

Senate Study Bill 2142

Conference Committee Text

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1 1 Section 1. Section [554.5102](#), Code 1995, is amended by
1 2 striking the section and inserting in lieu thereof the
1 3 following:
1 4 554.5102 DEFINITIONS.
1 5 1. In this Article unless the context otherwise requires:
1 6 a. "Adviser" means a person who, at the request of the
1 7 issuer, a confirmer, or another adviser, notifies or requests
1 8 another adviser to notify the beneficiary that a letter of
1 9 credit has been issued, confirmed, or amended.
1 10 b. "Applicant" means a person at whose request or for
1 11 whose account a letter of credit is issued. The term includes
1 12 a person who requests an issuer to issue a letter of credit on
1 13 behalf of another if the person making the request undertakes
1 14 an obligation to reimburse the issuer.
1 15 c. "Beneficiary" means a person who under the terms of a
1 16 letter of credit is entitled to have its complying
1 17 presentation honored. The term includes a person to whom
1 18 drawing rights have been transferred under a transferable
1 19 letter of credit.
1 20 d. "Confirmer" means a nominated person who undertakes, at
1 21 the request or with the consent of the issuer, to honor a
1 22 presentation under a letter of credit issued by another.
1 23 e. "Dishonor" of a letter of credit means failure timely
1 24 to honor or to take an interim action, such as acceptance of a
1 25 draft, that may be required by the letter of credit.
1 26 f. "Document" means a draft or other demand, document of
1 27 title, investment security, certificate, invoice, or other
1 28 record, statement, or representation of fact, law, right, or
1 29 opinion (i) which is presented in a written or other medium
1 30 permitted by the letter of credit or, unless prohibited by the
1 31 letter of credit, by the standard practice referred to in
1 32 section 554.5108, subsection 5, and (ii) which is capable of
1 33 being examined for compliance with the terms and conditions of
1 34 the letter of credit. A document may not be oral.
1 35 g. "Good faith" means honesty in fact in the conduct or
2 1 transaction concerned.
2 2 h. "Honor" of a letter of credit means performance of the
2 3 issuer's undertaking in the letter of credit to pay or deliver
2 4 an item of value. Unless the letter of credit otherwise
2 5 provides, "honor" occurs
2 6 (1) upon payment,
2 7 (2) if the letter of credit provides for acceptance, upon
2 8 acceptance of a draft and, at maturity, its payment, or
2 9 (3) if the letter of credit provides for incurring a
2 10 deferred obligation, upon incurring the obligation and, at
2 11 maturity, its performance.
2 12 i. "Issuer" means a bank or other person that issues a
2 13 letter of credit, but does not include an individual who makes
2 14 an engagement for personal, family, or household purposes.
2 15 j. "Letter of credit" means a definite undertaking that
2 16 satisfies the requirements of section 554.5104 by an issuer to
2 17 a beneficiary at the request or for the account of an
2 18 applicant or, in the case of a financial institution, to
2 19 itself or for its own account, to honor a documentary
2 20 presentation by payment or delivery of an item of value.
2 21 k. "Nominated person" means a person whom the issuer (i)

2 22 designates or authorizes to pay, accept, negotiate, or
2 23 otherwise give value under a letter of credit and (ii)
2 24 undertakes by agreement or custom and practice to reimburse.
2 25 1. "Presentation" means delivery of a document to an
2 26 issuer or nominated person for honor or giving of value under
2 27 a letter of credit.
2 28 m. "Presenter" means a person making a presentation as or
2 29 on behalf of a beneficiary or nominated person.
2 30 n. "Record" means information that is inscribed on a
2 31 tangible medium, or that is stored in an electronic or other
2 32 medium and is retrievable in perceivable form.
2 33 o. "Successor of a beneficiary" means a person who
2 34 succeeds to substantially all of the rights of a beneficiary
2 35 by operation of law, including a corporation with or into
3 1 which the beneficiary has been merged or consolidated, an
3 2 administrator, executor, personal representative, trustee in
3 3 bankruptcy, debtor in possession, liquidator, and receiver.
3 4 2. Definitions in other Articles applying to this Article
3 5 and the sections in which they appear are:
3 6 "Accept" or "Acceptance" Section 554.3409
3 7 "Value" Sections 554.3303, 554.4211
3 8 3. Article 1 contains certain additional general
3 9 definitions and principles of construction and interpretation
3 10 applicable throughout this Article.
3 11 Sec. 2. Section [554.5103](#), Code 1995, is amended by
3 12 striking the section and inserting in lieu thereof the
3 13 following:
3 14 554.5103 SCOPE.
3 15 1. This Article applies to letters of credit and to
3 16 certain rights and obligations arising out of transactions
3 17 involving letters of credit.
3 18 2. The statement of a rule in this Article does not by
3 19 itself require, imply, or negate application of the same or a
3 20 different rule to a situation not provided for, or to a person
3 21 not specified, in this Article.
3 22 3. With the exception of this subsection, subsections 1
3 23 and 4, section 554.5102, subsection 1, paragraphs "i" and "j",
3 24 section 554.5106, subsection 4, and section 554.5114,
3 25 subsection 4, and except to the extent prohibited in section
3 26 554.1102, subsection 3, and section 554.5117, subsection 4,
3 27 the effect of this Article may be varied by agreement or by a
3 28 provision stated or incorporated by reference in an
3 29 undertaking. A term in an agreement or undertaking generally
3 30 excusing liability or generally limiting remedies for failure
3 31 to perform obligations is not sufficient to vary obligations
3 32 prescribed by this Article.
3 33 4. Rights and obligations of an issuer to a beneficiary or
3 34 a nominated person under a letter of credit are independent of
3 35 the existence, performance, or nonperformance of a contract or
4 1 arrangement out of which the letter of credit arises or which
4 2 underlies it, including contracts or arrangements between the
4 3 issuer and the applicant and between the applicant and the
4 4 beneficiary.
4 5 Sec. 3. Section [554.5104](#), Code 1995, is amended by
4 6 striking the section and inserting in lieu thereof the
4 7 following:
4 8 554.5104 FORMAL REQUIREMENTS.
4 9 A letter of credit, confirmation, advice, transfer,
4 10 amendment, or cancellation may be issued in any form that is a
4 11 record and is authenticated (i) by a signature or (ii) in
4 12 accordance with the agreement of the parties or the standard
4 13 practice referred to in section 554.5108, subsection 5.
4 14 Sec. 4. Section [554.5105](#), Code 1995, is amended by
4 15 striking the section and inserting in lieu thereof the
4 16 following:
4 17 554.5105 CONSIDERATION.
4 18 Consideration is not required to issue, amend, transfer, or

4 19 cancel a letter of credit, advice, or confirmation.

4 20 Sec. 5. Section [554.5106](#), Code 1995, is amended by

4 21 striking the section and inserting in lieu thereof the

4 22 following:

4 23 554.5106 ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION.

4 24 1. A letter of credit is issued and becomes enforceable
4 25 according to its terms against the issuer when the issuer
4 26 sends or otherwise transmits it to the person requested to
4 27 advise or to the beneficiary. A letter of credit is revocable
4 28 only if it so provides.

4 29 2. After a letter of credit is issued, rights and
4 30 obligations of a beneficiary, applicant, confirmer, and issuer
4 31 are not affected by an amendment or cancellation to which that
4 32 person has not consented except to the extent the letter of
4 33 credit provides that it is revocable or that the issuer may
4 34 amend or cancel the letter of credit without that consent.

4 35 3. If there is no stated expiration date or other
5 1 provision that determines its duration, a letter of credit
5 2 expires one year after its stated date of issuance or, if none
5 3 is stated, after the date on which it is issued.

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

5 7 Sec. 6. Section [554.5107](#), Code 1995, is amended by

5 8 striking the section and inserting in lieu thereof the

5 9 following:

5 10 554.5107 CONFIRMER, NOMINATED PERSON, AND ADVISER.

5 11 1. A confirmer is directly obligated on a letter of credit
5 12 and has the rights and obligations of an issuer to the extent
5 13 of its confirmation. The confirmer also has rights against
5 14 and obligations to the issuer as if the issuer were an
5 15 applicant and the confirmer had issued the letter of credit at
5 16 the request and for the account of the issuer.

5 17 2. A nominated person who is not a confirmer is not
5 18 obligated to honor or otherwise give value for a presentation.

5 19 3. A person requested to advise may decline to act as an
5 20 adviser. An adviser that is not a confirmer is not obligated
5 21 to honor or give value for a presentation. An adviser
5 22 undertakes to the issuer and to the beneficiary accurately to
5 23 advise the terms of the letter of credit, confirmation,
5 24 amendment, or advice received by that person and undertakes to
5 25 the beneficiary to check the apparent authenticity of the
5 26 request to advise. Even if the advice is inaccurate, the
5 27 letter of credit, confirmation, or amendment is enforceable as
5 28 issued.

5 29 4. A person who notifies a transferee beneficiary of the
5 30 terms of a letter of credit, confirmation, amendment, or
5 31 advice has the rights and obligations of an adviser under
5 32 subsection 3. The terms in the notice to the transferee
5 33 beneficiary may differ from the terms in any notice to the
5 34 transferor beneficiary to the extent permitted by the letter
5 35 of credit, confirmation, amendment, or advice received by the
6 1 person who so notifies.

6 2 Sec. 7. Section [554.5108](#), Code 1995, is amended by

6 3 striking the section and inserting in lieu thereof the

6 4 following:

6 5 554.5108 ISSUER'S RIGHTS AND OBLIGATIONS.

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

6 14 2. An issuer has a reasonable time after presentation, but
6 15 not beyond the end of the seventh business day of the issuer

6 16 after the day of its receipt of documents:

6 17 a. to honor,

6 18 b. if the letter of credit provides for honor to be
6 19 completed more than seven business days after presentation, to
6 20 accept a draft or incur a deferred obligation, or

6 21 c. to give notice to the presenter of discrepancies in the
6 22 presentation.

6 23 3. Except as otherwise provided in subsection 4, an issuer
6 24 is precluded from asserting as a basis for dishonor any
6 25 discrepancy if timely notice is not given, or any discrepancy
6 26 not stated in the notice if timely notice is given.

6 27 4. Failure to give the notice specified in subsection 2 or
6 28 to mention fraud, forgery, or expiration in the notice does
6 29 not preclude the issuer from asserting as a basis for dishonor
6 30 fraud or forgery as described in section 554.5109, subsection
6 31 1, or expiration of the letter of credit before presentation.

6 32 5. An issuer shall observe standard practice of financial
6 33 institutions that regularly issue letters of credit.

6 34 Determination of the issuer's observance of the standard
6 35 practice is a matter of interpretation for the court. The
7 1 court shall offer the parties a reasonable opportunity to
7 2 present evidence of the standard practice.

7 3 6. An issuer is not responsible for:

7 4 a. the performance or nonperformance of the underlying
7 5 contract, arrangement, or transaction,

7 6 b. an act or omission of others, or

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

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

7 15 8. An issuer that has dishonored a presentation shall
7 16 return the documents or hold them at the disposal of, and send
7 17 advice to that effect to, the presenter.

7 18 9. An issuer that has honored a presentation as permitted
7 19 or required by this Article:

7 20 a. is entitled to be reimbursed by the applicant in
7 21 immediately available funds not later than the date of its
7 22 payment of funds;

7 23 b. takes the documents free of claims of the beneficiary
7 24 or presenter;

7 25 c. is precluded from asserting a right of recourse on a
7 26 draft under sections 554.3414 and 554.3415;

7 27 d. except as otherwise provided in sections 554.5110 and
7 28 554.5117, is precluded from restitution of money paid or other
7 29 value given by mistake to the extent the mistake concerns
7 30 discrepancies in the documents or tender which are apparent on
7 31 the face of the presentation; and

7 32 e. is discharged to the extent of its performance under
7 33 the letter of credit unless the issuer honored a presentation
7 34 in which a required signature of a beneficiary was forged.

7 35 Sec. 8. Section [554.5109](#), Code 1995, is amended by
8 1 striking the section and inserting in lieu thereof the
8 2 following:

8 3 554.5109 FRAUD AND FORGERY.

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

8 9 a. the issuer shall honor the presentation, if honor is
8 10 demanded by (i) a nominated person who has given value in good
8 11 faith and without notice of forgery or material fraud, (ii) a
8 12 confirmer who has honored its confirmation in good faith,

8 13 (iii) a holder in due course of a draft drawn under the letter
8 14 of credit which was taken after acceptance by the issuer or
8 15 nominated person, or (iv) an assignee of the issuer's or
8 16 nominated person's deferred obligation that was taken for
8 17 value and without notice of forgery or material fraud after
8 18 the obligation was incurred by the issuer or nominated person;
8 19 and

8 20 b. the issuer, acting in good faith, may honor or dishonor
8 21 the presentation in any other case.

8 22 2. If an applicant claims that a required document is
8 23 forged or materially fraudulent or that honor of the
8 24 presentation would facilitate a material fraud by the
8 25 beneficiary on the issuer or applicant, a court of competent
8 26 jurisdiction may temporarily or permanently enjoin the issuer
8 27 from honoring a presentation or grant similar relief against
8 28 the issuer or other persons only if the court finds that:

8 29 a. the relief is not prohibited under the law applicable
8 30 to an accepted draft or deferred obligation incurred by the
8 31 issuer;

8 32 b. a beneficiary, issuer, or nominated person who may be
8 33 adversely affected is adequately protected against loss that
8 34 it may suffer because the relief is granted;

8 35 c. all of the conditions to entitle a person to the relief
9 1 under the law of this state have been met; and

9 2 d. on the basis of the information submitted to the court,
9 3 the applicant is more likely than not to succeed under its
9 4 claim of forgery or material fraud and the person demanding
9 5 honor does not qualify for protection under subsection 1,
9 6 paragraph "a".

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

9 10 554.5110 WARRANTIES.

9 11 1. If its presentation is honored, the beneficiary
9 12 warrants:

9 13 a. to the issuer, any other person to whom presentation is
9 14 made, and the applicant that there is no fraud or forgery of
9 15 the kind described in section 554.5109, subsection 1; and

9 16 b. to the applicant that the drawing does not violate any
9 17 agreement between the applicant and beneficiary or any other
9 18 agreement intended by them to be augmented by the letter of
9 19 credit.

9 20 2. The warranties in subsection 1 are in addition to
9 21 warranties arising under Article 3, 4, 7, and 8 because of the
9 22 presentation or transfer of documents covered by any of those
9 23 articles.

9 24 Sec. 10. Section [554.5111](#), Code 1995, is amended by
9 25 striking the section and inserting in lieu thereof the
9 26 following:

9 27 554.5111 REMEDIES.

9 28 1. If an issuer wrongfully dishonors or repudiates its
9 29 obligation to pay money under a letter of credit before
9 30 presentation, the beneficiary, successor, or nominated person
9 31 presenting on its own behalf may recover from the issuer the
9 32 amount that is the subject of the dishonor or repudiation. If
9 33 the issuer's obligation under the letter of credit is not for
9 34 the payment of money, the claimant may obtain specific
9 35 performance or, at the claimant's election, recover an amount
10 1 equal to the value of performance from the issuer. In either
10 2 case, the claimant may also recover incidental but not
10 3 consequential damages. The claimant is not obligated to take
10 4 action to avoid damages that might be due from the issuer
10 5 under this subsection. If, although not obligated to do so,
10 6 the claimant avoids damages, the claimant's recovery from the
10 7 issuer must be reduced by the amount of damages avoided. The
10 8 issuer has the burden of proving the amount of damages
10 9 avoided. In the case of repudiation the claimant need not

10 10 present any document.

10 11 2. If an issuer wrongfully dishonors a draft or demand
10 12 presented under a letter of credit or honors a draft or demand
10 13 in breach of its obligation to the applicant, the applicant
10 14 may recover damages resulting from the breach, including
10 15 incidental but not consequential damages, less any amount
10 16 saved as a result of the breach.

10 17 3. If an adviser or nominated person other than a
10 18 confirmer breaches an obligation under this Article or an
10 19 issuer breaches an obligation not covered in subsection 1 or
10 20 2, a person to whom the obligation is owed may recover damages
10 21 resulting from the breach, including incidental but not
10 22 consequential damages, less any amount saved as a result of
10 23 the breach. To the extent of the confirmation, a confirmer
10 24 has the liability of an issuer specified in this subsection
10 25 and subsections 1 and 2.

10 26 4. An issuer, nominated person, or adviser who is found
10 27 liable under subsection 1, 2, or 3 shall pay interest on the
10 28 amount owed thereunder from the date of wrongful dishonor or
10 29 other appropriate date.

10 30 5. Reasonable attorney's fees and other expenses of
10 31 litigation must be awarded to the prevailing party in an
10 32 action in which a remedy is sought under this Article.

10 33 6. Damages that would otherwise be payable by a party for
10 34 breach of an obligation under this Article may be liquidated
10 35 by agreement or undertaking, but only in an amount or by a
11 1 formula that is reasonable in light of the harm anticipated.

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

11 5 554.5112 TRANSFER OF LETTER OF CREDIT.

11 6 1. Except as otherwise provided in section 554.5113,
11 7 unless a letter of credit provides that it is transferable,
11 8 the right of a beneficiary to draw or otherwise demand
11 9 performance under a letter of credit may not be transferred.

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

11 13 a. the transfer would violate applicable law; or

11 14 b. the transferor or transferee has failed to comply with
11 15 any requirement stated in the letter of credit or any other
11 16 requirement relating to transfer imposed by the issuer which
11 17 is within the standard practice referred to in section
11 18 554.5108, subsection 5, or is otherwise reasonable under the
11 19 circumstances.

11 20 Sec. 12. Section [554.5113](#), Code 1995, is amended by
11 21 striking the section and inserting in lieu thereof the
11 22 following:

11 23 554.5113 TRANSFER BY OPERATION OF LAW.

11 24 1. A successor of a beneficiary may consent to amendments,
11 25 sign and present documents, and receive payment or other items
11 26 of value in the name of the beneficiary without disclosing its
11 27 status as a successor.

11 28 2. A successor of a beneficiary may consent to amendments,
11 29 sign and present documents, and receive payment or other items
11 30 of value in its own name as the disclosed successor of the
11 31 beneficiary. Except as otherwise provided in subsection 5, an
11 32 issuer shall recognize a disclosed successor of a beneficiary
11 33 as beneficiary in full substitution for its predecessor upon
11 34 compliance with the requirements for recognition by the issuer
11 35 of a transfer of drawing rights by operation of law under the
12 1 standard practice referred to in section 554.5108, subsection
12 2 5, or, in the absence of such a practice, compliance with
12 3 other reasonable procedures sufficient to protect the issuer.

12 4 3. An issuer is not obliged to determine whether a
12 5 purported successor is a successor of a beneficiary or whether
12 6 the signature of a purported successor is genuine or

12 7 authorized.

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

12 16 5. An issuer whose rights of reimbursement are not covered
12 17 by subsection 4 or substantially similar law and any confirmer
12 18 or nominated person may decline to recognize a presentation
12 19 under subsection 2.

12 20 6. A beneficiary whose name is changed after the issuance
12 21 of a letter of credit has the same rights and obligations as a
12 22 successor of a beneficiary under this section.

12 23 Sec. 13. Section [554.5114](#), Code 1995, is amended by
12 24 striking the section and inserting in lieu thereof the
12 25 following:

12 26 554.5114 ASSIGNMENT OF PROCEEDS.

12 27 1. In this section, "proceeds of a letter of credit" means
12 28 the cash, check, accepted draft, or other item of value paid
12 29 or delivered upon honor or giving of value by the issuer or
12 30 any nominated person under the letter of credit. The term
12 31 does not include a beneficiary's drawing rights or documents
12 32 presented by the beneficiary.

12 33 2. A beneficiary may assign its right to part or all of
12 34 the proceeds of a letter of credit. The beneficiary may do so
12 35 before presentation as a present assignment of its right to
13 1 receive proceeds contingent upon its compliance with the terms
13 2 and conditions of the letter of credit.

13 3 3. An issuer or nominated person need not recognize an
13 4 assignment of proceeds of a letter of credit until it consents
13 5 to the assignment.

13 6 4. An issuer or nominated person has no obligation to give
13 7 or withhold its consent to an assignment of proceeds of a
13 8 letter of credit, but consent may not be unreasonably withheld
13 9 if the assignee possesses and exhibits the letter of credit
13 10 and presentation of the letter of credit is a condition to
13 11 honor.

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

13 16 6. Neither the rights recognized by this section between
13 17 an assignee and an issuer, transferee beneficiary, or
13 18 nominated person nor the issuer's or nominated person's
13 19 payment of proceeds to an assignee or a third person affect
13 20 the rights between the assignee and any person other than the
13 21 issuer, transferee beneficiary, or nominated person. The mode
13 22 of creating and perfecting a security interest in or granting
13 23 an assignment of a beneficiary's rights to proceeds is
13 24 governed by Article 9 or other law. Against persons other
13 25 than the issuer, transferee beneficiary, or nominated person,
13 26 the rights and obligations arising upon the creation of a
13 27 security interest or other assignment of a beneficiary's right
13 28 to proceeds and its perfection are governed by Article 9 or
13 29 other law.

13 30 Sec. 14. Section [554.5115](#), Code 1995, is amended by
13 31 striking the section and inserting in lieu thereof the
13 32 following:

13 33 554.5115 STATUTE OF LIMITATIONS.

13 34 An action to enforce a right or obligation arising under
13 35 this Article must be commenced within one year after the
14 1 expiration date of the relevant letter of credit or one year
14 2 after the cause of action accrues, whichever occurs later. A
14 3 cause of action accrues when the breach occurs, regardless of

14 4 the aggrieved party's lack of knowledge of the breach.
14 5 Sec. 15. Section [554.5116](#), Code 1995, is amended by
14 6 striking the section and inserting in lieu thereof the
14 7 following:

14 8 554.5116 CHOICE OF LAW AND FORUM.

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

14 17 2. Unless subsection 1 applies, the liability of an
14 18 issuer, nominated person, or adviser for action or omission is
14 19 governed by the law of the jurisdiction in which the person is
14 20 located. The person is considered to be located at the
14 21 address indicated in the person's undertaking. If more than
14 22 one address is indicated, the person is considered to be
14 23 located at the address from which the person's undertaking was
14 24 issued. For the purpose of jurisdiction, choice of law, and
14 25 recognition of interbranch letters of credit, but not
14 26 enforcement of a judgment, all branches of a bank are
14 27 considered separate juridical entities and a bank is
14 28 considered to be located at the place where its relevant
14 29 branch is considered to be located under this subsection.

14 30 3. Except as otherwise provided in this subsection, the
14 31 liability of an issuer, nominated person, or adviser is
14 32 governed by any rules of custom or practice, such as the
14 33 uniform customs and practice for documentary credits, to which
14 34 the letter of credit, confirmation, or other undertaking is
14 35 expressly made subject. If (i) this Article would govern the
15 1 liability of an issuer, nominated person, or adviser under
15 2 subsection 1 or 2, (ii) the relevant undertaking incorporates
15 3 rules of custom or practice, and (iii) there is conflict
15 4 between this Article and those rules as applied to that
15 5 undertaking, those rules govern except to the extent of any
15 6 conflict with the nonvariable provisions specified in section
15 7 554.5103, subsection 3.

15 8 4. If there is conflict between this Article and Article
15 9 3, 4, or 9, this Article governs.

15 10 5. The forum for settling disputes arising out of an
15 11 undertaking within this Article may be chosen in the manner
15 12 and with the binding effect that governing law may be chosen
15 13 in accordance with subsection 1.

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

15 18 1. An issuer that honors a beneficiary's presentation is
15 19 subrogated to the rights of the beneficiary to the same extent
15 20 as if the issuer were a secondary obligor of the underlying
15 21 obligation owed to the beneficiary and of the applicant to the
15 22 same extent as if the issuer were the secondary obligor of the
15 23 underlying obligation owed to the applicant.

15 24 2. An applicant that reimburses an issuer is subrogated to
15 25 the rights of the issuer against any beneficiary, presenter,
15 26 or nominated person to the same extent as if the applicant
15 27 were the secondary obligor of the obligations owed to the
15 28 issuer and has the rights of subrogation of the issuer to the
15 29 rights of the beneficiary stated in subsection 1.

15 30 3. A nominated person who pays or gives value against a
15 31 draft or demand presented under a letter of credit is
15 32 subrogated to the rights of:

15 33 a. the issuer against the applicant to the same extent as
15 34 if the nominated person were a secondary obligor of the
15 35 obligation owed to the issuer by the applicant;

16 1 b. the beneficiary to the same extent as if the nominated
16 2 person were a secondary obligor of the underlying obligation
16 3 owed to the beneficiary; and
16 4 c. the applicant to the same extent as if the nominated
16 5 person were a secondary obligor of the underlying obligation
16 6 owed to the applicant.

16 7 4. Notwithstanding any agreement or term to the contrary,
16 8 the rights of subrogation stated in subsections 1 and 2 do not
16 9 arise until the issuer honors the letter of credit or
16 10 otherwise pays and the rights in subsection 3 do not arise
16 11 until the nominated person pays or otherwise gives value.
16 12 Until then, the issuer, nominated person, and the applicant do
16 13 not derive under this section present or prospective rights
16 14 forming the basis of a claim, defense, or excuse.

16 15 Sec. 17. Section [539.1](#), Code 1995, is amended to read as
16 16 follows:

16 17 539.1 ASSIGNMENT OF NONNEGOTIABLE INSTRUMENTS.

16 18 Bonds, due bills, and all instruments by which the maker
16 19 promises to pay another, without words of negotiability, a sum
16 20 of money, or by which the maker promises to pay a sum of money
16 21 in property or labor, or to pay or deliver any property or
16 22 labor, or acknowledges any money, labor, or property to be
16 23 due, are assignable by endorsement on the instrument, or by
16 24 other writing. The assignee, including a person who takes
16 25 assignment for collection in the regular course of business,
16 26 has a right of action on them in the assignee's own name,
16 27 subject to any defense or counterclaim which the maker or
16 28 debtor had against an assignor of the instrument before notice
16 29 of the assignment. In case of conflict between this section
16 30 and sections

~~554.5116~~

~~554.5112, 554.5113, 554.5114, and~~
16 31 554.9318, sections

~~554.5116~~

~~554.5112, 554.5113, 554.5114, and~~
16 32 554.9318 control.

16 33 Sec. 18. Section [539.2](#), Code 1995, is amended to read as
16 34 follows:

16 35 539.2 ASSIGNMENT PROHIBITED BY INSTRUMENT.

17 1 When by the terms of an instrument its assignment is
17 2 prohibited, an assignment thereof shall nevertheless be valid,
17 3 but the maker may make use of any defense or counterclaim
17 4 against the assignee which the maker may have against any
17 5 assignor thereof before notice of such assignment is given to
17 6 the maker in writing. In case of conflict between this
17 7 section and sections

~~554.5116~~

~~554.5112, 554.5113, 554.5114,~~
17 8 and 554.9318, sections

~~554.5116~~

~~554.5112, 554.5113, 554.5114,~~
17 9 and 554.9318 control.

17 10 Sec. 19. Section [554.1105](#), subsection 2, Code 1995, is
17 11 amended to read as follows:

17 12 2. Where one of the following provisions of this chapter
17 13 specifies the applicable law, that provision governs and a
17 14 contrary agreement is effective only to the extent permitted
17 15 by the law (including the conflict of laws rules) so
17 16 specified:

17 17 Rights of creditors against sold goods. Section 554.2402.

17 18 Applicability of the Article on Bank Deposits and
17 19 Collections. Section 554.4102.

17 20 Applicability of the Article on Investment Securities.

17 21 Section 554.8106.
17 22 Perfection provisions of the Article on Secured
17 23 Transactions. Section 554.9103.
17 24 Governing law in the Article on Funds Transfers. Section
17 25 554.12507.
17 26 Letters of Credit. Section 5-116.
17 27 Applicability of the Article on Leases. Sections 554.13105
17 28 and 554.13106.
17 29 Sec. 20. Section 554.2512, subsection 1, paragraph b, Code
17 30 1995, is amended to read as follows:
17 31 b. despite tender of the required documents the
17 32 circumstances would justify injunction against honor under the
17 33 provisions of this chapter (section

~~554.5114~~

~~- 554.5109.~~

17 34 subsection 2).
17 35 Sec. 21. Section 554.9103, subsection 1, paragraph a, Code
18 1 1995, is amended to read as follows:
18 2 a. This subsection applies to documents,

~~and~~

~~- instruments,~~

18 3 rights to proceeds of written letters of credit, and

~~to~~

~~- goods~~

18 4 other than those covered by a certificate of title described
18 5 in subsection 2, mobile goods described in subsection 3, and
18 6 minerals described in subsection 5.
18 7 Sec. 22. Section [554.9104](#), paragraph 1, Code 1995, is
18 8 amended to read as follows:
18 9 1. to a transfer of an interest in any deposit account
18 10 (section 554.9105, subsection 1), except as provided with
18 11 respect to proceeds (section 554.9306) and priorities in
18 12 proceeds (section 554.9312)

~~-; or~~

18 13 Sec. 23. Section [554.9104](#), Code 1995, is amended by adding
18 14 the following new paragraph:
18 15 NEW PARAGRAPH. m. to a transfer of an interest in a
18 16 letter of credit other than the rights to proceeds of a
18 17 written letter of credit.
18 18 Sec. 24. Section [554.9105](#), subsection 3, Code 1995, is
18 19 amended to read as follows:
18 20 3. The following definitions in other Articles apply to
18 21 this Article:

18 22 "Check"	Section 554.3104
18 23 "Contract for sale"	Section 554.2106
18 24 "Holder in due course"	Section 554.3302
18 25 <u>"Letter of credit"</u>	<u>Section 554.5102</u>
18 26 "Note"	Section 554.3104
18 27 <u>"Proceeds of a letter of credit"</u>	<u>Section 554.5114(1)</u>
18 28 "Sale"	Section 554.2106

18 29 Sec. 25. Section [554.9106](#), Code 1995, is amended to read
18 30 as follows:
18 31 554.9106 DEFINITIONS: "ACCOUNT" – "GENERAL INTANGIBLES."
18 32 "Account" means any right to payment for goods sold or
18 33 leased or for services rendered which is not evidenced by an
18 34 instrument or chattel paper, whether or not it has been earned
18 35 by performance. "General intangibles" means any personal
19 1 property (including things in action) other than goods,
19 2 accounts, chattel paper, documents, instruments, rights to
19 3 proceeds of written letters of credit, and money. All rights
19 4 to payment earned or unearned under a charter or other
19 5 contract involving the use or hire of a vessel and all rights

19 6 incident to the charter or contract are accounts.
19 7 Sec. 26. Section [554.9304](#), Code 1995, is amended to read
19 8 as follows:
19 9 554.9304 PERFECTION OF SECURITY INTEREST IN INSTRUMENTS,
19 10 DOCUMENTS, PROCEEDS OF A WRITTEN LETTER OF CREDIT, AND GOODS
19 11 COVERED BY DOCUMENTS & PERFECTION BY PERMISSIVE FILING &
19 12 TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.
19 13 1. A security interest in chattel paper or negotiable
19 14 documents may be perfected by filing. A security interest in
19 15 the rights to proceeds of a written letter of credit can be
19 16 perfected only by the secured party's taking possession of the
19 17 letter of credit. A security interest in money or instruments
19 18 (other than certificated securities or instruments which
19 19 constitute part of chattel paper) can be perfected only by the
19 20 secured party's taking possession, except as provided in
19 21 subsections 4 and 5 of this section and section 554.9306,
19 22 subsections 2 and 3, on proceeds.
19 23 2. During the period that goods are in the possession of
19 24 the issuer of a negotiable document therefor, a security
19 25 interest in the goods is perfected by perfecting a security
19 26 interest in the document, and any security interest in the
19 27 goods otherwise perfected during such period is subject
19 28 thereto.
19 29 3. A security interest in goods in the possession of a
19 30 bailee other than one who has issued a negotiable document
19 31 therefor is perfected by issuance of a document in the name of
19 32 the secured party or by the bailee's receipt of notification
19 33 of the secured party's interest or by filing as to the goods.
19 34 4. A security interest in instruments (other than
19 35 certificated securities) or negotiable documents is perfected
20 1 without filing or the taking of possession for a period of
20 2 twenty-one days from the time it attaches to the extent that
20 3 it arises for new value given under a written security
20 4 agreement.
20 5 5. A security interest remains perfected for a period of
20 6 twenty-one days without filing where a secured party having a
20 7 perfected security interest in an instrument (other than
20 8 certificated securities), a negotiable document or goods in
20 9 possession of a bailee other than one who has issued a
20 10 negotiable document therefor
20 11 a. makes available to the debtor the goods or documents
20 12 representing the goods for the purpose of ultimate sale or
20 13 exchange or for the purpose of loading, unloading, storing,
20 14 shipping, transshipping, manufacturing, processing or
20 15 otherwise dealing with them in a manner preliminary to their
20 16 sale or exchange, but priority between conflicting security
20 17 interests in the goods is subject to section 554.9312,
20 18 subsection 3; or
20 19 b. delivers the instrument to the debtor for the purpose
20 20 of ultimate sale or exchange or of presentation, collection,
20 21 renewal, or registration of transfer.
20 22 6. After the twenty-one day period in subsections 4 and 5
20 23 perfection depends upon compliance with applicable provisions
20 24 of this Article.
20 25 Sec. 27. Section [554.9305](#), Code 1995, is amended to read
20 26 as follows:
20 27 554.9305 WHEN POSSESSION BY SECURED PARTY PERFECTS
20 28 SECURITY INTEREST WITHOUT FILING.
20 29 A security interest in letters of credit

~~and advices of~~

20 30

~~credit~~

(

~~subsection 2 "a" of~~
- section

~~554.5116~~

- 554.5114), goods,
20 31 instruments (other than certificated securities), money,
20 32 negotiable documents or chattel paper may be perfected by the
20 33 secured party's taking possession of the collateral. A
20 34 security interest in the right to proceeds of a written letter
20 35 of credit may be perfected by the secured party's taking
21 1 possession of the letter of credit. If such collateral other
21 2 than goods covered by a negotiable document is held by a
21 3 bailee, the secured party is deemed to have possession from
21 4 the time the bailee receives notification of the secured
21 5 party's interest. A security interest is perfected by
21 6 possession from the time possession is taken without relation
21 7 back and continues only so long as possession is retained,
21 8 unless otherwise specified in this Article. The security
21 9 interest may be otherwise perfected as provided in this
21 10 Article before or after the period of possession by the
21 11 secured party.

21 12 Sec. 28. APPLICABILITY. This Act applies to a letter of
21 13 credit that is issued on or after the effective date of this
21 14 Act. This Act does not apply to a transaction, event,
21 15 obligation, or duty arising out of or associated with a letter
21 16 of credit that was issued before the effective date of this
21 17 Act.

21 18 EXPLANATION

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

21 25 Section 554.5102 establishes definitions used in the
21 26 Article.

21 27 Section 554.5103 establishes the scope of the Article,
21 28 which is to apply to letters of credit and to certain rights
21 29 and obligations arising out of transactions involving letters
21 30 of credit.

21 31 Section 554.5104 sets forth the formal requirements of a
21 32 letter of credit.

21 33 Section 554.5105 provides that consideration is not
21 34 required to issue, amend, transfer, or cancel a letter of
21 35 credit.

22 1 Section 554.5106 governs the effect of the issuance of,
22 2 amendment to, cancellation of, and duration of a letter of
22 3 credit.

22 4 Section 554.5107 sets forth the rights and obligations of a
22 5 person who acts as a confirmer, nominated person, and adviser
22 6 with respect to a letter of credit.

22 7 Section 554.5108 sets forth the rights and obligations of
22 8 an issuer of a letter of credit.

22 9 Section 554.5109 sets forth options for honoring or
22 10 dishonoring a letter of credit for an issuer and an applicant
22 11 when either of these parties claims that a required document
22 12 is fraudulent or forged.

22 13 Section 554.5110 establishes the warranties of a
22 14 beneficiary if a letter of credit is presented and honored.

22 15 Section 554.5111 provides for the remedies of the parties
22 16 associated with the wrongful dishonor of a letter of credit or
22 17 a breach of an obligation associated with the letter of
22 18 credit.

22 19 Section 554.5112 provides for the transfer of a letter of
22 20 credit.

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

22 23 Section 554.5114 provides for the assignment of the
22 24 proceeds of a letter of credit.
22 25 Section 554.5115 establishes the statute of limitations for
22 26 an action to enforce a right or obligation under the letter of
22 27 credit.
22 28 Section 554.5116 provides for the choice of law governing
22 29 the letter of credit and the forum in which an action may be
22 30 brought.
22 31 Section 554.5117 provides for the subrogation of rights
22 32 under a letter of credit with respect to an issuer, applicant,
22 33 and nominated person.
22 34 The remaining sections of the bill provide conforming
22 35 amendments to other sections of chapter 554, and provide for
23 1 the Act's applicability.
23 2 LSB 3741SC 76
23 3 mj/cf/24