person. The mode
22 of creating and perfecting a security interest in or granting
23 an assignment of a beneficiary's rights to proceeds is
24 governed by Article 9 or other law. Against persons other
25 than the issuer, transferee beneficiary, or nominated person,
26 the rights and obligations arising upon the creation of a
27 security interest or other assignment of a beneficiary's right
28 to proceeds and its perfection are governed by Article 9 or
29 other law.

30 Sec. 14. Section 554.5115, Code 1995, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 554.5115 STATUTE OF LIMITATIONS.

34 An action to enforce a right or obligation arising under
35 this Article must be commenced within one year after the

1 expiration date of the relevant letter of credit or one year
2 after the cause of action accrues, whichever occurs later. A
3 cause of action accrues when the breach occurs, regardless of
4 the aggrieved party's lack of knowledge of the breach.

5 Sec. 15. Section 554.5116, Code 1995, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 554.5116 CHOICE OF LAW AND FORUM.

9 1. The liability of an issuer, nominated person, or
10 adviser for action or omission is governed by the law of the
11 jurisdiction chosen by an agreement in the form of a record
12 signed or otherwise authenticated by the affected parties in
13 the manner provided in section 554.5104 or by a provision in
14 the person's letter of credit, confirmation, or other
15 undertaking. The jurisdiction whose law is chosen need not
16 bear any relation to the transaction.

17 2. Unless subsection 1 applies, the liability of an
18 issuer, nominated person, or adviser for action or omission is
19 governed by the law of the jurisdiction in which the person is
20 located. The person is considered to be located at the
21 address indicated in the person's undertaking. If more than
22 one address is indicated, the person is considered to be
23 located at the address from which the person's undertaking was
24 issued. For the purpose of jurisdiction, choice of law, and
25 recognition of interbranch letters of credit, but not
26 enforcement of a judgment, all branches of a bank are
27 considered separate juridical entities and a bank is
28 considered to be located at the place where its relevant
29 branch is considered to be located under this subsection.

30 3. Except as otherwise provided in this subsection, the
31 liability of an issuer, nominated person, or adviser is
32 governed by any rules of custom or practice, such as the
33 uniform customs and practice for documentary credits, to which
34 the letter of credit, confirmation, or other undertaking is
35 expressly made subject. If (i) this Article would govern the

1 liability of an issuer, nominated person, or adviser under
2 subsection 1 or 2, (ii) the relevant undertaking incorporates
3 rules of custom or practice, and (iii) there is conflict
4 between this Article and those rules as applied to that
5 undertaking, those rules govern except to the extent of any
6 conflict with the nonvariable provisions specified in section
7 554.5103, subsection 3.

8 4. If there is conflict between this Article and Article
9 3, 4, or 9, this Article governs.

10 5. The forum for settling disputes arising out of an
11 undertaking within this Article may be chosen in the manner
12 and with the binding effect that governing law may be chosen
13 in accordance with subsection 1.

14 Sec. 16. Section 554.5117, Code 1995, is amended by
15 striking the section and inserting in lieu thereof the
16 following: 554.5117 SUBROGATION OF ISSUER, APPLICANT, AND
17 NOMINATED PERSON.

18 1. An issuer that honors a beneficiary's presentation is
19 subrogated to the rights of the beneficiary to the same extent
20 as if the issuer were a secondary obligor of the underlying
21 obligation owed to the beneficiary and of the applicant to the
22 same extent as if the issuer were the secondary obligor of the
23 underlying obligation owed to the applicant.

24 2. An applicant that reimburses an issuer is subrogated to
25 the rights of the issuer against any beneficiary, presenter,
26 or nominated person to the same extent as if the applicant
27 were the secondary obligor of the obligations owed to the
28 issuer and has the rights of subrogation of the issuer to the
29 rights of the beneficiary stated in subsection 1.

30 3. A nominated person who pays or gives value against a
31 draft or demand presented under a letter of credit is
32 subrogated to the rights of:

33 a. the issuer against the applicant to the same extent as
34 if the nominated person were a secondary obligor of the
35 obligation owed to the issuer by the applicant;

1 b. the beneficiary to the same extent as if the nominated
2 person were a secondary obligor of the underlying obligation
3 owed to the beneficiary; and

4 c. the applicant to the same extent as if the nominated
5 person were a secondary obligor of the underlying obligation
6 owed to the applicant.

7 4. Notwithstanding any agreement or term to the contrary,
8 the rights of subrogation stated in subsections 1 and 2 do not
9 arise until the issuer honors the letter of credit or
10 otherwise pays and the rights in subsection 3 do not arise
11 until the nominated person pays or otherwise gives value.
12 Until then, the issuer, nominated person, and the applicant do
13 not derive under this section present or prospective rights
14 forming the basis of a claim, defense, or excuse.

15 Sec. 17. Section 539.1, Code 1995, is amended to read as
16 follows:

17 539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

18 Bonds, due bills, and all instruments by which the maker
19 promises to pay another, without words of negotiability, a sum
20 of money, or by which the maker promises to pay a sum of money
21 in property or labor, or to pay or deliver any property or
22 labor, or acknowledges any money, labor, or property to be
23 due, are assignable by endorsement on the instrument, or by
24 other writing. The assignee, including a person who takes
25 assignment for collection in the regular course of business,
26 has a right of action on them in the assignee's own name,
27 subject to any defense or counterclaim which the maker or
28 debtor had against an assignor of the instrument before notice
29 of the assignment. In case of conflict between this section
30 and sections ~~554.5116~~ 554.5112, 554.5113, 554.5114, and
31 554.9318, sections ~~554.5116~~ 554.5112, 554.5113, 554.5114, and
32 554.9318 control.

33 Sec. 18. Section 539.2, Code 1995, is amended to read as
34 follows:

35 539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

1 When by the terms of an instrument its assignment is
2 prohibited, an assignment thereof shall nevertheless be valid,
3 but the maker may make use of any defense or counterclaim
4 against the assignee which the maker may have against any
5 assignor thereof before notice of such assignment is given to
6 the maker in writing. In case of conflict between this
7 section and sections ~~554.5116~~ 554.5112, 554.5113, 554.5114,
8 and 554.9318, sections ~~554.5116~~ 554.5112, 554.5113, 554.5114,
9 and 554.9318 control.

10 Sec. 19. Section 554.1105, subsection 2, Code 1995, is
11 amended to read as follows:

12 2. Where one of the following provisions of this chapter
13 specifies the applicable law, that provision governs and a
14 contrary agreement is effective only to the extent permitted
15 by the law (including the conflict of laws rules) so
16 specified:

17 Rights of creditors against sold goods. Section 554.2402.

18 Applicability of the Article on Bank Deposits and
19 Collections. Section 554.4102.

20 Applicability of the Article on Investment Securities.
21 Section 554.8106.

22 Perfection provisions of the Article on Secured
23 Transactions. Section 554.9103.

24 Governing law in the Article on Funds Transfers. Section
25 554.12507.

26 Letters of Credit. Section 5-116.

27 Applicability of the Article on Leases. Sections 554.13105
28 and 554.13106.

29 Sec. 20. Section 554.2512, subsection 1, paragraph b, Code
30 1995, is amended to read as follows:

31 b. despite tender of the required documents the
32 circumstances would justify injunction against honor under the
33 provisions of this chapter (section ~~554.5114~~ 554.5109,
34 subsection 2).

35 Sec. 21. Section 554.9103, subsection 1, paragraph a, Code

1 1995, is amended to read as follows:

2 a. This subsection applies to documents, and instruments,
 3 rights to proceeds of written letters of credit, and ~~to~~ goods
 4 other than those covered by a certificate of title described
 5 in subsection 2, mobile goods described in subsection 3, and
 6 minerals described in subsection 5.

7 Sec. 22. Section 554.9104, paragraph 1, Code 1995, is
 8 amended to read as follows:

9 1. to a transfer of an interest in any deposit account
 10 (section 554.9105, subsection 1), except as provided with
 11 respect to proceeds (section 554.9306) and priorities in
 12 proceeds (section 554.9312); or

13 Sec. 23. Section 554.9104, Code 1995, is amended by adding
 14 the following new paragraph:

15 NEW PARAGRAPH. m. to a transfer of an interest in a
 16 letter of credit other than the rights to proceeds of a
 17 written letter of credit.

18 Sec. 24. Section 554.9105, subsection 3, Code 1995, is
 19 amended to read as follows:

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

22 "Check"	Section 554.3104
23 "Contract for sale"	Section 554.2106
24 "Holder in due course"	Section 554.3302
25 <u>"Letter of credit"</u>	Section 554.5102
26 "Note"	Section 554.3104
27 <u>"Proceeds of a letter of credit"</u>	Section 554.5114(1)
28 "Sale"	Section 554.2106

29 Sec. 25. Section 554.9106, Code 1995, is amended to read
 30 as follows:

31 554.9106 DEFINITIONS: "ACCOUNT" -- "GENERAL INTANGIBLES."

32 "Account" means any right to payment for goods sold or
 33 leased or for services rendered which is not evidenced by an
 34 instrument or chattel paper, whether or not it has been earned
 35 by performance. "General intangibles" means any personal

1 property (including things in action) other than goods,
2 accounts, chattel paper, documents, instruments, rights to
3 proceeds of written letters of credit, and money. All rights
4 to payment earned or unearned under a charter or other
5 contract involving the use or hire of a vessel and all rights
6 incident to the charter or contract are accounts.

7 Sec. 26. Section 554.9304, Code 1995, is amended to read
8 as follows:

9 554.9304 PERFECTION OF SECURITY INTEREST IN INSTRUMENTS,
10 DOCUMENTS, PROCEEDS OF A WRITTEN LETTER OF CREDIT, AND GOODS
11 COVERED BY DOCUMENTS -- PERFECTION BY PERMISSIVE FILING --
12 TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.

13 1. A security interest in chattel paper or negotiable
14 documents may be perfected by filing. A security interest in
15 the rights to proceeds of a written letter of credit can be
16 perfected only by the secured party's taking possession of the
17 letter of credit. A security interest in money or instruments
18 (other than certificated securities or instruments which
19 constitute part of chattel paper) can be perfected only by the
20 secured party's taking possession, except as provided in
21 subsections 4 and 5 of this section and section 554.9306,
22 subsections 2 and 3, on proceeds.

23 2. During the period that goods are in the possession of
24 the issuer of a negotiable document therefor, a security
25 interest in the goods is perfected by perfecting a security
26 interest in the document, and any security interest in the
27 goods otherwise perfected during such period is subject
28 thereto.

29 3. A security interest in goods in the possession of a
30 bailee other than one who has issued a negotiable document
31 therefor is perfected by issuance of a document in the name of
32 the secured party or by the bailee's receipt of notification
33 of the secured party's interest or by filing as to the goods.

34 4. A security interest in instruments (other than
35 certificated securities) or negotiable documents is perfected

1 without filing or the taking of possession for a period of
2 twenty-one days from the time it attaches to the extent that
3 it arises for new value given under a written security
4 agreement.

5 5. A security interest remains perfected for a period of
6 twenty-one days without filing where a secured party having a
7 perfected security interest in an instrument (other than
8 certificated securities), a negotiable document or goods in
9 possession of a bailee other than one who has issued a
10 negotiable document therefor

11 a. makes available to the debtor the goods or documents
12 representing the goods for the purpose of ultimate sale or
13 exchange or for the purpose of loading, unloading, storing,
14 shipping, transshipping, manufacturing, processing or
15 otherwise dealing with them in a manner preliminary to their
16 sale or exchange, but priority between conflicting security
17 interests in the goods is subject to section 554.9312,
18 subsection 3; or

19 b. delivers the instrument to the debtor for the purpose
20 of ultimate sale or exchange or of presentation, collection,
21 renewal, or registration of transfer.

22 6. After the twenty-one day period in subsections 4 and 5
23 perfection depends upon compliance with applicable provisions
24 of this Article.

25 Sec. 27. Section 554.9305, Code 1995, is amended to read
26 as follows:

27 554.9305 WHEN POSSESSION BY SECURED PARTY PERFECTS
28 SECURITY INTEREST WITHOUT FILING.

29 A security interest in letters of credit ~~and advices of~~
30 ~~credit (subsection 2-"a"-of section 554-5116~~ 554.5114), goods,
31 instruments (other than certificated securities), money,
32 negotiable documents or chattel paper may be perfected by the
33 secured party's taking possession of the collateral. A
34 security interest in the right to proceeds of a written letter
35 of credit may be perfected by the secured party's taking

1 possession of the letter of credit. If such collateral other
2 than goods covered by a negotiable document is held by a
3 bailee, the secured party is deemed to have possession from
4 the time the bailee receives notification of the secured
5 party's interest. A security interest is perfected by
6 possession from the time possession is taken without relation
7 back and continues only so long as possession is retained,
8 unless otherwise specified in this Article. The security
9 interest may be otherwise perfected as provided in this
10 Article before or after the period of possession by the
11 secured party.

12 Sec. 28. APPLICABILITY. This Act applies to a letter of
13 credit that is issued on or after the effective date of this
14 Act. This Act does not apply to a transaction, event,
15 obligation, or duty arising out of or associated with a letter
16 of credit that was issued before the effective date of this
17 Act.

18 EXPLANATION

19 This bill amends chapter 554, the Uniform Commercial Code,
20 by rewriting Article 5 relating to letters of credit in
21 conformance with recommendations by the American law institute
22 and the national conference of commissioners on uniform state
23 laws, and provides conforming amendments to various other
24 sections in chapter 554.

25 Section 554.5102 establishes definitions used in the
26 Article.

27 Section 554.5103 establishes the scope of the Article,
28 which is to apply to letters of credit and to certain rights
29 and obligations arising out of transactions involving letters
30 of credit.

31 Section 554.5104 sets forth the formal requirements of a
32 letter of credit.

33 Section 554.5105 provides that consideration is not
34 required to issue, amend, transfer, or cancel a letter of
35 credit.

1 Section 554.5106 governs the effect of the issuance of,
2 amendment to, cancellation of, and duration of a letter of
3 credit.

4 Section 554.5107 sets forth the rights and obligations of a
5 person who acts as a confirmer, nominated person, and adviser
6 with respect to a letter of credit.

7 Section 554.5108 sets forth the rights and obligations of
8 an issuer of a letter of credit.

9 Section 554.5109 sets forth options for honoring or
10 dishonoring a letter of credit for an issuer and an applicant
11 when either of these parties claims that a required document
12 is fraudulent or forged.

13 Section 554.5110 establishes the warranties of a
14 beneficiary if a letter of credit is presented and honored.

15 Section 554.5111 provides for the remedies of the parties
16 associated with the wrongful dishonor of a letter of credit or
17 a breach of an obligation associated with the letter of
18 credit.

19 Section 554.5112 provides for the transfer of a letter of
20 credit.

21 Section 554.5113 provides for the transfer of a letter of
22 credit by operation of law.

23 Section 554.5114 provides for the assignment of the
24 proceeds of a letter of credit.

25 Section 554.5115 establishes the statute of limitations for
26 an action to enforce a right or obligation under the letter of
27 credit.

28 Section 554.5116 provides for the choice of law governing
29 the letter of credit and the forum in which an action may be
30 brought.

31 Section 554.5117 provides for the subrogation of rights
32 under a letter of credit with respect to an issuer, applicant,
33 and nominated person.

34 The remaining sections of the bill provide conforming
35 amendments to other sections of chapter 554, and provide for

S.F. _____ H.F. _____

1 the Act's applicability.
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