# UNIFORM COMMERCIAL CODE
# Act 174 of 1962

AN ACT to enact the uniform commercial code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, leases, and secured transactions, including certain sales of accounts, chattel paper and contract rights; to provide for public notice to third parties in certain circumstances; to regulate procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; to make an appropriation; to provide penalties; and to repeal certain acts and parts of acts.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1984, Act 170, Imd. Eff. June 29, 1984 ;—Am. 1992, Act 101, Eff. Sept. 30, 1992.

*The People of the State of Michigan enact:*

## ARTICLE 1
## GENERAL PROVISIONS

## PART 1
## SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

### 440.1101 Uniform commercial code; short title of act; heading of article.

Sec. 1101. (1) This act shall be known and may be cited as the "uniform commercial code".

(2) This article shall be known and may be cited as the "uniform commercial code – general provisions".

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1102 Applicability of articles.

Sec. 1102. This article applies to a transaction to the extent that it is governed by another article of this act.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1103 Construction of act.

Sec. 1103. (1) This act must be liberally construed and applied to promote the following underlying purposes and policies:

(a) To simplify, clarify, and modernize the law governing commercial transactions.

(b) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.

(c) To make uniform the law among the various jurisdictions.

(2) Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1104 Construction of act as to implied repeal by subsequent legislation.

Sec. 1104. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.1105 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to effectiveness of certain provisions in case of contrary agreements.

### 440.1106 Meanings.

Sec. 1106. All of the following apply in this act, unless the statutory context otherwise requires:

(a) Words in the singular number include the plural, and those in the plural include the singular.

(b) Words of any gender also refer to any other gender.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.


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### 440.1107 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to discharge of claims or rights after breach.

### 440.1108 Electronic signatures.

Sec. 1108. This article modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, except that nothing in this article modifies, limits, or supersedes section 7001(c) of that act, 15 USC 7001, or authorizes electronic delivery of any of the notices described in section 7003(b) of that act, 15 USC 7003.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

### 440.1201 Definitions.

Sec. 1201. (1) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this act that apply to particular articles or parts of this act, have the meanings stated.

(2) Subject to definitions contained in other articles of this act that apply to particular articles or parts of this act, and unless the context otherwise requires, as used in this act:

(a) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(b) "Aggrieved party" means a party entitled to resort to a remedy.

(c) "Agreement", as distinguished from contract as defined in subdivision (*l*), means the bargain of the parties in fact, as found in their language or by implication from other circumstances, including course of performance, course of dealing, or usage of trade or course of performance as provided in section 1303.

(d) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(e) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.

(f) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(g) "Branch" includes a separately incorporated foreign branch of a bank.

(h) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(i) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. The term does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(j) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include any of the following:

(*i*) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to surrounding text of the same or lesser size.

(*ii*) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.


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(*l*) "Contract", as distinguished from agreement as defined in subdivision (c), means the total legal obligation that results from the parties' agreement as determined by this act as supplemented by any other applicable laws.

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

(n) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(o) "Delivery" means either of the following:

(*i*) With respect to an electronic document of title, a voluntary transfer of control.

(*ii*) With respect to an instrument, document of title, or chattel paper, a voluntary transfer of possession.

(p) "Document of title" means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. "Electronic document of title" means a document of title evidenced by a record consisting of information stored in an electronic medium. "Tangible document of title" means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(q) "Fault" means a default, breach, or wrongful act or omission.

(r) "Fungible goods" means either of the following:

(*i*) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit.

(*ii*) Goods that by agreement are treated as equivalent.

(s) "Genuine" means free of forgery or counterfeiting.

(t) "Good faith", except as otherwise provided in article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(u) "Holder" means any of the following:

(*i*) A person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.

(*ii*) A person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession.

(*iii*) A person in control of a negotiable electronic document of title.

(v) "Insolvency proceedings" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(w) "Insolvent" means any of the following:

(*i*) Having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute.

(*ii*) Being unable to pay debts as they become due.

(*iii*) Being insolvent within the meaning of federal bankruptcy law.

(x) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more countries.

(y) "Organization" means a person other than an individual.

(z) "Party", as distinct from "third party", means a person that has engaged in a transaction or made an agreement subject to this act.

(aa) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(bb) "Present value" means the amount as of a date certain of 1 or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(cc) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(dd) "Purchaser" means a person that takes by purchase.

(ee) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or


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other medium and is retrievable in perceivable form.

(ff) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(gg) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(hh) "Right" includes remedy.

(ii) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. The term does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2401, but a buyer may also acquire a "security interest" by complying with article 9. Except as otherwise provided in section 2505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2401 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a security interest is determined under section 1203.

(jj) "Send" in connection with a writing, record, or notice means any of the following:

(*i*) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified on the instrument or otherwise agreed, or if there is not an address specified or agreed, to any address reasonable under the circumstances.

(*ii*) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(kk) "Signed" includes any symbol executed or adopted by a party with present intention to adopt or accept a writing.

(*ll*) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(mm) "Surety" includes a guarantor or other secondary obligor.

(nn) "Term" means a portion of an agreement that relates to a particular matter.

(oo) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(pp) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(qq) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.1202 Definitions.

Sec. 1202. For purposes of this act:

(a) Subject to subdivision (f), a person has "notice" of a fact if the person has any of the following:

(*i*) Actual knowledge of it.

(*ii*) Received a notice or notification of it.

(*iii*) From all the facts and circumstances known to the person at the time in question, reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking those steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subdivision (f), a person "receives" a notice or notification when either of the following occurs:

(*i*) It comes to that person's attention.

(*ii*) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of those communications.


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(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1203 Transaction in form of lease; "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under lease agreement; determination.

Sec. 1203. (1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and any of the following are met:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(d) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because any of the following are met:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into.

(b) The lessee assumes risk of loss of the goods.

(c) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs.

(d) The lessee has an option to renew the lease or to become the owner of the goods.

(e) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(f) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if either of the following are met:

(a) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed.

(b) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1204 Value for rights.

Sec. 1204. Except as otherwise provided in articles 3, 4, and 5, a person gives value for rights if the person acquires them for any of the following:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.


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(c) By accepting delivery under a preexisting contract for purchase.

(d) In return for any consideration sufficient to support a simple contract.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1205 Time for taking action.

Sec. 1205. (1) Whether a time for taking an action required by this act is reasonable depends on the nature, purpose, and circumstances of the action.

(2) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1206 Presumption.

Sec. 1206. Whenever this act creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.1207 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to performance or acceptance of reservation of rights.

### 440.1208 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to right to accelerate or require collateral.

### 440.1209 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to subordination.

### 440.1210 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to definitions.

### 440.1211 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to contract, security, or instrument, and introduction of euro to agreement.

## PART 3
## TERRITORIAL APPLICABILITY AND GENERAL RULES

### 440.1301 Applicability of law of this state or other state or nation; applicability of act to transactions bearing relation to state; provisions specifying applicable law.

Sec. 1301. (1) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of that other state or nation shall govern their rights and duties.

(2) In the absence of an agreement effective under subsection (1), and except as provided in subsection (3), this act applies to transactions bearing an appropriate relation to this state.

(3) If 1 of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a) Section 2402.

(b) Sections 2A105 and 2A106.

(c) Section 4102.

(d) Section 4A507.

(e) Section 5116.

(f) Section 8110.

(g) Sections 9301 through 9307.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1302 Agreements; "unless otherwise agreed"; implication.

Sec. 1302. (1) Except as otherwise provided in subsection (2) or elsewhere in this act, the effect of any provision of this act may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness, and care prescribed by this act may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this act


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requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(3) The presence in certain provisions of this act of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1303 Course of performance, course of dealing, or usage of trade.

Sec. 1303. (1) For purposes of this act, a "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if both of the following are met:

(a) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party.

(b) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2) For purposes of this act, a "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(3) For purposes of this act, a "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of a usage of trade must be proved as facts. If it is established that a usage of trade is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(5) Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. All of the following apply if that construction is unreasonable:

(a) Express terms prevail over course of performance, course of dealing, and usage of trade.

(b) Course of performance prevails over course of dealing and usage of trade.

(c) Course of dealing prevails over usage of trade.

(6) Subject to section 2209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7) Evidence of a relevant usage of trade offered by 1 party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1304 Good faith obligation.

Sec. 1304. Every contract or duty within this act imposes an obligation of good faith in its performance and enforcement.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1305 Administration of remedies; enforcement of right or obligation.

Sec. 1305. (1) The remedies provided in this act must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1306 Claim or right arising out of alleged breach; discharge.

Sec. 1306. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1307 Prima facie evidence of certain documents.


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Sec. 1307. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1308 Performance or promise of performance; effect of reservation of rights; applicability of subsection (1) to accord and satisfaction.

Sec. 1308. (1) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not prejudice the rights reserved by that performance, promise, or assent. Words such as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1309 Accelerating payment or performance or requiring collateral or additional collateral.

Sec. 1309. A term providing that 1 party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

### 440.1310 Subordination.

Sec. 1310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

**History:** Add. 2012, Act 86, Eff. July 1, 2013.

## ARTICLE 2
## SALES

## PART 1
## SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

### 440.2101 Uniform commercial code—sales; short title.

Sec. 2101. This article shall be known and may be cited as “uniform commercial code—sales”.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2102 Application of article; security and other transactions excluded.

Sec. 2102. Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2103 Article 2; definitions.

Sec. 2103. (1) In this article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Receipt" of goods means taking physical possession of them.

(c) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

| | |
|---|---|
| "Acceptance". | Section 2606. |
| "Banker's credit". | Section 2325. |
| "Between merchants". | Section 2104. |
| "Cancellation". | Section 2106(4). |


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|---|---|
| "Commercial unit". | Section 2105. |
| "Confirmed credit". | Section 2325. |
| "Conforming to contract". | Section 2106. |
| "Contract for sale". | Section 2106. |
| "Cover". | Section 2712. |
| "Entrusting". | Section 2403. |
| "Financing agency". | Section 2104. |
| "Future goods". | Section 2105. |
| "Goods". | Section 2105. |
| "Identification". | Section 2501. |
| "Installment contract". | Section 2612. |
| "Letter of credit". | Section 2325. |
| "Lot". | Section 2105. |
| "Merchant". | Section 2104. |
| "Overseas". | Section 2323. |
| "Person in position of seller". | Section 2707. |
| "Present sale". | Section 2106. |
| "Sale". | Section 2106. |
| "Sale on approval". | Section 2326. |
| "Sale or return". | Section 2326. |
| "Termination". | Section 2106. |

(3) "Control" as provided in section 7106 and the following definitions in other articles apply to this article:

| | |
|---|---|
| "Check". | Section 3104. |
| "Consignee". | Section 7102. |
| "Consignor". | Section 7102. |
| "Consumer goods". | Section 9102. |
| "Dishonor". | Section 3502. |
| "Draft". | Section 3104. |

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2104 “Merchant," “financing agency,” and “between merchants” defined.

Sec. 2104. (1) "Merchant" means a person that deals in goods of the kind or otherwise by the person's occupation holds itself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to which that knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary who by the person's occupation holds itself out as having that knowledge or skill.

(2) "Financing agency" means a bank, finance company, or other person that in the ordinary course of business makes advances against goods or documents of title or that by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the sellers draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person that similarly intervenes between persons that are in the position of seller and buyer in respect to the goods under section 2707.

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2105 Goods, lot, commercial unit; definitions.

Sec. 2105. (1) “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 2107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.


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

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2106 Contract, agreement, contract for sale, sale, present sale; definitions of certain terms.

Sec. 2106. (1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 2401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2107 Contract for sale of property removable or severable from realty as contract for sale of goods; third party rights; execution and recording as notice to third parties.

Sec. 2107. (1) A contract for the sale of minerals or the like, (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979.

## PART 2
## FORM, FORMATION AND READJUSTMENT OF CONTRACTS

### 440.2201 Formal requirements; statute of frauds.

Sec. 2201. (1) Except as otherwise provided in this section, a contract for the sale of goods for the price of $1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing.

(2) Between merchants, if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the


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requirements of subsection (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract that does not satisfy the requirements of subsection (1) but is valid in other respects is enforceable in any of the following circumstances:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement.

(b) If the party against whom enforcement is sought admits in his or her pleading or testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this section beyond the quantity of goods admitted.

(c) With respect to goods for which payment has been made and accepted or that have been received and accepted under section 2606.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2002, Act 15, Imd. Eff. Feb. 21, 2002.

### 440.2202 Final written expression of agreement; parol or extrinsic evidence.

Sec. 2202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to those terms as are included in that memoranda or writing may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by any of the following:

(a) By course of performance, course of dealing, or usage of trade under section 1303.

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.2203 Seals.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2204 Contract for sale; formation, conduct, time, open terms.

Sec. 2204. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

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

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2205 Firm offers.

Sec. 2205. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2206 Offer and acceptance in formation of contract.

Sec. 2206. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

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

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is


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not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2207 Additional or different terms in acceptance; contract by conduct.

Sec. 2207. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2208 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to course of performance.

### 440.2209 Modification; rescission; waiver, retraction.

Sec. 2209. (1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

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

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2210 Delegation of performance; assignment of rights.

Sec. 2210. (1) A party may perform that party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having that other party's original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the other party by that other party's contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (*i*) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (*ii*) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of “the contract” is to be


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construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to that other party's rights against the assignor demand assurances from the assignee (section 2609).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

### 440.2301 Obligations of seller and buyer.

Sec. 2301. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2302 Unconscionable contract or clause.

Sec. 2302. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2303 Allocation or division of risk or burden.

Sec. 2303. Where this article allocates a risk or a burden as between the parties “unless otherwise agreed”, the agreement may not only shift the allocation but may also divide the risk or burden.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2304 Price; payment in money, goods, realty, or otherwise.

Sec. 2304. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2305 Open price term; fixed price.

Sec. 2305. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

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

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2306 Output of seller; requirement of buyer; exclusive dealing.


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Sec. 2306. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2307 Delivery in single lot or several lots; payment.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2308 Place for delivery of goods and documents of title.

Sec. 2308. Unless otherwise agreed

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

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

(c) documents of title may be delivered through customary banking channels.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2309 Time of performance; contract termination.

Sec. 2309. (1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

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

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2310 Open time and place for payment or running of credit; shipment under reservation; inspection.

Sec. 2310. Unless otherwise agreed, all of the following apply:

(a) Payment is due at the time and place at which the buyer is to receive the goods even if the place of shipment is the place of delivery.

(b) If the seller is authorized to send the goods, the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless that inspection is inconsistent with the terms of the contract pursuant to section 2513.

(c) If delivery is authorized and made by way of documents of title otherwise than by subdivision (b), then payment is due regardless of where the goods are to be received at 1 of the following times, as applicable:

(*i*) At the time and place at which the buyer is to receive delivery of the tangible documents.

(*ii*) At the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence.

(d) If the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2311 Specification of performance; assortment and shipment of goods; remedies.

Sec. 2311. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of section 2204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of section 2319 specifications or arrangements


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relating to shipment are at the seller's option.

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

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2312 Warranties of title; freedom from liens.

Sec. 2312. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2313 Creation of express warranties by seller.

Sec. 2313. (1) Express warranties by the seller are created as follows:

(a) An affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) A description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) A sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he or she have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty, except as provided in the art multiples sales act and Act No. 121 of the Public Acts of 1970, being sections 442.321 to 442.325 of the Michigan Compiled Laws.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 53, Eff. Dec. 9, 1987.

### 440.2313b Express warranty; extension; merchant or warrantor to give purchaser writing stating time period.

Sec. 2313b. An express warranty covering goods sold to a purchaser in this state shall be extended by a period equal to the number of days prescribed in subdivisions (a) and (b), if the cumulative number of days is more than either 10 days or 10% of the number of days of the warranty. A merchant or warrantor shall at the time the goods are repaired give the purchaser a writing stating the time period prescribed in subdivisions (a) and (b):

(a) The date from which the goods are delivered to the merchant or the warrantor for a warranteed repair to the date the purchaser is informed that the necessary repair has been completed.

(b) The date from which the merchant or warrantor attempts to make a warranteed repair to the goods at the purchaser's residence, domicile, or place of business to the date the necessary repairs are completed. In addition to this time period, the number of days preceding the date the merchant or warrantor begins a repair during which the goods were inoperative due to the need for a warranteed repair beginning with the date the purchaser notifies the merchant or warrantor in writing that the goods are inoperative and the merchant or warrantor receives the notice.

**History:** Add. 1978, Act 133, Eff. Mar. 30, 1979.

### 440.2314 Implied warranty; merchantability, course of dealing, usage of trade.


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Sec. 2314. (1) Unless excluded or modified (section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

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

(3) Unless excluded or modified (section 2316) other implied warranties may arise from course of dealing or usage of trade.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2315 Implied warranty; fitness for particular purpose.

Sec. 2315. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2316 Words or conduct relevant to creation of express warranty and tending to negate or limit warranty; construction; excluding or modifying implied warranty of merchantability and implied warranty of fitness; language; example; limiting remedies for breach of warranty.

Sec. 2316. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof.”

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is”, “with all faults” or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) with respect to the sale of cattle, hogs, or sheep, there is no implied warranty that the cattle, hogs, or sheep are free from disease, if the seller shows that all state and federal law concerning animal health has been satisfied.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 2718 and 2719).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1981, Act 101, Imd. Eff. July 15, 1981.

### 440.2317 Warranties; cumulation and conflict.

Sec. 2317. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.


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(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2318 Warranties; third party beneficiaries.

Sec. 2318. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2319 F.O.B. and F.A.S. terms.

Sec. 2319. (1) Unless otherwise agreed the term F.O.B. (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which

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

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

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (section 2323).

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

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

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

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

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2320 C.I.F. and C. & F. terms.

Sec. 2320. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.


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(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2321 C.I.F. and C. & F. terms, net landed weights, delivered weights, out turn; warranty of condition on arrival, inspection before payment.

Sec. 2321. Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to “net landed weights”, “delivered weights”, “out turn” quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2322 Delivery exship.

Sec. 2322. (1) Unless otherwise agreed a term for delivery of goods “exship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2323 Overseas shipment; bill of lading, form.

Sec. 2323. (1) If a contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) In connection with a contract subject to subsection (1), if a tangible bill of lading is issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading must be tendered. Even if the agreement expressly requires a full set, both of the following apply:

(a) Due tender of a single part is acceptable within the provisions concerning cure of improper delivery under section 2508(1).

(b) Even if a full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2324 No arrival, no sale terms.

Sec. 2324. Under a term “no arrival, no sale” or terms of like meaning, unless otherwise agreed,

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

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to


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conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 2613).

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2325 Letter of credit or banker's credit; confirmed credit; definitions.

Sec. 2325. (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term “letter of credit” or “banker's credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2326 Transaction as “sale on approval” or “sale or return” if delivered goods returnable by buyer; claims of creditors; effect of “or return” term of contract for sale; work of fine art not subject to claims of art dealer's creditors; “art dealer,”“commission,” and “fine art” defined.

Sec. 2326. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) A “sale on approval” if the goods are delivered primarily for use, and

(b) A “sale or return” if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any “or return” term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 2201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 2202).

(4) Whenever a person delivers or causes to be delivered a work of fine art to an art dealer for the purpose of sale, or exhibition and sale, to the public on a commission, the work of fine art is not subject to the claims of the art dealer's creditors. For the purposes of this subsection, the terms “art dealer”, “commission”, and “fine art” have the meanings ascribed to them in section 1 of 1979 PA 90, MCL 442.311.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1982, Act 397, Eff. Mar. 30, 1983;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2327 Sale on approval; sale or return; special incidents.

Sec. 2327. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2328 Sale by auction; sale with reserve; forced sale.

Sec. 2328. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be


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withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

### 440.2401 Passing of title; reservation for security; limited application of section; rejection; revesting.

Sec. 2401. Each provision of this article with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods except where the provisions refers to the title. In situations that are not covered by the other provisions of this article and matters concerning title become material, the following rules apply:

(a) Title to goods cannot pass under a contract for sale before their identification to the contract under section 2501, and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of article 9, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(b) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes its performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even if a document of title is to be delivered at a different time or place. In particular and despite any reservation of a security interest by the bill of lading, both of the following apply:

(*i*) Unless subparagraph (*ii*) applies, if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment.

(*ii*) If the contract requires delivery at destination, title passes on tender there.

(c) Unless otherwise explicitly agreed where delivery is to be made without moving the goods, 1 of the following applies:

(*i*) If the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers the document of title.

(*ii*) If the seller is to deliver an electronic document of title, title passes when the seller delivers the document.

(*iii*) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(d) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Revesting of title under this subdivision occurs by operation of law and is not a "sale".

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2402 Rights of seller's creditors against sold goods.

Sec. 2402. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (sections 2502 and 2716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute


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the transaction a fraudulent transfer or voidable preference.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2403 Purchasers and transferees; title, rights, and powers to transfer goods; entrusting.

Sec. 2403. (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser; or

(b) the delivery was in exchange for a check which is later dishonored; or

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

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

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7).

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

## PART 5
## PERFORMANCE

### 440.2501 Special property and insurable interest in goods; identification of goods.

Sec. 2501. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise becoming growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2502 Special property and insurable interest in goods.

Sec. 2502. (1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if 1 of the following occurs:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract.

(b) In all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his or her special property has been made by the buyer he or she acquires the right to recover the goods only if they conform to the contract for sale.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2503 Tender of delivery by seller; shipment; destination; goods in possession of bailee;


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**documents.**

Sec. 2503. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular all of the following apply:

(a) Tender must be at a reasonable hour, and if it is a tender of goods, the goods must be kept available for the period reasonably necessary to enable the buyer to take possession.

(b) Unless otherwise agreed, the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) If section 2504 applies to a shipment, tender requires that the seller comply with that section.

(3) If a seller is required to deliver at a particular destination, tender requires that the seller comply with subsection (1) and also, if appropriate, tender documents as described in subsections (4) and (5).

(4) If goods are in the possession of a bailee and are to be delivered without being moved, both of the following apply:

(a) Except as provided in subdivision (b), tender requires that the seller either tender a negotiable document of title covering the goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods.

(b) Tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonally objects, and except as otherwise provided in article 9, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons. However, risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Both of the following apply if the contract requires the seller to deliver documents:

(a) The seller must tender all the documents in correct form, except as provided in section 2323(2) with respect to bills of lading in a set.

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2504 Delivery by shipment; contract with carrier, documents, notice.

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

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2505 Shipment with and without reservation by seller.

Sec. 2505. (1) Both of the following apply if a seller has identified goods to a contract by or before shipment:

(a) The seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security. However, except in a case of conditional delivery under section 2507(2), a nonnegotiable bill of lading naming the buyer as consignee does not reserve a security interest even if the seller retains possession or control of the bill of lading.

(2) If a shipment by a seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within section 2504 but it does not impair the rights given to the buyer by shipment and identification of the goods to the contract or impair the seller's powers as a holder of a negotiable document of title.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.


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### 440.2506 Financing agency; rights; reimbursement.

Sec. 2506. (1) A financing agency by paying or purchasing for value a draft that relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency that has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2507 Tender of delivery; conditions, payment.

Sec. 2507. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2508 Improper delivery; cure, replacement.

Sec. 2508. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2509 Risk of loss; absence of breach.

Sec. 2509. (1) The following apply if a contract requires or authorizes the seller to ship goods by carrier:

(a) If the contract does not require the seller to deliver the goods at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even if the shipment is under reservation under section 2505.

(b) If the contract does require the seller to deliver the goods at a particular destination and the goods are tendered to the buyer at that destination while in the possession of the carrier, the risk of loss passes to the buyer when the goods are tendered at that destination in a manner that enables the buyer to take delivery.

(2) If goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer when 1 of the following occurs:

(a) The buyer receives possession or control of a negotiable document of title covering the goods.

(b) The bailee provides acknowledgment of the buyer's right to possession of the goods.

(c) The buyer receives possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in section 2503(4)(b).

(3) If subsection (1) or (2) does not apply, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant. Otherwise, the risk of loss passes to the buyer on tender of delivery.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2510 Risk of loss; effect of breach.

Sec. 2510. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

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

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.


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### 440.2511 Payment by buyer; tender, check.

Sec. 2511. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this act on the effect of an instrument on an obligation (section 3802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2512 Payment by buyer; inspection, nonconforming goods.

Sec. 2512. (1) If the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this act (section 5109(b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyers right to inspect or any of his or her remedies.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.2513 Inspection by buyer; time, expenses, place, method.

Sec. 2513. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

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

(a) for delivery C.O.D. or on other like terms; or

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

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2514 Documents; delivery to drawee on acceptance or payment.

Sec. 2514. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2515 Adjustment of dispute; preservation of evidence, inspection.

Sec. 2515. In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

## PART 6
## BREACH, REPUDIATION AND EXCUSE


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### 440.2601 Improper delivery; buyer's rights.

Sec. 2601. Subject to the provisions of this article on breach in installment contracts (section 2612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 2718 and 2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2602 Rejection of goods.

Sec. 2602. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the 2 following sections on rejected goods (sections 2603 and 2604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 2711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (section 2703).

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2603 Rejection of goods; merchant buyer's duties.

Sec. 2603. (1) Subject to any security interest in the buyer (subsection (3) of section 2711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2604 Rejection of goods; buyer's options.

Sec. 2604. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2605 Rejection of goods; failure of buyer to particularize defect.

Sec. 2605. (1) A buyer's failure to state in connection with rejection a particular defect that is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach if either of the following applies:

(a) The seller could have cured the defect if the buyer stated the defect seasonably.

(b) Between merchants, if the seller after rejection makes a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2606 Acceptance of goods; occurrence.


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Sec. 2606. (1) Acceptance of goods occurs when the buyer

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

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

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2607 Acceptance of goods; effect; notice of breach; burden of establishing breach; notice of claim or litigation to person answerable.

Sec. 2607. (1) The buyer must pay at the contract rate for any goods accepted.

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

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

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

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

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the 2 litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound

(b) if the claim is one for infringement or the like (subsection (3) of section 2312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 2312).

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2608 Acceptance of goods; revocation, time, notice, effect.

Sec. 2608. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2609 Contract for sale; performance; insecurity, demand, assurance of due performance.

Sec. 2609. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.


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(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2610 Anticipatory repudiation.

Sec. 2610. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (section 2703 or section 2711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2611 Anticipatory repudiation; retraction.

Sec. 2611. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (section 2609).

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2612 Installment contract; breach.

Sec. 2612. (1) An “installment contract” is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause “each delivery is a separate contract” or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2613 Casualty to identified goods; total loss; partial loss, option of buyer.

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

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2614 Substituted performance; acceptance, payment.

Sec. 2614. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes


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commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2615 Failure of presupposed conditions; nondelivery, partial delivery, excuse.

Sec. 2615. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

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

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2616 Procedure on notice claiming excuse.

Sec. 2616. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (section 2612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

## PART 7
## REMEDIES

### 440.2701 Collateral or ancillary contracts; remedies for breach.

Sec. 2701. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2702 Insolvency of buyer; remedies of seller.

Sec. 2702. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 2705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10 day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article (section 2403). Successful reclamation of goods excludes all other remedies with respect to them.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.


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### 440.2703 Buyer's wrongful rejection, revocation of acceptance, or nonpayment; remedies of seller.

Sec. 2703. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 2612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (section 2705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (section 2706);

(e) recover damages for nonacceptance (section 2708) or in a proper case the price (section 2709);

(f) cancel.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2704 Buyer's wrongful rejection, revocation of acceptance, or nonpayment; identification of goods; resale; salvage.

Sec. 2704. (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2705 Stoppage of delivery in transit or otherwise; conditions; notice to bailee.

Sec. 2705. (1) A seller may stop delivery of goods in the possession of a carrier or other bailee if the seller discovers the buyer to be insolvent under section 2702 and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against a buyer described in subsection (1), the seller may stop delivery until 1 of the following occurs:

(a) Receipt of the goods by the buyer.

(b) Acknowledgment to the buyer by a bailee of the goods except a carrier that the bailee holds the goods for the buyer.

(c) An acknowledgment to the buyer by a carrier by reshipment or as a warehouse that the carrier holds the goods for the buyer.

(d) Negotiation to the buyer of a negotiable document of title covering the goods.

(3) All of the following must be met to stop delivery under this section:

(a) The seller must notify the bailee so as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification under subdivision (a), the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods, the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier that has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2706 Buyer's wrongful rejection, revocation of acceptance, or nonpayment; resale by seller; recovery of loss; notice to buyer; profit.

Sec. 2706. (1) Under the conditions stated in section 2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (section


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2710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

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

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

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

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of section 2711).

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2707 Person in the position of a seller.

Sec. 2707. (1) A “person in the position of a seller” includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2708 Nonacceptance or repudiation; seller's damages.

Sec. 2708. (1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 2723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 2710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (section 2710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2709 Nonpayment; action for price, damages.

Sec. 2709. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

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

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

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a


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payment due or has repudiated (section 2610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2710 Seller's incidental damages.

Sec. 2710. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2711 Nondelivery, repudiation, rejection, or revocation of acceptance; buyer's remedies; security interest in goods.

Sec. 2711. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (section 2612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this article (section 2713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this article (section 2502); or

(b) in a proper case obtain specific performance or replevy or recover the goods as provided in this article (section 2716).

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2712 Cover; procurement of substitute goods; buyer's damages.

Sec. 2712. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 2715), but less expenses saved in consequence of the seller's breach.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2713 Nondelivery or repudiation; buyer's damages.

Sec. 2713. (1) Subject to the provisions of this article with respect to proof of market price (section 2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (section 2715), but less expenses saved in consequence of the seller's breach.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2714 Accepted goods; buyer's damages for breach.

Sec. 2714. (1) Where the buyer has accepted goods and given notification (subsection (3) of section 2607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

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


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**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2715 Buyer's incidental and consequential damages.

Sec. 2715. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2716 Specific performance; replevin; claim and delivery.

Sec. 2716. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin or recovery in a claim and delivery proceeding for goods identified to the contract if after reasonable effort he or she is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2717 Deduction of damages from price; notice.

Sec. 2717. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2718 Liquidation and limitation of damages; restitution to buyers.

Sec. 2718. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500.00, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 2706).

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2719 Contractual modification or limitation of remedies.

Sec. 2719. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming


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goods or parts; and

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

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2720 Cancellation, rescission, antecedent breach.

Sec. 2720. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2721 Remedies for misrepresentation or fraud.

Sec. 2721. Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2722 Right of action against third party for injury to goods.

Sec. 2722. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

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

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2723 Evidence of market price; time, place, surprise.

Sec. 2723. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 2708 or section 2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

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

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2724 Evidence of market price; market quotations, admissibility.

Sec. 2724. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.2725 Statute of limitations in contracts for sale; contractual reduction.

Sec. 2725. (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not


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less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warrant explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

## ARTICLE 2A
## LEASES

## PART 1
## GENERAL PROVISIONS

### 440.2801 Short title.

Sec. 2A101. This article shall be known and may be cited as the “uniform commercial code - leases”.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2802 Applicability of article.

Sec. 2A102. This article applies to any transaction, regardless of form, that creates a lease.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2803 Definitions; sections; principles of construction and interpretation.

Sec. 2A103. (1) In this article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind. The term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means a unit of goods that by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" means goods or performance under a lease contract that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.00.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which all of the following apply:

(*i*) The lessor does not select, manufacture, or supply the goods.

(*ii*) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease.

(*iii*) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract.

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract.

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or


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liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing of the following:

(I) The identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person.

(II) The lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(III) The lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures under section 2A309, but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(*l*) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of 1 or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor


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as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

| | |
|---|---|
| "Accessions". | Section 2A310. |
| "Construction mortgage". | Section 2A309. |
| "Encumbrance". | Section 2A309. |
| "Fixtures". | Section 2A309. |
| "Fixture filing". | Section 2A309. |
| "Purchase money lease". | Section 2A309. |

(3) The following definitions in other articles apply to this article:

| | |
|---|---|
| "Account". | Section 9102. |
| "Between merchants". | Section 2104. |
| "Buyer". | Section 2103. |
| "Chattel paper". | Section 9102. |
| "Consumer goods". | Section 9102. |
| "Document". | Section 9102. |
| "Entrusting". | Section 2403. |
| "General intangible". | Section 9102. |
| "Good faith". | Section 2103. |
| "Instrument". | Section 9102. |
| "Merchant". | Section 2104. |
| "Mortgage". | Section 9102. |
| "Pursuant to commitment". | Section 9102. |
| "Receipt". | Section 2103. |
| "Sale". | Section 2106. |
| "Sale on approval". | Section 2326. |
| "Sale or return". | Section 2326. |
| "Seller". | Section 2103. |

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2804 Lease requirements; compliance with applicable statutes; effect of noncompliance with applicable statute.

Sec. 2A104. (1) A lease, although subject to this article, is also subject to all of the following:

(a) A certificate of title statute of this state, including, but not limited to, part 803 (watercraft transfer and certificate of title) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.80301 to 324.80322 of the Michigan Compiled Laws; the mobile home commission act, Act No. 96 of the Public Acts of 1987, being sections 125.2301 to 125.2349 of the Michigan Compiled Laws; and chapter II of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.201 to 257.259 of the Michigan Compiled Laws.

(b) A certificate of title statute of another jurisdiction (section 2A105).

(c) The Michigan consumer protection act, Act No. 331 of the Public Acts of 1976, being sections 445.901 to 445.922 of the Michigan Compiled Laws.

(2) Except for sections 2A105, 2A304(3), and 2A305(3), in case of conflict between this article and a statute referred to in subsection (1), the statute controls.

(3) Failure to comply with any applicable statute has only the effect specified in the statute.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 1996, Act 72, Imd. Eff. Feb. 26, 1996.

### 440.2805 Certificate of title statute; compliance; applicable law.

Sec. 2A105. Subject to the provisions of sections 2A304(3) and 2A305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law of the jurisdiction issuing the certificate until the earlier of the following:

(a) Surrender of the certificate.

(b) Four months after the goods are removed from that jurisdiction and thereafter until a new certificate of


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title is issued by another jurisdiction.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2806 Choice of law; judicial forum.

Sec. 2A106. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2807 Discharge of claim or right without consideration.

Sec. 2A107. A claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2808 Unconscionable contract, clause, or conduct.

Sec. 2A108. (1) If a court, as a matter of law, finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if a court, as a matter of law, finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease, all of the following apply:

(a) If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2809 Power to accelerate payment or performance or require collateral; good faith.

Sec. 2A109. (1) A term providing that 1 party or his or her successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when he or she deems himself or herself insecure or in words of similar import must be construed to mean that he or she has power to do so only if he or she in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise, the burden of establishing lack of good faith is on the party against whom the power has been exercised.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2810 Motor vehicle or trailer; transaction creating sale or security interest.

Sec. 2A110. With respect to a motor vehicle or trailer, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

## PART 2
## FORMATION AND CONSTRUCTION OF LEASE CONTRACT


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### 440.2851 Lease contract; enforcement by action or defense; conditions; sufficiency of description or writing; determination of term.

Sec. 2A201. (1) A lease contract is not enforceable by way of action or defense unless 1 of the following applies:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000.00.

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable for any of the following:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement.

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted.

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is determined as follows:

(a) Term specified if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term.

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted.

(c) A reasonable lease term.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2852 Final written expression; parol or extrinsic evidence.

Sec. 2A202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by any of the following:

(a) By course of dealing or usage of trade or by course of performance.

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2853 Effect of seal affixed to writing.

Sec. 2A203. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2854 Lease contract; sufficiency to show agreement; conduct; open terms.

Sec. 2A204. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although 1 or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.


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### 440.2855 Firm offer; assurances to hold offer open.

Sec. 2A205. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2856 Offer to make lease contract; manner of acceptance; lapse.

Sec. 2A206. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2857 Repealed. 2012, Act 86, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to course of performance and construction of terms.

### 440.2858 Lease agreement; modification or rescission; waiver; retraction.

Sec. 2A208. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2859 Supply contract; extension of benefits of supplier promises and of warranties to lessee; limitations; effect of modification or rescission; retention of rights.

Sec. 2A209. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee does not do either of the following:

(a) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise.

(b) Impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2860 Express warranties; creation.

Sec. 2A210. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and


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becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2861 Warranty against claim or interest in goods; claim by way of infringement; specifications furnished by lessee.

Sec. 2A211. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2862 Implied warranty of merchantability; other implied warranties.

Sec. 2A212. (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least all of the following:

(a) Pass without objection in the trade under the description in the lease agreement.

(b) In the case of fungible goods, are of fair average quality within the description.

(c) Are fit for the ordinary purposes for which goods of that type are used.

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved.

(e) Are adequately contained, packaged, and labeled as the lease agreement may require.

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2863 Implied warranty of fitness for a particular purpose.

Sec. 2A213. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2864 Limiting, negating, excluding, or modifying warranties; construction of words or conduct.

Sec. 2A214. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other, but, subject to the provisions of section 2A202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous, and states, for example, "There is no warranty that the goods will be fit for a particular purpose".


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(3) Notwithstanding subsection (2), but subject to subsection (4), all of the following apply:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is”, or “with all faults”, or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous.

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed.

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (section 2A211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2865 Inconsistent warranties; intent; rules of construction.

Sec. 2A215. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2866 Warranty; extension to persons in family, household, or to guest; exclusion, modification, or limitation.

Sec. 2A216. A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2867 Lease contract; identification of goods; absence of explicit agreement.

Sec. 2A217. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to be the parties. In the absence of explicit agreement, the following determines when identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified.

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified.

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2868 Lease contract; insurable interest in goods.

Sec. 2A218. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.


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(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that 1 or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2869 Risk of loss; passage to lessee.

Sec. 2A219. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this article on the effect of default on risk of loss (section 2A220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier, but if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subdivision (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise, the risk passes to the lessee on tender of delivery.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2870 Risk of loss; repudiation; default.

Sec. 2A220. (1) Where risk of loss is to pass to the lessee and the time of passage is not stated, then the following rules apply:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2871 Casualty to identified goods before delivery or risk of loss passes.

Sec. 2A221. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 2A219, then the following rules apply:

(a) If the loss is total, the lease contract is avoided.

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

## PART 3
## EFFECT OF LEASE CONTRACT

### 440.2901 Lease contract; enforcement.

Sec. 2A301. Except as otherwise provided in this article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2902 Applicability of article; title or possession.


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Sec. 2A302. Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2903 Security interest; creation; transfer; limitations; rights and remedies; delegation of duties or performance; liability; prohibition.

Sec. 2A303. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to article 9, secured transactions, by reason of section 9109(1)(c).

(2) Except as provided in subsection (3) and section 9407, a provision in a lease agreement (*i*) which prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (*ii*) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (*i*) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (*ii*) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4).

(4) Subject to subsection (3) and section 9407, the following rules apply:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 2A501(2).

(b) If subdivision (a) is not applicable and if a transfer is made that (*i*) is prohibited under a lease agreement or (*ii*) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2904 Transfer from lessor to subsequent lessee; power; obtaining rights in ordinary course of business; entrustment; certificate of title.

Sec. 2A304. (1) Subject to section 2A303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and section 2A527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though any of the following apply:

(a) The lessor's transferor was deceived as to the identity of the lessor.

(b) The delivery was in exchange for a check which is later dishonored.

(c) It was agreed that the transaction was to be a "cash sale".

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.


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(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2905 Transfer from lessee to buyer or sublessee; power; rights; buyer in ordinary course of business; entrustment; certificate of title.

Sec. 2A305. (1) Subject to section 2A303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and section 2A511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease, the lessee has that power even though any of the following apply:

(a) The lessor was deceived as to the identity of the lessee.

(b) The delivery was in exchange for a check which is later dishonored.

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2906 Materials or services provided with respect to goods subject to lease contract; lien; priority; exception.

Sec. 2A306. If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2907 Creditor of lessee; rights; taking leasehold interest subject to security interest.

Sec. 2A307. (1) Except as otherwise provided in section 2A306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) and in sections 2A306 and 2A308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in sections 9317, 9321, and 9323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2908 Creditor of lessor or seller; lease or sale contract treated as void; fraudulent retention or possession of goods; security for preexisting claim.

Sec. 2A308. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this article impairs the rights of creditors of a lessor if the lease contract (*i*) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for


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money, security, or the like, and (*ii*) is made under circumstances which under any statute or rule of law apart from this article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2909 Definitions; lease of fixtures; priority of security interests; right to remove goods; reimbursement; perfection by filing financing statement as fixture filing.

Sec. 2A309. (1) As used in this section:

(a) "Goods" are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.

(b) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 9502(1) and (2).

(c) A "lease" is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.

(d) A "mortgage" is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if either of the following applies:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if any of the following apply:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures, the lease contract is enforceable.

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable.

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures.

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real


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estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (*i*) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or (*ii*) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of article 9.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2910 Goods as accessions; priority of interests; right to remove goods; reimbursement.

Sec. 2A310. (1) Goods are accessions when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of either of the following:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions.

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (*i*) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this article, or (*ii*) if necessary to enforce his or her other rights and remedies under this article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2911 Subordination by agreement.

Sec. 2A311. Nothing in this article prevents subordination by agreement by any person entitled to priority.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

## PART 4

## PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSED

### 440.2931 Lease contract; demanding adequate assurance of due performance; repudiation; determination of adequacy; acceptance of nonconforming delivery or payment.

Sec. 2A401. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the


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circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2932 Repudiation of lease contract.

Sec. 2A402. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may do any of the following:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party.

(b) Make demand pursuant to section 2A401 and await assurance of future performance adequate under the circumstances of the particular case.

(c) Resort to any right or remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing 1 of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 2A524).

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2933 Retraction of repudiation.

Sec. 2A403. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 2A401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2934 Substituted performance; tender and acceptance; failure of payment due to government regulation.

Sec. 2A404. (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, then the following apply:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent.

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2935 Substituted performance; delay or nondelivery; allocating production and deliveries; notification.

Sec. 2A405. Subject to section 2A404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subdivisions (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in subdivision (a) affect only part of the lessor's or the supplier's capacity to


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perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subdivision (b), of the estimated quota thus made available for the lessee.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2936 Notification by lessor of delay or allocation; rights of lessee; lapse of lease contract.

Sec. 2A406. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under section 2A405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A510) may do either of the following:

(a) Terminate the lease contract (section 2A505(2)).

(b) Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under section 2A405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2937 Finance lease other than consumer lease; effect of lessee's promises; acceptance of goods by lessee; enforcement; validity.

Sec. 2A407. (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) is (*i*) effective and enforceable between the parties, and by or against third parties including assignees of the parties, and (*ii*) not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

## PART 5
## DEFAULT

### 440.2951 Default; rights and remedies; self-help; enforcement covering real property and goods.

Sec. 2A501. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in section 1305(1) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.2952 Notice of default or enforcement.


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Sec. 2A502. Except as otherwise provided in this article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2953 Default; rights and remedies provided in lease agreement; optional remedies; liquidation, limitation, alteration or exclusion of consequential damages; collateral or ancillary obligations and promises.

Sec. 2A503. (1) Except as otherwise provided in this article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.

(2) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(3) Consequential damages may be liquidated under section 2A504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this article.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2954 Liquidation of damages; reasonableness; restitution; setoff.

Sec. 2A504. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 2A525 or 2A526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds either of the following:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1).

(b) In the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or $500.00.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes any of the following:

(a) A right to recover damages under the provisions of this article other than subsection (1).

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2955 Cancellation or termination of lease contract; discharge of executory obligations; material misrepresentation or fraud; rescission, rejection, or return of goods as bar to rights or remedies.

Sec. 2A505. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of “cancellation,”“rescission,” or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.


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(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2956 Default; commencement and accrual of action; effect of termination; applicability of section to tolling of statute of limitations or causes of action accrued before effective date of article.

Sec. 2A506. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than 1 year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this article becomes effective.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2957 Damages based on market rent.

Sec. 2A507. (1) Damages based on market rent (section 2A519 or 2A528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time specified in sections 2A519 and 2A528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by 1 party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2958 Default by lessor; rights and remedies; breach of warranty; security interest for rent, security, and expenses; deduction of damages from rent due.

Sec. 2A508. (1) If a lessor fails to deliver the goods in conformity to the lease contract (section 2A509) or repudiates the lease contract (section 2A402), or a lessee rightfully rejects the goods (section 2A509) or justifiably revokes acceptance of the goods (section 2A517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A510), the lessor is in default under the lease contract and the lessee may do any or all of the following:

(a) Cancel the lease contract (section 2A505(1)).

(b) Recover so much of the rent and security as has been paid and is just under the circumstances.

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (section 2A518 or 2A520), or recover damages for nondelivery (section 2A519 or 2A520).

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract,


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the lessee may also do either of the following:

(a) If the goods have been identified, recover them (section 2A522).

(b) In a proper case, obtain specific performance or replevy the goods (section 2A521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include the right to cancel the lease, and in section 2A519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 2A519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 2A527(5).

(6) Subject to the provisions of section 2A407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2959 Failure of goods or tender or delivery to conform to lease contract; rights of lessee; effectiveness of rejection of goods.

Sec. 2A509. (1) Subject to the provisions of section 2A510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2960 Installment lease contract; rejecting nonconforming delivery; conditions requiring acceptance; reinstatement of lease contract.

Sec. 2A510. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to 1 or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2961 Rejection of goods in merchant lessee's possession or control; duties of merchant lessee; right to reimbursement; good faith conduct; purchaser in good faith.

Sec. 2A511. (1) Subject to any security interest of a lessee (section 2A508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee or any other lessee (section 2A512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with this section or section 2A512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or section 2A512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with 1 or more of the requirements of this article.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.


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### 440.2962 Rejection of goods in lessee's possession; rights and obligations of lessee.

Sec. 2A512. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 2A511) and subject to any security interest of a lessee (section 2A505(5)) the following rules apply:

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection.

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 2A511.

(c) Except as otherwise provided by this section, the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2963 Rejection of goods before expiration of time for performance; rights of lessor or supplier.

Sec. 2A513. (1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2964 Rejection of goods; failure of lessee to state particular defect or reserve rights when paying consideration against documents; effect.

Sec. 2A514. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default if either of the following applies:

(a) If, stated seasonably, the lessor or the supplier could have cured the defect.

(b) Between merchants, if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2965 Acceptance of goods; opportunity to inspect; conduct; accepting part of unit.

Sec. 2A515. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and either of the following applies:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity.

(b) The lessee fails to make an effective rejection of the goods (section 2A509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2966 Acceptance of goods; rent; revocation prohibited; exception; acceptance of tender; effect of suit against lessee for breach of warranty or other obligation; infringement.

Sec. 2A516. (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.


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(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified.

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 2A211), the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation.

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the 2 litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 2A211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 2A211).

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2967 Revoking acceptance of nonconforming lot or commercial unit; conditions; notification; rights and duties of lessee.

Sec. 2A517. (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured.

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2968 Default by lessor; cover; damages.

Sec. 2A518. (1) After default by a lessor under the lease contract of the type described in section 2A508(1) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement under section 2A504 or otherwise determined pursuant to agreement of the parties under sections 1302 and 2A503, if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (*i*) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement and (*ii*) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had


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elected not to cover and section 2A519 governs.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.2969 Nondelivery or repudiation by lessor; rejection or revocation of acceptance by lessee; damages; measure of damages for market rent, nonconforming tender or delivery, or breach of warranty.

Sec. 2A519. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement under section 2A504 or otherwise determined pursuant to agreement of the parties under sections 1302 and 2A503, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification under section 2A516(3), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.2970 Default by lessor; incidental and consequential damages.

Sec. 2A520. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include the following:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise.

(b) Injury to person or property proximately resulting from any breach of warranty.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2971 Specific performance.

Sec. 2A521. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2972 Insolvency of lessor; recovery of conforming goods after receipt of first installment of rent and security.

Sec. 2A522. (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 2A217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the


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lease contract.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2973 Wrongful rejection or revocation; failure to make payment; repudiation; default; rights of lessor; damages; cancellation of lease.

Sec. 2A523. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A510), the lessee is in default under the lease contract and the lessor may do any of the following:

(a) Cancel the lease contract (section 2A505(1)).

(b) Proceed respecting goods not identified to the lease contract (section 2A524).

(c) Withhold delivery of the goods and take possession of goods previously delivered (section 2A525).

(d) Stop delivery of the goods by any bailee (section 2A526).

(e) Dispose of the goods and recover damages (section 2A527), retain the goods and recover damages (section 2A528), or, in a proper case, recover rent (section 2A529).

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequences of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract, if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2), or if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2974 Additional rights of lessor aggrieved under MCL 440.2973(1).

Sec. 2A524. (1) A lessor aggrieved under section 2A523(1) may do any of the following:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control.

(b) Dispose of goods (section 2A527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2975 Insolvency of lessee; refusal to deliver goods; possession, availability, or disposition of goods; proceeding without judicial process.

Sec. 2A525. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in section 2A523(1) or 2A523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 2A527).

(3) The lessor may proceed under subsection (2) without judicial process if that can be done without breach of the peace or the lessor may proceed by action.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.2976 Insolvency of lessee; stopping delivery of goods in possession of bailee; conditions; notification; liability for charges or damages; obligation of carrier.

Sec. 2A526. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee is insolvent and may stop delivery of carload, truckload, planeload, or larger


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shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until 1 of the following occurs:

(a) Receipt of the goods by the lessee.

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee.

(c) An acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3) To stop delivery under this section, a lessor shall notify the bailee so as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(4) After notification under subsection (3), the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(5) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.2977 Default; disposition of goods; damages based on new lease agreement; rights of subsequent good faith buyer or lessee; accounting for profit.

Sec. 2A527. (1) After a default by a lessee under the lease contract of the type described in section 2A523(1) or 2A523(3), or after the lessor refuses to deliver or takes possession of goods under section 2A525 or 2A526, or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement under section 2A504 or otherwise determined pursuant to agreement of the parties under sections 1302 and 2A503, if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (*i*) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (*ii*) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (*iii*) any incidental damages allowed under section 2A530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with 1 or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A508(5)).

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.2978 Retention or disposition of goods by lessor; damages.

Sec. 2A528. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement under section 2A504 or otherwise determined pursuant to agreement of the parties under sections 1302 and 2A503, if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement that for any reason does not qualify for treatment under section 2A527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A523(1) or 2A523(3)(a), or, if agreed, for other default of the lessee, (*i*) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (*ii*) the present value as of the date determined under this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and any incidental damages allowed under section 2A530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position


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as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.2979 Default by lessee; damages; holding identified goods for remaining lease term; disposition of goods by lessor; use and possession of goods by lessee; rent.

Sec. 2A529. (1) After default by the lessee under the lease contract of the type described in section 2A523(1) or 2A523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages the following:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 2A219), (*i*) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (*ii*) the present value as of the date of default of the rent for the then remaining lease term of the lease agreement, and (*iii*) any incidental damages allowed under section 2A530, less expenses saved in consequence of the lessee's default.

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (*i*) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (*ii*) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (*iii*) any incidental damages allowed under section 2A530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 2A527 or 2A528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 2A527 or 2A528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (section 2A402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under section 2A527 or 2A528.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2980 Incidental damages.

Sec. 2A530. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

### 440.2981 Third party causing injury.

Sec. 2A531. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract, (*i*) the lessor has a right of action against the third party, and (*ii*) the lessee also has a right of action against the third party if any of the following apply to the lessee:

(a) Has a security interest in the goods.

(b) Has an insurable interest in the goods.

(c) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.


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### 440.2982 Additional damages.

Sec. 2A532. In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

**History:** Add. 1992, Act 101, Eff. Sept. 30, 1992.

## ARTICLE 3
## NEGOTIABLE INSTRUMENTS

## PART 1
## GENERAL PROVISIONS AND DEFINITIONS

### 440.3101 Short title; article.

Sec. 3101. This article shall be known and may be cited as “uniform commercial code—negotiable instruments”.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3102 Scope; limitations; conflict of laws.

Sec. 3102. (1) This article applies to negotiable instruments. It does not apply to money, to payment orders governed by article 4a, or to securities governed by article 8.

(2) If there is conflict between this article and article 4 or 9, articles 4 and 9 govern.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this article to the extent of the inconsistency.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3103 Definitions; principles of construction.

Sec. 3103. (1) As used in this article:

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.

(c) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

(d) "Drawee" means a person ordered in a draft to make payment.

(e) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(f) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(g) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to 1 or more persons jointly or in the alterative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(h) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(i) "Party" means a party to an instrument.

(j) "Principal obligor", with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article.

(k) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(*l*) "Prove" with respect to a fact means to meet the burden of establishing the fact under section 1201(2)(h).

(m) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(n) "Remotely created consumer item" means an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(o) "Secondary obligor", with respect to an instrument, means any of the following:


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(*i*) An indorser or an accommodation party.

(*ii*) A drawer that has the obligation described in section 3414(4).

(*iii*) Any other party to the instrument that has recourse against another party to the instrument under section 3116(2).

(2) Other definitions applying to this article and the sections in which they appear are as follows:

| | |
|---|---|
| "Acceptance" | section 3409. |
| "Accommodated party" | section 3419. |
| "Accommodation party" | section 3419. |
| "Account" | section 4104. |
| "Alteration" | section 3407. |
| "Anomalous endorsement" | section 3205. |
| "Blank endorsement" | section 3205. |
| "Cashier's check" | section 3104. |
| "Certificate of deposit" | section 3104. |
| "Certified check" | section 3409. |
| "Check" | section 3104. |
| "Consideration" | section 3303. |
| "Draft" | section 3104. |
| "Endorsement" | section 3204. |
| "Endorser" | section 3204. |
| "Holder in due course" | section 3304. |
| "Incomplete instrument" | section 3115. |
| "Instrument" | section 3104. |
| "Issue" | section 3105. |
| "Issuer" | section 3105. |
| "Negotiable instrument" | section 3104. |
| "Negotiation" | section 3201. |
| "Note" | section 3104. |
| "Payable at a definite time" | section 3108. |
| "Payable on demand" | section 3108. |
| "Payable to bearer" | section 3109. |
| "Payable to order" | section 3109. |
| "Payment" | section 3602. |
| "Person entitled to enforce" | section 3301. |
| "Presentment" | section 3501. |
| "Reacquisition" | section 3207. |
| "Special endorsement" | section 3205. |
| "Teller's check" | section 3104. |
| "Transfer of instrument" | section 3203. |
| "Traveler's check" | section 3104. |
| "Value" | section 3303. |

(3) The following definitions in other articles apply to this article:

| | |
|---|---|
| "Banking day" | section 4104. |
| "Clearing-house" | section 4104. |
| "Collecting bank" | section 4105. |
| "Depositary bank" | section 4105. |
| "Documentary draft" | section 4104. |
| "Intermediary bank" | section 4105. |
| "Item" | section 4104. |
| "Payor bank" | section 4105. |
| "Suspends payments" | section 4104. |

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2012, Act 86, Eff. July 1, 2013;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.


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**Compiler's note:** In subsection (1)(g), "alterative" evidently should read "alternative."

### 440.3104 Additional definitions.

Sec. 3104. (1) Except as provided in subsections (3) and (4), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if all of the following apply:

(a) It is payable to bearer or to order at the time it is issued or first comes into possession of a holder.

(b) It is payable on demand or at a definite time.

(c) It does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1), except subdivision (a), and otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.

(4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

(6) "Check" means a draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

(9) "Traveler's check" means an instrument that is payable on demand, is drawn on or payable at or through a bank, is designated by the term "traveler's check" or by a substantially similar term, and requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3105 "Issue" and "issuer" defined; effect of unissued or conditionally issued instrument.

Sec. 3105. (1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3106 Unconditional status of promise or order.

Sec. 3106. (1) Except as provided in this section, for the purposes of section 3104(1), a promise or order is unconditional unless it states 1 of the following:

(a) An express condition to payment.

(b) That the promise or order is subject to or governed by another record.

(c) That rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.

(2) A promise or order is not made conditional by or because of either of the following:

(a) By a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration.

(b) Because payment is limited to resort to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order


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conditional for the purposes of section 3104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 3104(1); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3107 Payment in foreign money.

Sec. 3107. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3108 Instrument payable on demand, at definite time, or at fixed date.

Sec. 3108. (1) A promise or order is "payable on demand" if it:

(a) States that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder.

(b) Does not state any time of payment.

(2) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of:

(a) Prepayment.

(b) Acceleration.

(c) Extension at the option of the holder.

(d) Extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(3) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3109 Promise or order; payable on demand; payable at definite time; instrument payable at fixed date.

Sec. 3109. (1) A promise or order is payable to the bearer if it does any of the following:

(a) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment.

(b) Does not state a payee.

(c) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is payable to order if it is payable:

(a) To the order of an identified person.

(b) To an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially endorsed pursuant to section 3205(1). An instrument payable to an identified person may become payable to bearer if it is endorsed in blank pursuant to section 3205(2).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3110 Determination of person payable; intent; signature by automated means; determining holder; instrument payable to 2 or more persons.

Sec. 3110. (1) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by


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a name or other identification that is not that of the intended person. If more than 1 person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by 1 or more of the signers.

(2) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to any of the following:

(*i*) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named.

(*ii*) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative.

(*iii*) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization.

(*iv*) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to 2 or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to 2 or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to 2 or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3111 Place of payment.

Sec. 3111. Except as otherwise provided for items in article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than 1 place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3112 Interest.

Sec. 3112. (1) Unless otherwise provided in the instrument:

(a) An instrument is not payable with interest.

(b) Interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3113 Instrument antedated, postdated, or undated.

Sec. 3113. (1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 4401(3), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3114 Instrument; contradictory terms.

Sec. 3114. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3115 Incomplete instrument; definition; enforcement; alteration; burden.

Sec. 3115. (1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3), if an incomplete instrument is an instrument under section 3104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 3104, but, after completion, the requirements of section 3104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 3407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3116 Joint and several liability.

Sec. 3116. (1) Except as otherwise provided in the instrument, 2 or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in section 3419(6) or by agreement of the affected parties, a party having joint and several liability who pay the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

**Compiler's note:** In subsection (2), "pay" evidently should read "pays."

### 440.3117 Obligation modified, supplemented, or nullified by separate agreement.

Sec. 3117. Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3118 Action to enforce obligation; commencement; time period; other actions.

Sec. 3118. (1) Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the due date or dates stated in the note or, if a due date is accelerated, within 6 years after the accelerated due date.

(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 3 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 3 years after demand for payment is made to the acceptor or issuer.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the due date has passed.


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(6) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (*i*) within 6 years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (*ii*) within 6 years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action (*i*) for conversion of an instrument, for money had and received, or like action based on conversion, (*ii*) for breach of warranty, or (*iii*) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within 3 years after the cause of action accrues.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3119 Notice of litigation to answerable third party.

Sec. 3119. In an action for breach of an obligation for which a third person is answerable over pursuant to this article or article 4, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (*i*) that the person notified may come in and defend and (*ii*) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the 2 litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3120-440.3122 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

**Compiler's note:** The repealed sections pertained to instruments payable through or at a bank, accrual of cause of action, and interest.

## PART 2
## NEGOTIATION, TRANSFER, AND ENDORSEMENT

### 440.3201 Negotiation; definition; transfer of possession.

Sec. 3201. (1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3202 Negotiation; effective although subject to rescission or other remedies.

Sec. 3202. (1) Negotiation is effective even if obtained (*i*) from an infant, a corporation exceeding its powers, or a person without capacity, (*ii*) by fraud, duress, or mistake, or (*iii*) in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3203 Transfer of instrument; delivery; rights of transferee; effect of transfer of less than entire instrument.

Sec. 3203. (1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this article and has only the rights of a partial assignee.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3204 "Endorsement" and "endorser" defined; transfer of security interest effective as unqualified endorsement; instrument payable to name other than holder.

Sec. 3204. (1) "Endorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (*i*) negotiating the instrument, (*ii*) restricting payment of the instrument, or (*iii*) incurring endorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Endorser" means a person who makes an endorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3205 Special endorsement; blank endorsement; conversion; "anomalous endorsement" defined.

Sec. 3205. (1) If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a "special endorsement". When specially endorsed, an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in section 3110 apply to special endorsements.

(2) If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a "blank endorsement". When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.

(3) The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous endorsement" means an endorsement made by a person who is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3206 Endorsement; limitation; condition; words indicating collection by bank; endorsee as agent, trustee, or other fiduciary; purchaser as holder in due course; exception; defense.

Sec. 3206. (1) An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) If an instrument bears an endorsement (*i*) described in section 4201(2), or (*ii*) in blank or to a particular bank using the words "for deposit", "for collection", or other words indicating a purpose of having the instrument collected by a bank for the endorser or for a particular account, the following rules apply:

(a) A person, other than a bank, who purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement.

(b) A depositary bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the endorser or applied consistently with the endorsement.

(c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the


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instrument are received by the endorser or applied consistently with the endorsement.

(d) Except as otherwise provided in subdivision (c), a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.

(4) Except for an endorsement covered by subsection (3), if an instrument bears an endorsement using words to the effect that payment is to be made to the endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another person, the following rules apply:

(a) Unless there is notice of breach of fiduciary duty as provided in section 3307, a person who purchases the instrument from the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of the payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser.

(b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3) or has notice or knowledge of breach of fiduciary duty as stated in subsection (4).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an endorsement to which this section applies and the payment is not permitted by this section.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3207 Instrument; reacquisition.

Sec. 3207. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel endorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An endorser whose endorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3208 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

**Compiler's note:** The repealed section pertained to reacquisition of instruments.

## PART 3
## ENFORCEMENT OF INSTRUMENTS

### 440.3301 Instrument; person entitled to enforce.

Sec. 3301. "Person entitled to enforce" an instrument means (*i*) the holder of the instrument, (*ii*) a nonholder in possession of the instrument who has the rights of a holder, or (*iii*) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 3309 or 3418(4). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3302 Holder in due course; notice of discharge as effective against holder; rights of holder; time and manner of notice; section subject to law limiting status.

Sec. 3302. (1) Subject to subsection (3) and section 3106(4), "holder in due course" means the holder of an instrument if both of the following apply:

(a) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity.

(b) The holder took the instrument (*i*) for value, (*ii*) in good faith, (*iii*) without notice that the instrument is overdue or has been dishonored or that there is an incurred default with respect to payment of another instrument issued as part of the same series, (*iv*) without notice that the instrument contains an unauthorized signature or has been altered, (*v*) without notice of any claim to the instrument described in section 3306, and (*vi*) without notice that any party has a defense or claim in recoupment described in section 3305(1).

(2) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1), but discharge is effective against a person who became a holder in due course


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with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (*i*) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (*ii*) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (*iii*) as the successor in interest to an estate or other organization.

(4) If under section 3303(1)(a) the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) If (*i*) the person entitled to enforce an instrument has only a security interest in the instrument and (*ii*) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3303 Instrument issued or transferred for value; consideration.

Sec. 3303. (1) An instrument is issued or transferred for value if any of the following apply:

(a) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed.

(b) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding.

(c) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due.

(d) The instrument is issued or transferred in exchange for a negotiable instrument.

(e) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(2) “Consideration” means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for consideration.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3304 Instruments payable on demand or payable at definite time as overdue; conditions.

Sec. 3304. (1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) On the day after the day demand for payment is duly made.

(b) If the instrument is a check, 90 days after its date.

(c) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(2) With respect to an instrument payable at a definite time, the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.


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### 440.3305 Right to enforce obligation; defenses or claims available; statement; section subject to other law.

Sec. 3305. (1) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(a) A defense of the obligor based on (*i*) infancy of the obligor to the extent it is a defense to a simple contract, (*ii*) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (*iii*) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (*iv*) discharge of the obligor in insolvency proceedings.

(b) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument, but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a), but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument in section 3306 of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(5) In a consumer transaction, if law other than this article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement, all of the following apply:

(a) The instrument has the same effect as if the instrument included such a statement.

(b) The issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement.

(c) The extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(6) This section is subject to law other than this article that establishes a different rule for consumer transactions.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3306 Instrument; person subject to claim of property or possessory right.

Sec. 3306. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3307 Fiduciary duty; breach.

Sec. 3307. (1) As used in this section:

(a) “Fiduciary” means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(b) “Represented person” means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subdivision (a) is owned.


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(2) If (*i*) an instrument is taken from a fiduciary for payment or collection or for value, (*ii*) the taker has knowledge of the fiduciary status of the fiduciary, and (*iii*) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(b) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (*i*) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (*ii*) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (*iii*) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(c) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(d) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (*i*) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (*ii*) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (*iii*) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3308 Establishing validity of signature; burden; right to payment subject to defense or claim in recoupment; holder in due course not subject to defense or claim.

Sec. 3308. (1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 3402(1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 3301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3309 Enforcement of instrument in which loss of possession occurred.

Sec. 3309. (1) A person not in possession of an instrument is entitled to enforce the instrument if all of the following are met:

(a) The person meets either of the following:

(*i*) Was entitled to enforce the instrument when loss of possession occurred.

(*ii*) Has directly or indirectly acquired ownership of the instrument from a person that was entitled to enforce the instrument when loss of possession occurred.

(b) The loss of possession was not the result of a transfer by the person or a lawful seizure.

(c) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument under subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 3308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3310 Certified check, cashier's check, or teller's check; discharge; note or uncertified


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**check; suspension of obligation; other instruments.**

Sec. 3310. (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an endorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(b) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(c) Except as provided in subdivision (d), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(d) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(3) If an instrument other than one described in subsection (1) or (2) is taken for an obligation, the effect is (*i*) that stated in subsection (1) if the instrument is one on which a bank is liable as maker or acceptor, or (*ii*) that stated in subsection (2) in any other case.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

**440.3311 Discharge; tender as full satisfaction of claim.**

Sec. 3311. (1) If a person against whom a claim is asserted proves that (*i*) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (*ii*) the amount of the claim was unliquidated or subject to a bona fide dispute, and (*iii*) the claimant obtained payment of the instrument, the following subsections apply.

(2) Unless subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4), a claim is not discharged under subsection (2) if either of the following applies:

(a) The claimant, if an organization, proves that (*i*) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (*ii*) the instrument or accompanying communication was not received by that designated person, office, or place.

(b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not apply if the claimant is an organization that sent a statement complying with subdivision (a)(*i*).

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

**440.3312 Definitions; asserting claim to amount of check by communication to obligated bank; delivery of declaration of loss; claim asserted in compliance with subsection (2); duties of claimant if presentment by holder in due course; rights of claimant with respect to check.**

Sec. 3312. (1) As used in this section:


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(a) "Check" means a cashier's check, teller's check, or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(c) "Declaration of loss" means a statement, made in a record under penalty of perjury, to the effect that all of the following apply:

(*i*) The declarer lost possession of a check.

(*ii*) The declarer is the drawer or payee of the check in the case of a certified check, or the remitter or payee of the check in the case of a cashier's check or teller's check.

(*iii*) The loss of possession was not the result of a transfer by the declarer or a lawful seizure.

(*iv*) The declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(2) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check if all of the following apply:

(a) The claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check.

(b) The communication contains or is accompanied by a declaration of loss of the claimant with respect to the check.

(c) The communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid.

(d) The claimant provides reasonable identification if requested by the obligated bank.

(3) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration.

(4) If a claim is asserted in compliance with subsection (2), the following rules apply:

(a) The claim becomes enforceable at the later of the following:

(*i*) The time the claim is asserted.

(*ii*) The 90th day following the date of the check in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance in the case of a certified check.

(b) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(c) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(d) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 4302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(5) If the obligated bank pays the amount of a check to a claimant under subsection (4)(d) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to do both of the following:

(a) Refund the payment to the obligated bank if the check is paid.

(b) Pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(6) If a claimant has the right to assert a claim under subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 3309.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

## PART 4
## LIABILITY OF PARTIES

### 440.3401 Liability; signature.

Sec. 3401. (1) A person is not liable on an instrument unless (*i*) the person signed the instrument, or (*ii*) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 3402.

(2) A signature may be made (*i*) manually or by means of a device or machine, and (*ii*) by the use of any


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name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3402 Liability of parties; signature by authorized representative.

Sec. 3402. (1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to subsection (3), if (*i*) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (*ii*) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3403 Unauthorized signature; effect.

Sec. 3403. (1) Unless otherwise provided in this article or article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this article.

(2) If the signature of more than 1 person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if 1 of the required signatures is lacking.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this article which makes the unauthorized signature effective for the purposes of this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3404 Imposter; inducing issuance of instrument; endorsement in name of payee; failure to exercise ordinary care.

Sec. 3404. (1) If an imposter, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the imposter, or to a person acting in concert with the imposter, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) If (*i*) a person whose intent determines to whom an instrument is payable in section 3110(1) or (2) does not intend the person identified as payee to have any interest in the instrument, or (*ii*) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special endorsement:

(a) Any person in possession of the instrument is its holder.

(b) An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2), an endorsement is made in the name of a payee if (*i*) it is made in a name substantially similar to that of the payee or (*ii*) the instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the


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loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3405 Definitions; fraudulent endorsement by employee or person acting in concert with employee.

Sec. 3405. (1) As used in this section:

(a) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent endorsement" means (*i*) in the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer, or (*ii*) in the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee.

(c) "Responsibility" with respect to instruments means authority (*i*) to sign or endorse instruments on behalf of the employer, (*ii*) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (*iii*) to prepare or process instruments for issue in the name of the employer, (*iv*) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (*v*) to control the disposition of instruments to be issued in the name of the employer, or (*vi*) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent endorsement of the instrument, the endorsement is effective as the endorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2), an endorsement is made in the name of the person to whom an instrument is payable if (*i*) it is made in a name substantially similar to the name of that person or (*ii*) the instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3406 Failure to exercise ordinary care contributing to alteration or forged instrument; allocation of loss; burden of proof.

Sec. 3406. (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) Under subsection (1), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3407 Alteration; definition; discharge of party affected; enforcement of rights.

Sec. 3407. (1) "Alteration" means (*i*) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (*ii*) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(2) Except as provided in subsection (3), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.


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(3) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (*i*) according to its original terms, or (*ii*) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3408 Check or draft; operation as assignment.

Sec. 3408. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3409 Acceptance of draft; definition; operation; "certified check" defined; refusal to certify.

Sec. 3409. (1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3410 Acceptance varying from terms of draft.

Sec. 3410. (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3411 Obligated bank; definition; refusal to pay check; expenses or damages not recoverable.

Sec. 3411. (1) As used in this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully (*i*) refuses to pay a cashier's check or certified check, (*ii*) stops payment of a teller's check, or (*iii*) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because (*i*) the bank suspends payments, (*ii*) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (*iii*) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (*iv*) payment is prohibited by law.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3412 Note, cashier's check, or other draft; obligation of issuer to pay according to terms.

Sec. 3412. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (*i*) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (*ii*) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 and 3407. The obligation is owed to a person entitled to enforce the instrument or to an endorser who paid the instrument under section 3415.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3413 Draft; obligation to pay according to terms; amount.

Sec. 3413. (1) The acceptor of a draft is obliged to pay the draft (*i*) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (*ii*) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (*iii*) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 and 3407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser who paid the draft under section 3414 or 3415.

(2) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (*i*) the certification or acceptance does not state an amount, (*ii*) the amount of the instrument is subsequently raised, and (*iii*) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3414 Applicability of section; unaccepted draft; dishonor; payment according to terms; acceptance by bank; discharge of drawer; obligation of drawer if acceptor not bank and draft dishonored; disclaimer of liability; suspension of payments after expiration of 30-day period.

Sec. 3414. (1) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (*i*) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (*ii*) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 and 3407. The obligation is owed to a person entitled to enforce the draft or to an endorser who paid the draft under section 3415.

(3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser under section 3415(1) and (3).

(5) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (2) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (2) is not effective if the draft is a check.

(6) If (*i*) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, (*ii*) the drawee suspends payments after expiration of the 30-day period without paying the check, and (*iii*) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3415 Dishonored instrument; obligation and liability of endorser.

Sec. 3415. (1) Subject to subsections (2), (3), (4), and (5) and to section 3419(4), if an instrument is dishonored, an endorser is obliged to pay the amount due on the instrument (*i*) according to the terms of the instrument at the time it was endorsed, or (*ii*) if the endorser endorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 and 3407. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.

(2) If an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable under subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by section 3503 and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection (1) is discharged.

(5) If an endorser of a check is liable under subsection (1) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the endorsement was made, the liability of the endorser under subsection (1) is discharged.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.


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### 440.3416 Transfer of instrument for consideration; endorsement; warranties.

Sec. 3416. (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee all of the following:

(a) That the warrantor is a person entitled to enforce the instrument.

(b) That all signatures on the instrument are authentic and authorized.

(c) That the instrument has not been altered.

(d) That the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor.

(e) That the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(f) With respect to a remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3417 Presentment of unaccepted or dishonored draft; rights of parties.

Sec. 3417. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (*i*) the person obtaining payment or acceptance, at the time of presentment, and (*ii*) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith all of the following:

(a) That the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.

(b) That the draft has not been altered.

(c) That the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(d) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 3404 or 3405 or the drawer is precluded under section 3406 or 4406 from asserting against the drawee the unauthorized endorsement or alteration.

(4) If (*i*) a dishonored draft is presented for payment to the drawer or an endorser or (*ii*) any other instrument is presented for payment to a party obliged to pay the instrument, and (*iii*) payment is received, the following rules apply:

(a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.


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(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) or (4) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3418 Payment or acceptance by mistake.

Sec. 3418. (1) Except as provided in subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (*i*) payment of the draft had not been stopped pursuant to section 4403 or (*ii*) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (*i*) recover the payment from the person to whom or for whose benefit payment was made or (*ii*) in the case of acceptance, may revoke the acceptance.

(3) The remedies provided by subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 3417 or 4407.

(4) Notwithstanding section 4215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (1) or (2), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3419 Accommodation parties.

Sec. 3419. (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 3605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (*i*) execution of judgment against the other party has been returned unsatisfied, (*ii*) the other party is insolvent or in an insolvency proceeding, (*iii*) the other party cannot be served with process, or (*iv*) it is otherwise apparent that payment cannot be obtained from the other party.

(5) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(6) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its


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obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3420 Conversion.

Sec. 3420. (1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (*i*) the issuer or acceptor of the instrument or (*ii*) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(2) In an action under subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

## PART 5
## DISHONOR

### 440.3501 Presentment; definition; manner; rights of party to whom presentment is made.

Sec. 3501. (1) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (*i*) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (*ii*) to accept a draft made to the drawee.

(2) The following rules are subject to article 4, agreement of the parties, and clearinghouse rules and the like:

(a) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any 1 of 2 or more makers, acceptors, drawees, or other payors.

(b) Upon demand of the person to whom presentment is made, the person making presentment must (*i*) exhibit the instrument, (*ii*) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (*iii*) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (*i*) return the instrument for lack of a necessary endorsement, or (*ii*) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3502 Notes and drafts; dishonor.

Sec. 3502. (1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the date of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and subdivision (b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice


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of dishonor or nonpayment under section 4301 or 4302, or becomes accountable for the amount of the check under section 4302.

(b) If a draft is payable on demand and subdivision (a) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(c) If a draft is payable on a date stated in the draft, the draft is dishonored if (*i*) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (*ii*) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (2)(b), (c), and (d), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 3504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3503 Notice of dishonor; manner; sufficiency; time periods.

Sec. 3503. (1) The obligation of an endorser stated in section 3415(2) and the obligation of a drawer stated in section 3414(4) may not be enforced unless (*i*) the endorser or drawer is given notice of dishonor of the instrument complying with this section or (*ii*) notice of dishonor is excused under section 3504(2).

(2) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(3) Subject to section 3504(3), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (*i*) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (*ii*) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3504 Presentment, notice of dishonor, or delay in giving notice of dishonor; conditions for excuse.

Sec. 3504. (1) Presentment for payment or acceptance of an instrument is excused if (*i*) the person entitled to present the instrument cannot with reasonable diligence make presentment, (*ii*) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (*iii*) by the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer, (*iv*) the drawer or endorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (*v*) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(2) Notice of dishonor is excused if (*i*) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (*ii*) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(3) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3505 Admissible evidence creating presumption of dishonor; protest.

Sec. 3505. (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) A document regular in form as provided in subsection (2) which purports to be a protest.

(b) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor.

(c) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3506-440.3511 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

**Compiler's note:** The repealed sections pertained to presentment, dishonor, notice of dishonor, and protest.

## PART 6
## DISCHARGE AND PAYMENT

### 440.3601 Discharge; effect against holder in due course.

Sec. 3601. (1) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3602 Discharge; payment; "signed" defined.

Sec. 3602. (1) Subject to subsection (5), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(2) Subject to subsection (5), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (3) even if the party obliged to pay the note has received a notification under this subsection.

(3) Subject to subsection (5), to the extent of a payment under subsections (1) and (2), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 3306 by another person.

(4) Subject to subsection (5), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any party that has acquired those rights and that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (2) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(5) The obligation of a party to pay the instrument is not discharged under subsections (1) to (4) if either of the following applies:

(a) A claim to the instrument under section 3306 is enforceable against the party receiving payment and (*i*) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (*ii*) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument.


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(b) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(6) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3603 Tender of payment; effect; refusal of tender as discharge; interest; obligor ready and able to pay on due date.

Sec. 3603. (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.3604 Discharge by intentional voluntary act; canceling or striking out endorsement; "signed" defined.

Sec. 3604. (1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (*i*) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (*ii*) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(2) Cancellation or striking out of an endorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the endorsement.

(3) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3605 Secondary obligor; rights and duties; agreement to modification or to extend time when payments are due; obligation secured by interest in collateral; discharge; impairing value of interest in collateral; knowledge of accommodation; consent or waiver of discharge; release or extension; burden of persuasion; presumption.

Sec. 3605.

(1) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(b) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(c) If the secondary obligor is not discharged under subdivision (b), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.


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(2) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which 1 or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(b) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(c) To the extent that the secondary obligor is not discharged under subdivision (b), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(b) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(c) To the extent that the secondary obligor is not discharged under subdivision (b), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(4) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under article 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(5) A secondary obligor is not discharged under subsection (1)(c), (2), (3), or (4) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under section 3419(3) that the instrument was signed for accommodation.

(6) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(7) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide both of the following:

(a) That the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor.

(b) That the recourse of the secondary obligor continues as if the release or extension had not been granted.

(8) Except as otherwise provided in subsection (9), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(9) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or


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requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

### 440.3606 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

**Compiler's note:** The repealed section pertained to discharge, impairment of recourse or of collateral, and express reservation.

## PART 7
## ADVICE OF INTERNATIONAL SIGHT DRAFT

### 440.3701 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

**Compiler's note:** The repealed section pertained to international sight draft and letter of advice.

## PART 8
## MISCELLANEOUS

### 440.3801-440.3805 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

**Compiler's note:** The repealed sections pertained to negotiation, endorsement, acceptance, payment, and discharge of drafts; effect of instrument on underlying obligation; notice of litigation to third party; lost, destroyed, or stolen instruments; and instruments not payable to order or bearer.

# ARTICLE 4
# BANK DEPOSITS AND COLLECTIONS

## PART 1
## GENERAL PROVISIONS AND DEFINITIONS

### 440.4101 Uniform commercial code—bank deposits and collections; short title.

Sec. 4101. This article shall be known and may be cited as uniform commercial code—bank deposits and collections.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4102 Conflict of laws; provisions applicable.

Sec. 4102. (1) To the extent that items within this article are also within articles 3 and 8, they are subject to those articles. If there is conflict, this article governs article 3 but article 8 governs this article.

(2) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4103 Variation by agreement; measure of damages; action constituting ordinary care.

Sec. 4103. (1) The effect of the provisions of this article may be varied by agreement but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this article, is prima facie the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article is not disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith, it includes any other damages the party suffered as a proximate consequence.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4104 Definitions used in article.

Sec. 4104. (1) As used in this article unless the context otherwise requires:

(a) "Account" means any depositor credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

(b) "Afternoon" means the period of a day between noon and midnight.

(c) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(d) "Clearing-house" means an association of banks or other payors regularly clearing items.

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities as defined in section 8102 or instructions for uncertificated securities as defined in section 8102, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(g) "Draft" means a draft as defined in section 3104 or an item, other than an instrument, that is an order.

(h) "Drawee" means a person ordered in a draft to make payment.

(i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or pay. The term does not include a payment order governed by article 4a or a credit or debit card slip.

(j) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(k) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(*l*) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

| | |
|---|---|
| "Agreement for electronic presentment". | Section 4110. |
| "Collecting bank". | Section 4105. |
| "Depositary bank". | Section 4105. |
| "Intermediary bank". | Section 4105. |
| "Payor bank". | Section 4105. |
| "Presenting bank". | Section 4105. |
| "Presentment notice". | Section 4110. |

(3) "Control" as provided in section 7106 and the following definitions in other articles apply to this article:

| | |
|---|---|
| "Acceptance". | Section 3409. |
| "Alteration". | Section 3409. |
| "Certificate of deposit". | Section 3104. |
| "Cashier's check". | Section 3104. |
| "Certified check". | Section 3409. |
| "Check". | Section 3104. |
| "Draft". | Section 3104. |
| "Holder in due course". | Section 3302. |
| "Instrument". | Section 3104. |
| "Notice of dishonor". | Section 3503. |
| "Order". | Section 3103. |
| "Ordinary care". | Section 3103. |
| "Person entitled to enforce". | Section 3301. |
| "Presentment". | Section 3501. |
| "Promise". | Section 3103. |
| "Prove". | Section 3103. |
| "Remotely created consumer item". | Section 3103. |
| "Teller's check". | Section 3104. |
| "Unauthorized signature". | Section 3403. |

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2012, Act 87, Eff. July 1, 2013;—Am. 2014, Act 103, Imd. Eff. Apr. 10, 2014.

### 440.4105 Additional definitions.

Sec. 4105. As used in this article unless the context otherwise requires:

(a) "Bank" means a person engaged in the business of banking, including a saving bank, saving and loan association, credit union, or trust company.

(b) "Depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(c) "Payor bank" means a bank that is the drawee of a draft.

(d) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank.

(e) "Collecting bank" means a bank handling the item for collection except the payor bank.

(f) "Presenting bank" means a bank presenting an item except a payor bank.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4106 "Payable through" and "payable at" explained; bank as collecting bank.

Sec. 4106. (1) If an item states that it is "payable through" a bank identified in the item, (*i*) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (*ii*) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, (*i*) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (*ii*) the item may be presented for payment only by or through the bank.

(3) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4107 Bank branch or separate office as separate bank.

Sec. 4107. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4108 Time of receipt of items.

Sec. 4108. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4109 Collecting bank; waiving, modifying, or extending time limits; excuse for delay.

Sec. 4109. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this act for a period not exceeding 2 additional banking days without discharge of drawers or endorsers or liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this act or by instructions is excused if (*i*) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank and (*ii*) the bank exercises such diligence as the circumstances require.

**History:** Add. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4110 "Agreement for electronic presentment" defined; presentment notice.

Sec. 4110. (1) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment,


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payment, dishonor, and other matters concerning items subject to the agreement.

(2) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(3) If presentment is made by presentment notice, a reference to “item” or “check” in this article means the presentment notice unless the context otherwise indicates.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4111 Commencement of action under article; time period.

Sec. 4111. An action to enforce an obligation, duty, or right arising under this article must be commenced within 3 years after the cause of action accrues.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

PART 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

### 440.4201 Agency status of banks; provisional status of credits; applicability of article; endorsement with pay any bank.

Sec. 4201. (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder until the item has been either of the following:

(a) Returned to the customer initiating collection.

(b) Specially endorsed by a bank to a person who is not a bank.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4202 Collecting bank; duties; exercising ordinary care; liability.

Sec. 4202. (1) A collecting bank must exercise ordinary care in all of the following:

(a) Presenting an item or sending it for presentment.

(b) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be.

(c) Settling for an item when the bank receives final settlement.

(d) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank exercises ordinary care under subsection (1) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4203 Collecting bank; instructions from transferor.

Sec. 4203. Subject to article 3 concerning conversion of instruments (section 3420) and restrictive endorsements (section 3206) only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4204 Collecting bank; methods of sending items; presentment.

Sec. 4204. (1) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.


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(2) A collecting bank may send:

(a) An item directly to the payor bank.

(b) An item to a nonbank payor if authorized by its transferor.

(c) An item other than documentary drafts to a nonbank payor, if authorized by federal reserve regulation or operating circular, clearing-house rule, or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4205 Depositary bank; item delivered by customer for collection.

Sec. 4205. If a customer delivers an item to a depositary bank for collection, then both of the following apply:

(a) The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer endorses the item, and, if the bank satisfies the other requirements of section 3302, it is a holder in due course.

(b) The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4206 Transfer between banks.

Sec. 4206. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4207 Warranties of customer and collecting bank on transfer of items; accrual of cause of action.

Sec. 4207. (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank all of the following:

(a) That the warrantor is a person entitled to enforce the item.

(b) That all signatures on the item are authentic and authorized.

(c) That the item has not been altered.

(d) That the item is not subject to a defense or claim in recoupment under section 3305(1) of any party that can be asserted against the warrantor.

(e) That the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(f) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (*i*) according to the terms of the item at the time it was transferred, or (*ii*) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3115 and 3407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 103, Imd. Eff. Apr. 10, 2014.

### 440.4208 Presentment of unaccepted or dishonored draft; warranties of person obtaining payment and prior transferor; discharge; accrual of cause of action.

Sec. 4208. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee


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pays or accepts the draft, (*i*) the person obtaining payment or acceptance, at the time of presentment, and (*ii*) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith all of the following:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.

(b) The draft has not been altered.

(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(d) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (*i*) breach of warranty is a defense to the obligation of the acceptor, and (*ii*) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 3404 or 3405 or the drawer is precluded under section 3406 or 4406 from asserting against the drawee the unauthorized endorsement or alteration.

(4) If (*i*) a dishonored draft is presented for payment to the drawer or an endorser or (*ii*) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 103, Imd. Eff. Apr. 10, 2014.

### 440.4209 Electronic presentment; encoding of information and retaining items; warranties; recovery of damages, expenses, and loss of interest.

Sec. 4209. (1) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(2) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4210 Security interest of collecting bank in items, accompanying documents, or proceeds.

Sec. 4210. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of any of the following:

(a) If an item is deposited in an account, to the extent to which credit given for the item has been withdrawn or applied.

(b) If an item for which it has given credit is available for withdrawal as of right, to the extent of the credit


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given whether or not the credit is drawn upon and whether or not there is a right of charge-back.

(c) If it makes an advance on or against the item.

(2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to article 9 except for the following:

(a) A security agreement is not necessary to make the security interest enforceable under section 9203(2)(c)(*i*).

(b) A filing is not required to perfect the security interest.

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.4211 Bank with security interest as holder in due course.

Sec. 4211. For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of section 3302 on what constitutes a holder in due course.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4212 Presentment by notice of item not payable by, through, or at a bank; treating item as dishonored.

Sec. 4212. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 3501 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 3501 is not received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 103, Imd. Eff. Apr. 10, 2014.

### 440.4213 Settlement; medium and time.

Sec. 4213. (1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription, the following apply:

(a) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement.

(b) The time of settlement is as follows:

(*i*) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered.

(*ii*) With respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made.

(*iii*) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered.

(*iv*) With respect to tender of settlement by a funds transfer, when payment is made pursuant to section 4406a(1) to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline then 1 of the following apply:


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(a) Presents or forwards the check for collection, settlement is final when the check is finally paid.

(b) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4214 Right to charge-back or refund.

Sec. 4214. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain return from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(2) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(3) A depositary bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 4301).

(4) The right to charge-back is not affected by either of the following:

(a) Previous use of a credit given for the item.

(b) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money the dollar amount of any charge-back or refund shall be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4215 Final payment of items by payor bank; final credit; availability of credit for withdrawal.

Sec. 4215. (1) An item is finally paid by a payor bank when the bank has first done any of the following:

(a) Paid the item in cash.

(b) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule or agreement.

(c) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule or agreement.

(2) If provisional settlement for an item does not become final, the item is not finally paid.

(3) If provisional settlement for an item between the presenting and payor banks is made through a clearing-house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.

(4) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(5) Subject to (*i*) applicable law stating a time for availability of funds and (*ii*) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right if either of the following apply:

(a) The bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that


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time.

(b) The bank is both the depositary bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(6) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4216 Payor or collecting bank; suspension of payments.

Sec. 4216. (1) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(4) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer, which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

**History:** Add. 1993, Act 130, Eff. Sept. 30, 1993.

## PART 3
## COLLECTION OF ITEMS: PAYOR BANKS

### 440.4301 Demand items; recovery of settlement; time of dishonor; return of items.

Sec. 4301. (1) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it does any of the following:

(a) Returns the item.

(b) Returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement.

(c) Sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (1).

(3) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned when 1 of the following occurs:

(a) As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with its rules.

(b) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his or her instructions.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 103, Imd. Eff. Apr. 10, 2014.

### 440.4302 Payor bank; accountability upon presentment and receipt of item; defenses.

Sec. 4302. (1) If an item is presented on and received by a payor bank the bank is accountable for the amount of the following:

(a) A demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline.

(b) Any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based on breach of a presentment warranty (section 4208) or proof that the person seeking enforcement of the liability


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presented or transferred the item for the purpose of defrauding the payor bank.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4303 Payor bank; items subject to knowledge notice, stop-payment order, legal process, or setoff; order in which times may be handled.

Sec. 4303. (1) Any knowledge, notice, or stop-payment order received by, legal process served upon or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(a) The bank accepts or certifies the item.

(b) The bank pays the item in cash.

(c) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule or agreement.

(d) The bank becomes accountable for the amount of the item under section 4302 dealing with the payor bank's responsibility for late return of items.

(e) With respect to checks, a cutoff hour no earlier than 1 hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to subsection (1) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

## PART 4
## RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

### 440.4401 Payor bank; charge against customer's account.

Sec. 4401. (1) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 4403(2) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 4303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 4402.

(4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to either of the following:

(a) The original terms of the altered item.

(b) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4402 Payor bank; wrongful dishonor; liability to customer; determination of account balance.

Sec. 4402. (1) Except as otherwise provided in this article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for


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insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than 1 determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4403 Customer's right to stop payment; lapse and renewal; burden of proof of loss.

Sec. 4403. (1) A customer or any person authorized to draw on the account if there is more than 1 person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 4303. If the signature of more than 1 person is required to draw on an account, any of these persons may stop payment or close the account.

(2) A stop-payment order is effective for 6 months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional 6-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 4402.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 103, Imd. Eff. Apr. 10, 2014.

### 440.4404 Payment of checks more than 6 months old.

Sec. 4404. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4405 Death or incompetence of customer.

Sec. 4405. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4406 Statement of account; identification of items paid; retention of items or copies; customer's duty to discover and report unauthorized signature or alteration; failure to comply with subsection (3); failure of bank to exercise ordinary care in paying item; time limitation.

Sec. 4406. (1) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to subsection (1), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should


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reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(4) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (3), the customer is precluded from asserting against the bank the following:

(a) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure.

(b) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(5) If subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (3) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) does not apply.

(6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within 1 year after the statement or items are made available to the customer (subsection (1)) discover and report his or her unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

### 440.4407 Improper payment; subrogation of payor bank.

Sec. 4407. If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights of the following:

(a) Of any holder in due course on the item against the drawer or maker.

(b) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose.

(c) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

## PART 5
## COLLECTION OF DOCUMENTARY DRAFTS

### 440.4501 Documentary draft; presentment, notice of dishonor.

Sec. 4501. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4502 Documentary draft; presentment on arrival of goods, refusal for non-arrival; notice to transferor.

Sec. 4502. When a draft or the relevant instructions require presentment “on arrival”, “when goods arrive” or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4503 Documentary draft; responsibility of presenting bank for documents and goods; report of reasons for dishonor; referees; expenses.

Sec. 4503. Unless otherwise instructed and except as provided in article 5 a bank presenting a documentary


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draft

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.4504 Documentary draft; presenting bank's right to deal with goods; lien for expenses.

Sec. 4504. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

## ARTICLE 4A
## FUNDS TRANSFERS

## PART 1
## SUBJECT MATTERS AND DEFINITIONS

### 440.4601 Short title.

Sec. 4A101. This article shall be known and may be cited as “uniform commercial code—funds transfers”.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4602 Applicability of article.

Sec. 4A102. Except as otherwise provided in section 4A108, this article applies to funds transfers defined in section 4A104.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4603 Definitions; instruction as a separate payment order; issuance of payment order.

Sec. 4A103. (1) As used in this article:

(a) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if the following apply:

(*i*) The instruction does not state a condition to payment to the beneficiary other than time of payment.

(*ii*) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender.

(*iii*) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) “Beneficiary” means the person to be paid by the beneficiary's bank.

(c) “Beneficiary's bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) “Receiving bank” means the bank to which the sender's instruction is addressed.

(e) “Sender” means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than 1 payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4604 Definitions.

Sec. 4A104. As used in this article:


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(a) “Funds transfer” means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) “Intermediary bank” means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) “Originator” means the sender of the first payment order in a funds transfer.

(d) “Originator's bank” means (*i*) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (*ii*) the originator if the originator is a bank.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4605 Definitions; sections where other definitions appear.

Sec. 4A105. (1) As used in this article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in section 1201(2)(h).

(2) Other definitions applying to this article and the sections in which they appear are as follows:

| | |
|---|---|
| "Acceptance". | Section 4A209. |
| "Beneficiary". | Section 4A103. |
| "Beneficiary's bank". | Section 4A103. |
| "Executed". | Section 4A301. |
| "Execution date". | Section 4A301. |
| "Funds transfer". | Section 4A104. |
| "Funds-transfer system rule". | Section 4A501. |
| "Intermediary bank". | Section 4A104. |
| "Originator". | Section 4A104. |
| "Originator's bank". | Section 4A104. |
| "Payment by beneficiary's bank to beneficiary". | Section 4A405. |
| "Payment by originator to beneficiary". | Section 4A406. |
| "Payment by sender to receiving bank". | Section 4A403. |
| "Payment date". | Section 4A401. |
| "Payment order". | Section 4A103. |
| "Receiving bank". | Section 4A103. |
| "Security procedure". | Section 4A201. |
| "Sender". | Section 4A103. |

(3) The following definitions in article 4 apply to this article:

| | |
|---|---|
| "Clearing-house". | Section 4104. |
| "Item". | Section 4104. |
| "Suspends payments". | Section 4104. |

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.4606 Payment order or communication canceling or amending payment order; determining time of receipt.


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Sec. 4A106. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1202. A receiving bank may fix a cut-off time or times on a funds transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds transfer business day or after the appropriate cut-off time on a funds transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds transfer business day.

(2) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds transfer business day, the next day that is a funds transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.4607 Regulations of federal reserve system as superseding article.

Sec. 4A107. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this article to the extent of the inconsistency.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4608 Applicability of article to certain funds transfer; inconsistency; "electronic fund transfer act" defined.

Sec. 4A108. (1) Except as provided in subsection (2), this article does not apply to a funds transfer any part of which is governed by the electronic fund transfer act.

(2) This article applies to a funds transfer that is a remittance transfer as defined in 15 USC 1693o-1, unless the remittance transfer is an electronic fund transfer as defined in 15 USC 1693a.

(3) In a funds transfer to which this article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the electronic fund transfer act, the provision of the electronic fund transfer act governs to the extent of the inconsistency.

(4) As used in this section, "electronic fund transfer act" means the electronic fund transfer act, 15 USC 1693 to 1693r.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992;—Am. 2014, Act 105, Imd. Eff. Apr. 10, 2014.

## PART 2
## ISSUE AND ACCEPTANCE OF PAYMENT ORDER

### 440.4701 “Security procedure” defined.

Sec. 4A201. “Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (*i*) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (*ii*) detecting error in the transmission of the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4702 Authorized payment order; verification by security procedure; determination of commercial reasonableness; “sender” defined; applicability of section to amendments and cancellations of payment orders; agreement to vary rights and obligations prohibited.

Sec. 4A202. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (*i*) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (*ii*) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written


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agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (*i*) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (*ii*) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1), or it is effective as the order of the customer under subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in section 4A203(1)(a), rights and obligations arising under this section or section 4A203 may not be varied by agreement.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4703 Payment order effective pursuant to MCL 440.4702; application of rules; applicability of section to amendments of payment orders.

Sec. 4A203. (1) If an accepted payment order is not, under section 4A202(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 4A202(2), the following rules apply:

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (*i*) entrusted at anytime with duties to act for the customer with respect to payment orders or the security procedure, or (*ii*) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4704 Receiving bank; acceptance of unauthorized or nonenforceable payment; refund; interest; recovery; reasonable time fixed by agreement; agreement to vary obligation to refund payment prohibited.

Sec. 4A204. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (*i*) not authorized and not effective as the order of the customer under section 4A202, or (*ii*) not enforceable, in whole or in part, against the customer under section 4A203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in section 1302(2), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.4705 Erroneous payment order; duty and liability of sender upon notification from receiving bank; applicability of section to amendments to payment orders.


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Sec. 4A205. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (*i*) erroneously instructed payment to a beneficiary not intended by the sender, (*ii*) erroneously instructed payment in an amount greater than the amount intended by the sender, or (*iii*) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(a) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 4A206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subdivisions (b) and (c).

(b) If the funds transfer is completed on the basis of an erroneous payment order described in subsection (1)(*i*) or (*iii*), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(c) If the funds transfer is completed on the basis of a payment order described in subsection (1)(*ii*), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (*i*) the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order, and (*ii*) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4706 Transmitting payment order to funds-transfer system or other third-party communication system; system as agent; effect of discrepancy; applicability of section.

Sec. 4A206. (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4707 Payment order; identification of beneficiary; nonexistent or unidentifiable person or account; name and number identifying different persons; inconsistent identification by name and number; recovery of amount paid.

Sec. 4A207. (1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (*i*) a payment order described in subsection (2) is accepted, (*ii*) the originator's payment order described the beneficiary inconsistently by name and number, and (*iii*) the beneficiary's bank pays the person


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identified by number as permitted by subsection (2)(a), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4708 Payment order; identification of intermediary or beneficiary bank; rules.

Sec. 4A208. (1) The following rules apply to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number:

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) The following rules apply to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 4A302(1)(a).

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4709 Acceptance of payment order.

Sec. 4A209. (1) Subject to subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) When the bank pays the beneficiary as stated in section 4A405(1) or (2), or notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be


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withdrawn or used until receipt of payment from the sender of the order.

(b) When the bank receives payment of the entire amount of the sender's order pursuant to section 4A403(1)(a) or (b).

(c) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within 1 hour after that time, or 1 hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 4A211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4710 Rejection of payment order.

Sec. 4A210. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, any means complying with the agreement is reasonable and any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 4A211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4711 Communication by sender canceling or amending payment order; method of transmission; effectiveness; liability of sender for loss and expenses; revocation by death or legal incapacity; effectiveness of funds-transfer system rule.

Sec. 4A211. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.


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(2) Subject to subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation, or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank. With respect to a payment order, the following rules apply:

(a) A payment order accepted by a receiving bank other than the beneficiary's bank, cancellation, or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) A payment order accepted by the beneficiary's bank, cancellation, or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order that is a duplicate of a payment order previously issued by the sender, that orders payment to a beneficiary not entitled to receive payment from the originator, or that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b).

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4712 Receiving bank; failure to accept payment order; liability for breach of agreement to accept payment order.

Sec. 4A212. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 4A209, and liability is limited to that provided in this article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this article or by express agreement.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

## PART 3
## EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

### 440.4801 Execution of payment order; “execution date” defined.

Sec. 4A301. (1) A payment order is “executed” by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) “Execution date” of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the


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order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4802 Receiving bank; acceptance of payment order pursuant to MCL 440.4709(1); obligations of bank to execute order; use of funds-transfer system; transmission by first-class mail or reasonable means; payment of charges for services and expenses.

Sec. 4A302. (1) Except as provided in subsections (2) through (4), if the receiving bank accepts a payment order pursuant to section 4A209(1), the bank has the following obligations in executing the order:

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable in the circumstances, and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first-class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4803 Receiving bank; payment of sender's order pursuant to MCL 440.4902(3); effect of erroneous payment order; applicability of subsection (2); obligation of sender to pay payment order; recovery by issuer from beneficiary.

Sec. 4A303. (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 4A402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 4A402(3) if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the


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amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4804 Notification from receiving bank of erroneously executed payment order; duties of sender; obligation to pay interest; recovery by bank prohibited.

Sec. 4A304. If the sender of a payment order that is erroneously executed as stated in section 4A303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 4A402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4805 Receiving bank; payment delay; interest; liability to originator for expenses resulting from improper execution; recovery of damages; failure to execute pursuant to express agreement; attorney fees; liability of bank under subsections (1) and (2) not varied by agreement.

Sec. 4A305. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 4A302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of section 4A302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorney's fees are recoverable if demand for compensation under subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) may not be varied by agreement.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

## PART 4
## PAYMENT

### 440.4901 “Payment date” defined.

Sec. 4A401. “Payment date” of a payment order means the day on which the amount of the order is


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payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4902 Payment order issued to beneficiary or receiving bank subject to MCL 440.4705 and 440.4707; payment by sender; refund; right of sender executing payment order to receive or retain payment; right of sender to be excused from obligation to pay or receive refund not varied by agreement.

Sec. 4A402. (1) This section is subject to sections 4A205 and 4A207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) and to section 4A303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 4A204 and 4A304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 4A302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4903 Sender's obligation under MCL 440.4902 to pay receiving bank; payment requirements; final settlement; satisfaction of sender's payment obligation.

Sec. 4A403. (1) Payment of the sender's obligation under section 4A402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (*i*) credited an account of the receiving bank with the sender, or (*ii*) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.


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(3) If 2 banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 4A402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by 1 bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under section 4A402(2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4904 Beneficiary bank; acceptance of payment order subject to MCL 440.4711(5), 440.4905(4), and 440.4905(5); payment due date; refusal of bank to pay after demand; recovery of damages; instruction to pay to beneficiary's account; notice; interest; attorney fees; rights of beneficiary pursuant to agreement or funds-transfer system rule.

Sec. 4A404. (1) Subject to sections 4A211(5), 4A405(4), and 4A405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4905 Beneficiary bank; crediting account of beneficiary of payment order; payment of bank obligations under MCL 440.4904(1); time of payment; condition to payment or agreement; provisional payments to beneficiary under funds-transfer system rule; refund; applicability of subsection (5) to certain funds transfer.

Sec. 4A405. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 4A404(1) occurs when and to the extent (*i*) the beneficiary is notified of the right to withdraw the credit, (*ii*) the bank lawfully applies the credit to a debt of the beneficiary, or (*iii*) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 4A404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order is accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (*i*) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (*ii*) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule, and (*iii*) the beneficiary's bank did not receive


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payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 4A406.

(5) This subsection applies to the funds transfer that includes a payment order transmitted over a funds-transfer system that (*i*) nets obligations multilaterally among participants, and (*ii*) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of 1 or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (*i*) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (*ii*) the beneficiary's bank is entitled to recover payment from the beneficiary, (*iii*) no payment by the originator to the beneficiary occurs under section 4A406, and (*iv*) subject to section 4A402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under section 4A402(3) because the funds transfer has not been completed.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4906 Originator of funds transfer; conditions for payment to beneficiary; satisfaction and discharge of obligation; determination; rights varied by agreement.

Sec. 4A406. (1) Subject to sections 4A211(5), 4A405(4), and 4A405(5), the originator of a funds transfer pays the beneficiary of the originator's payment order (*i*) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (*ii*) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (*i*) the payment under subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (*ii*) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (*iii*) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (*iv*) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 4A404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of 1 or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

## PART 5
## MISCELLANEOUS PROVISIONS

### 440.4951 Rights and obligations of party to funds transfer varied by agreement of affected party; “funds-transfer system rule” defined.

Sec. 4A501. (1) Except as otherwise provided in this article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) “Funds-transfer system rule” means a rule of an association of banks (*i*) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (*ii*) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 4A404(3), 4A405(4), and 4A507(3).

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.


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### 440.4952 “Creditor process” defined and explained.

Sec. 4A502. (1) As used in this section, “creditor process” means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts that payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4953 Powers of court with respect to funds transfer.

Sec. 4A503. For proper cause and in compliance with applicable law, a court may restrain (*i*) a person from issuing a payment order to initiate a funds transfer, (*ii*) an originator's bank from executing the payment order of the originator, or (*iii*) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4954 Receiving bank; authority to charge sender's account; credits.

Sec. 4A504. (1) If a receiving bank has received more than 1 payment order of the sender or 1 or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4955 Customer objection to payment; notification required.

Sec. 4A505. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within 1 year after the notification was received by the customer.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4956 Receiving bank; determination of interest payable.

Sec. 4A506. (1) If, under this article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (*i*) by agreement of the sender and receiving bank, or (*ii*) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable


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federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

### 440.4957 Rights and obligations of parties; application of choice of law.

Sec. 4A507. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each subdivision of subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (*i*) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (*ii*) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (*i*) is binding on participating banks. A choice of law made pursuant to clause (*ii*) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than 1 funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

**History:** Add. 1992, Act 100, Imd. Eff. June 25, 1992.

## ARTICLE 5
## LETTERS OF CREDIT

### 440.5101 Uniform commercial code—letters of credit; short title of article.

Sec. 5101. This article may be cited as uniform commercial code—letters of credit.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5102 Definitions.

Sec. 5102. (1) As used in this article:

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

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

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


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

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

(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is not oral which is both of the following:

(*i*) Presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 5108(5).

(*ii*) Capable of being examined for compliance with the terms and conditions of the letter of credit.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

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

(*i*) Upon payment.

(*ii*) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment.

(*iii*) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

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

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of section 5104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means both of the following:

(*i*) A person whom the issuer designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit.

(*ii*) A person whom the issuer undertakes by agreement or custom and practice to reimburse.

(*l*) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

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

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

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other articles applying to this article and the sections in which they appear are:

| | |
|---|---|
| "Accept" or "acceptance". | Section 3409. |
| "Value". | Sections 3303 and 4211. |

(3) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5103 Letters of credit; scope of article.

Sec. 5103. (1) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(3) With the exception of this subsection, subsections (1) and (4), sections 5102(1)(i) and (j), 5106(4), and 5114(4), and except to the extent prohibited in sections 1302 and 5117(4), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.5104 Issuance; authentication.

Sec. 5104. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated by 1 or more of the following:

(a) A signature.

(b) In accordance with the agreement of the parties or the standard practice referred to in section 5108(5).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5105 Consideration.

Sec. 5105. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5106 Credit; issuance; enforcement; revocation; expiration.

Sec. 5106. (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

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

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5107 Confirmation; rights and obligations; request to advise; notice to transferee beneficiary.

Sec. 5107. (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

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

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5108 Honoring or dishonoring presentation.

Sec. 5108. (1) Except as otherwise provided in section 5109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 5113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents to do 1 or more of the following:

(a) To honor.

(b) If the letter of credit provides for honor to be completed more than 7 business days after presentation, to accept a draft or incur a deferred obligation.


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(c) To give notice to the presenter of discrepancies in the presentation.

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

(4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in section 5109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) The performance or nonperformance of the underlying contract, arrangement, or transaction.

(b) An act or omission of others.

(c) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5).

(7) If an undertaking constituting a letter of credit under section 5102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

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

(9) An issuer that has honored a presentation as permitted or required by this article:

(a) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds.

(b) Takes the documents free of claims of the beneficiary or presenter.

(c) Is precluded from asserting a right of recourse on a draft under sections 3414 and 3415.

(d) Except as otherwise provided in sections 5110 and 5117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation.

(e) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5109 Forged or fraudulent document; injunction; findings of court.

Sec. 5109. (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) The issuer shall honor the presentation, if honor is demanded by 1 or more of the following:

(*i*) A nominated person who has given value in good faith and without notice of forgery or material fraud.

(*ii*) A confirmer who has honored its confirmation in good faith.

(*iii*) A holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person.

(*iv*) An assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person.

(b) The issuer, acting in good faith, may honor or dishonor the presentation in any other cause.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds all of the following:

(a) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer.

(b) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted.

(c) All of the conditions to entitle a person to the relief under the law of this state have been met.

(d) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.


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### 440.5110 Warranties on presentment or transfer.

Sec. 5110. (1) If presentation is honored, the beneficiary warrants:

(a) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in section 5109(1).

(b) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5111 Wrongful dishonor, repudiation, or breach; rights of claimant or applicant; liability of issuer, nominated person, or adviser; attorney fees; liquidated damages.

Sec. 5111. (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

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

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

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

(5) Reasonable attorney's fees and other expenses of litigation shall be awarded to the prevailing party in an action in which a remedy is sought under this article.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5112 Right to draw or demand performance under letter of credit; transfer.

Sec. 5112. (1) Except as otherwise provided in section 5113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if either of the following applies:

(a) The transfer would violate applicable law.

(b) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 5108(5) or is otherwise reasonable under the circumstances.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5113 Rights of successor beneficiary.

Sec. 5113. (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as


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otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 5108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) has the consequences specified in section 5108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 5109.

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

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5114 Proceeds of letter of credit.

Sec. 5114. (1) In this section, “proceeds of a letter of credit” means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

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

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

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

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

(6) The rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person or the issuer's or nominated person's payment of proceeds to an assignee or a third person do not affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by article 9 or other law.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5115 Commencement of action.

Sec. 5115. An action to enforce a right or obligation arising under this article must be commenced within 1 year after the expiration date of the relevant letter of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5116 Jurisdiction; forum.

Sec. 5116. (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 5104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action or


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omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than 1 address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the uniform customs and practice for documentary credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If this article would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2), or the relevant undertaking incorporates rules of custom or practice, or there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in section 5103(3).

(4) If there is conflict between this article and article 3, 4, 4a, or 9, this article governs.

(5) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5117 Rights of subrogation.

Sec. 5117. (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

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

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of all of the following:

(a) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant.

(b) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary.

(c) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

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

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

### 440.5118 Document presented under letter of credit; security interest of issuer or nominated person.

Sec. 5118. (1) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(2) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (1), the security interest continues and is subject to article 9, but all of the following apply:

(a) A security agreement is not necessary to make the security interest enforceable under section 9203(2)(c).

(b) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected.

(c) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.


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ARTICLE 6
BULK TRANSFERS

### 440.6101-440.6111 Repealed. 1998, Act 489, Imd. Eff. Jan. 4, 1999.

**Compiler's note:** Enacting section 2 of Act 489 of 1998 provides:

"Enacting section 2. Rights and obligations that arose under article 6 before article 6 was repealed remain valid and may be enforced as if article 6 had not been repealed."

ARTICLE 7
WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1
GENERAL

### 440.7101 Uniform commercial code—documents of title; short title of article.

Sec. 7101. This article shall be known and may be cited as "uniform commercial code—documents of title".

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7102 Uniform commercial code; documents of title; definitions.

Sec. 7102. (1) As used in this article, unless the context otherwise requires:

(a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Carrier" means a person that issues a bill of lading.

(c) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(d) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(e) "Delivery order" means a record that contains an order to deliver goods directed to a warehouseman, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(h) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes any person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(i) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(j) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(k) "Sign" means any of the following, with present intent to authenticate or adopt a record:

(*i*) To execute or adopt a tangible symbol.

(*ii*) To attach to or logically associate with the record an electronic sound, symbol, or process.

(*l*) "Shipper" means a person that enters into a contract of transportation with a carrier.

(m) "Warehouse" means a person engaged in the business of storing goods for hire.

(2) All of the following definitions from other articles apply to this article:

(a) "Contract for sale" as defined in section 2106.

(b) "Lessee in the ordinary course of business" as defined in section 2A103.

(c) "Receipt of goods" as defined in section 2103.

(3) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7103 Article subject to governmental treaty, statute, or regulatory statute; electronic


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**signatures.**

Sec. 7103. (1) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(2) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(3) This act modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(a) or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

(4) To the extent there is a conflict between the uniform electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849, and this article, this article governs.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7104 Negotiable and nonnegotiable warehouse receipt, bill of lading, or other document of title.

Sec. 7104. (1) Except as otherwise provided in subsection (3), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(2) A document of title other than one described in subsection (1) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(3) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7105 Tangible document of title as substitute for electronic document; electronic document title as substitute for tangible document of title; conditions.

Sec. 7105. (1) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if both of the following are met:

(a) The person entitled under the electronic document surrenders control of the document to the issuer.

(b) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(2) All of the following apply upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (1):

(a) The electronic document ceases to have any effect or validity.

(b) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(3) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if both of the following are met:

(a) The person entitled under the tangible document surrenders possession of the document to the issuer.

(b) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(4) All of the following apply upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (3):

(a) The tangible document ceases to have any effect or validity.

(b) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7106 Person having control of electronic document.

Sec. 7106. (1) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(2) A system satisfies subsection (1), and a person is considered to have control of an electronic document


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of title, if the document is created, stored, and assigned in a manner that meets all of the following:

(a) A single authoritative copy of the document exists that is unique, identifiable, and, except as otherwise provided in subdivisions (d), (e), and (f), unalterable.

(b) The authoritative copy described in subdivision (a) identifies the person asserting control as 1 of the following:

(*i*) The person to which the document was issued.

(*ii*) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred.

(c) The authoritative copy described in subdivision (a) is communicated to and maintained by the person asserting control or its designated custodian.

(d) Copies or amendments that add or change an identified assignee of the authoritative copy described in subdivision (a) can be made only with the consent of the person asserting control.

(e) Each copy of the authoritative copy described in subdivision (a) and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

(f) Any amendment of the authoritative copy described in subdivision (a) is readily identifiable as authorized or unauthorized.

**History:** Add. 2012, Act 87, Eff. July 1, 2013.

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

### 440.7201 Warehouse receipt; issuance; storage under government bond.

Sec. 7201. (1) A warehouse receipt may be issued by any warehouse.

(2) If distilled spirits, agricultural commodities, or any other goods are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is considered to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7202 Terms of receipt; form; contrary provisions.

Sec. 7202. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(a) A statement of the location of the warehouse where the goods are stored.

(b) The date of issue of the receipt.

(c) The unique identification code of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order.

(e) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt.

(f) A description of the goods or the packages containing them.

(g) The signature of the warehouse or its agent.

(h) If the receipt is issued for goods that the warehouse owners, either solely, jointly, or in common with others, a statement of the fact of that ownership.

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(3) A warehouse may insert in its receipt any terms that are not contrary to the provisions of this act and do not impair its obligation of delivery under section 7403 or its duty of care under section 7204. Any contrary provisions are ineffective.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7203 Liability for nonreceipt or misdescription.

Sec. 7203. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that any of the following apply:


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(a) The document conspicuously indicates that the issuer does not know whether all or any part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true.

(b) The party or purchaser has notice of the nonreceipt or misdescription.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7204 Duty of care; contractual limitation of warehouse liability; provisions as to time and manner of presenting claims and commencing actions.

Sec. 7204. (1) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(2) Damages may be limited by a term in a warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7205 Fungible goods; buyer's title.

Sec. 7205. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling those goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7206 Termination of storage at warehouse's option; removal or sale; notice; delivery; satisfaction of lien.

Sec. 7206. (1) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 7210.

(2) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (1) and section 7210, the warehouse may specify in the notice given under subsection (1) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(4) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(5) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7207 Separation of goods; commingling of fungible goods; overissued receipts.

Sec. 7207. (1) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.


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(2) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7208 Alteration of warehouse receipts.

Sec. 7208. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7209 Warehouse's lien; security interest; "household goods" defined; loss of lien.

Sec. 7209. (1) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds of those goods in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds of those goods in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(2) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. The security interest is governed by article 9.

(3) A warehouse's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not do any of the following:

(a) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with any of the following:

(*i*) Actual or apparent authority to ship, store, or sell.

(*ii*) Power to obtain delivery under section 7403.

(*iii*) Power of disposition under section 2403, 2A304(2), 2A305(2), 9320, or 9321 or other statute or rule of law.

(b) Acquiesce in the procurement by the bailor or its nominee of any document.

(4) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. As used in this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(5) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7210 Warehouse's lien; enforcement procedure; liability for noncompliance.

Sec. 7210. (1) Except as otherwise provided in subsection (2), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. A warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market for the goods, sells at the price


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current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(2) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(c) The sale must conform to the terms of the notification.

(d) The sale must be held at the nearest suitable place to where the goods are held or stored.

(e) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than 6 conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(4) A warehouse may buy at any public sale held pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(6) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(7) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(8) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (1) or (2).

(9) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

## PART 3
## BILLS OF LADING: SPECIAL PROVISIONS

### 440.7301 Negotiable bill of lading; issuer's liability for misdating, nonreceipt, or misdescription; goods loaded by issuer of bill of lading; bulk; statement of shipper's weight, load, and count; guarantee; liability.

Sec. 7301. (1) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of similar import, if that indication is true.

(2) All of the following apply if goods are loaded by the issuer of a bill of lading:

(a) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk.

(b) Words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(3) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate


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facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(4) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of those words does not imply liability for damages caused by improper loading.

(5) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7302 Through bill of lading or other document of title; variance as to overseas undertaking; obligations of persons other than issuer; obligations of persons to issuer.

Sec. 7302. (1) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(3) The issuer of a through bill of lading or other document of title described in subsection (1) is entitled to recover all of the following from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(a) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment.

(b) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7303 Diversion; reconsignment; change of instructions.

Sec. 7303. (1) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from any of the following:

(a) The holder of a negotiable bill.

(b) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions.

(c) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill.

(d) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(2) Unless instructions described in subsection (1) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7304 Bills of lading in set of parts.

Sec. 7304. (1) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes 1 bill.

(3) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are


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negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(4) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(5) The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7305 Destination and substitute bills.

Sec. 7305. (1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7105, may procure a substitute bill to be issued at any place designated in the request.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7306 Altered bills of lading.

Sec. 7306. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.7307 Carrier's lien.

Sec. 7307. (1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds of those goods in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(3) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7308 Carrier's lien; enforcement; procedure; liability for noncompliance.

Sec. 7308. (1) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market for that type of goods, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier subject to the terms of the bill of lading and this article.

(3) A carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.


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(5) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(6) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(7) A carrier's lien may be enforced pursuant to either subsection (1) or the procedure set forth in section 7210(2).

(8) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7309 Carrier's duty of care; contractual provisions as to liability.

Sec. 7309. (1) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

## PART 4
## WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

### 440.7401 Irregularities in issue of document of title.

Sec. 7401. The obligations imposed by this article on an issuer apply to a document of title even if any of the following apply:

(a) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content.

(b) The issuer violated laws regulating the conduct of its business.

(c) The goods covered by the document were owned by the bailee when the document was issued.

(d) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7402 Duplicate document of title; overissue.

Sec. 7402. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 7105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7403 Delivery; exceptions; satisfaction of bailee's lien; cancellation or indication of partial delivery.

Sec. 7403. (1) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) Delivery of the goods to a person whose receipt was rightful as against the claimant.

(b) Damages to or delay, loss, or destruction of the goods for which the bailee is not liable.

(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage.

(d) The exercise by a seller of its right to stop delivery pursuant to section 2705 or by a lessor of its right to stop delivery pursuant to section 2A526.

(e) A diversion, reconsignment, or other disposition pursuant to section 7303.


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(f) Release, satisfaction, or any other personal defense against the claimant.

(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7503(1), both of the following apply:

(a) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries.

(b) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7404 Bailee's delivery in good faith according to document of title.

Sec. 7404. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if any of the following apply:

(a) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods.

(b) The person to which the bailee delivered the goods did not have authority to receive the goods.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

## PART 5
## WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

### 440.7501 Negotiable document of title; indorsement; notice of arrival.

Sec. 7501. (1) All of the following rules apply to a negotiable tangible document of title:

(a) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(b) If the document's original terms run to bearer, it is negotiated by delivery alone.

(c) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(d) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(e) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(2) All of the following rules apply to a negotiable electronic document of title:

(a) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(b) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(c) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(3) Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(4) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7502 Negotiation; rights acquired.

Sec. 7502. (1) Subject to sections 7205 and 7503, a holder to which a negotiable document of title is duly negotiated acquires all of the following:


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(a) Title to the document.

(b) Title to the goods.

(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued.

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article. However, in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to section 7503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if any of the following occur:

(a) The due negotiation or any prior due negotiation constituted a breach of duty.

(b) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion.

(c) A previous sale or other transfer of the goods or document has been made to a third person.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7503 Documents of title to goods; defeat in certain cases.

Sec. 7503. (1) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not do any of the following:

(a) Deliver or entrust the goods or any document of title covering the goods to the bailor or his or her nominee with any of the following:

(*i*) Actual or apparent authority to ship, store, or sell.

(*ii*) Power to obtain delivery under section 7403.

(*iii*) Power of disposition under section 2403, 2A304(2), 2A305(2), 9320, or 9321(3) or other statute or rule of law.

(b) Acquiesce in the procurement by the bailor or its nominee of any document.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under section 7504 to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7504 Documents of title; transfer by delivery in absence of due negotiation; effect; defeat of transfer rights; diversion or change of shipping instructions; stoppage of delivery.

Sec. 7504. (1) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(2) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated by any of the following:

(a) By those creditors of the transferor which could treat the transfer as void under section 2402 or 2A308.

(b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights.

(c) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights.

(d) As against the bailee, by good-faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a leasee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(4) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under


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section 2705 or a lessor under section 2A526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7505 Documents of title; liability of indorser.

Sec. 7505. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7506 Documents of title; delivery without indorsement; right to have indorsement supplied.

Sec. 7506. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7507 Documents of title; warranties on negotiation or delivery for value.

Sec. 7507. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only the following:

(a) That the document is genuine.

(b) That the transferor does not have knowledge of any fact that would impair the document's validity or worth.

(c) That the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7508 Documents of title; warranties of collecting bank.

Sec. 7508. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7509 Documents of title; adequacy as contract for sale, lease, or conditions of a credit.

Sec. 7509. Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

## PART 6
## WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

### 440.7601 Lost, stolen, or destroyed documents of title; delivery of goods or issuance of substitute document; indemnity.

Sec. 7601. (1) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney fees in any action under this subsection.

(2) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured by that delivery. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within 1 year after the delivery.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.


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### 440.7602 Judicial process; surrender of document of title; purchaser for value.

Sec. 7602. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.7603 Conflicting claims; interpleader.

Sec. 7603. If more than 1 person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has had a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

## PART 7
## MISCELLANEOUS PROVISIONS

### 440.7701 Applicability of amendatory act.

Sec. 7701. (1) The amendatory act that added this section applies to a document of title that is issued or a bailment that arises on or after the effective date of that amendatory act.

(2) The amendatory act that added this section does not apply to a document of title that is issued or a bailment that arises before the effective date of that amendatory act even if the document of title or bailment would be subject to that amendatory act if the document of title had been issued or bailment had arisen on or after the effective date of that amendatory act.

(3) The amendatory act that added this section does not apply to a right of action that has accrued before the effective date of that amendatory act.

**History:** Add. 2012, Act 87, Eff. July 1, 2013.

### 440.7702 Document of title issued or bailment that arises before effective date of amendatory act.

Sec. 7702. A document of title issued or a bailment that arises before the effective date of the amendatory act that added this section and the rights, obligations, and interests flowing from that document or bailment are governed by any statute amended or repealed by that amendatory act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute.

**History:** Add. 2012, Act 87, Eff. July 1, 2013.

# ARTICLE 8
# INVESTMENT SECURITIES

## PART 1
## SHORT TITLE AND GENERAL MATTERS

### 440.8101 Uniform commercial code—investment securities; cited as.

Sec. 8101. This article may be cited as uniform commercial code—investment securities.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8102 Definitions.

Sec. 8102. (1) As used in this article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.


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(e) "Clearing corporation" means 1 or more of the following:

(*i*) A person that is registered as a clearing agency under the federal securities laws.

(*ii*) A federal reserve bank.

(*iii*) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means either of the following:

(*i*) Send a signed writing.

(*ii*) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement under section 8501(2)(b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset", except as otherwise provided in section 8103, means 1 or more of the following:

(*i*) A security.

(*ii*) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment.

(*iii*) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem the security.

(k) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(*l*) "Registered form", as applied to a certificated security, means a form containing both of the following:

(*i*) The security certificate specifies a person entitled to the security.

(*ii*) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(m) "Securities intermediary" means either of the following:

(*i*) A clearing corporation.

(*ii*) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(n) "Security", except as otherwise provided in section 8103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer and is all of the following:

(*i*) Represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer.

(*ii*) One of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(*iii*) Either of the following:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets.

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

(o) "Security certificate" means a certificate representing a security.

(p) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5.

(q) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this article and the sections in which they appear are:

| | |
|---|---|
| Appropriate person | Section 8107 |
| Control | Section 8106 |
| Delivery | Section 8301 |


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| | |
|---|---|
| Investment company security | Section 8103 |
| Issuer | Section 8201 |
| Overissue | Section 8210 |
| Protected purchaser | Section 8303 |
| Securities account | Section 8501 |

(3) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(4) The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1973, Act 9, Imd. Eff. Apr. 12, 1973;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2012, Act 86, Eff. July 1, 2013.

### 440.8103 Share or equity interest as security; "investment company security" defined; interest in partnership or limited liability company as security or financial asset; writing; option or similar obligation issued by clearing corporation as financial asset; commodity contract; financial asset.

Sec. 8103. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An investment company security is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in section 9102(1)(o), is not a security or a financial asset.

(7) A document of title is not a financial asset unless section 8102(1)(i)(*iii*) applies.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.8104 Security or interest in security; financial asset; security entitlement; acquisition; placing security or financial asset in possession of another person.

Sec. 8104. (1) A person acquires a security or an interest in a security under this article in either of the following situations:

(a) The person is a purchaser to whom a security is delivered pursuant to section 8301.

(b) The person acquires a security entitlement to the security pursuant to section 8501.

(2) A person acquires a financial asset, other than a security, or an interest in the security, under this article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 8503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8105 Notice of adverse claim.

Sec. 8105. (1) A person has notice of an adverse claim if 1 or more of the following apply:

(a) The person knows of the adverse claim.


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(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim.

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest in a financial asset is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest in a financial asset in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer that meets either of the following:

(a) Is more than 1 year after a date set for presentment or surrender for redemption or exchange.

(b) Is more than 6 months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate applies to 1 of the following:

(a) Whether in bearer or registered form, has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer.

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under article 9 is not notice of an adverse claim to a financial asset.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8106 Certificated security in bearer form; certificated security in registered form; uncertificated security; security entitlement; control; agreement by issuer or securities intermediary.

Sec. 8106. (1) A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser and if either of the following applies:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement.

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has “control” of an uncertificated security if either of the following applies:

(a) The uncertificated security is delivered to the purchaser.

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has “control” of a security entitlement if 1 of the following applies:

(a) The purchaser becomes the entitlement holder.

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(c) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even if the registered owner in the case of subsection (3)(b) or the entitlement holder in the case of subsection (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the


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registered owner or entitlement holder.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.8107 "Appropriate person" defined; effectiveness of indorsement, instruction, or entitlement order.

Sec. 8107. (1) "Appropriate person" means 1 or more of the following:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security.

(b) With respect to an instruction, the registered owner of an uncertificated security.

(c) With respect to an entitlement order, the entitlement holder.

(d) If the person designated in subdivision (a), (b), or (c) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent.

(e) If the person designated in subdivision (a), (b), or (c) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if 1 or more of the following are true:

(a) It is made by the appropriate person.

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under section 8106(3)(b) or (4)(b).

(c) The appropriate person has ratified the indorsement, instruction, or entitlement order or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if either of the following applies:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction.

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

**History:** Add. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8108 Warranty to purchaser.

Sec. 8108. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, and warrants to any subsequent purchaser all of the following:

(a) The certificate is genuine and has not been materially altered.

(b) The transferor or indorser does not know of any fact that might impair the validity of the security.

(c) There is no adverse claim to the security.

(d) The transfer does not violate any restriction on transfer.

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person.

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser all of the following:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person.

(b) The security is valid.

(c) There is no adverse claim to the security.

(d) At the time the instruction is presented to the issuer, all of the following apply:


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(*i*) The purchaser will be entitled to the registration of transfer.

(*ii*) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(*iii*) The transfer will not violate any restriction on transfer.

(*iv*) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants all of the following:

(a) The uncertificated security is valid.

(b) There is no adverse claim to the security.

(c) The transfer does not violate any restriction on transfer.

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer both of the following:

(a) There is no adverse claim to the security.

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer both of the following:

(a) The instruction is effective.

(b) At the time the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7).

(9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2), and that broker has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

**History:** Add. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8109 Warranty to securities intermediary.

Sec. 8109. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary both of the following:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person.

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in section 8108(1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in section 8108(1) or (2).

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8110 Jurisdiction.

Sec. 8110. (1) The law of the issuer's jurisdiction, as specified in subsection (4), governs all of the following:

(a) The validity of a security.


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(b) The rights and duties of the issuer with respect to registration of transfer.

(c) The effectiveness of registration of transfer by the issuer.

(d) Whether the issuer owes any duties to an adverse claimant to a security.

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The law of the securities intermediary's jurisdiction, as specified in subsection (5), governs all of the following:

(a) Acquisition of a security entitlement from the securities intermediary.

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement.

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement.

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) “Issuer's jurisdiction” means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) through (e).

(5) The following rules determine a “securities intermediary's jurisdiction” for the purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this amendatory act, that jurisdiction is the securities intermediary's jurisdiction.

(b) If subdivision (a) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither subdivision (a) nor subdivision (b) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If none of the preceding subdivisions apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If none of the preceding subdivisions apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record-keeping concerning the account.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.8111 Rule adopted by clearing corporation; effect.

Sec. 8111. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this act and affects another party who does not consent to the rule.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8112 Reaching interest of debtor.

Sec. 8112. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4).

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process


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upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4).

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8113 Sale or purchase of security; enforcement of contract or contract modification.

Sec. 8113. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within 1 year of its making.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8114 Action on certificated security against issuer; rules.

Sec. 8114. The following rules apply in an action on a certificated security against the issuer:

(a) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(b) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(c) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(d) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8115 Transferring or dealing with financial asset; liability of securities intermediary, broker, or agent.

Sec. 8115. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee did 1 or more of the following:

(a) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process.

(b) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant.

(c) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8116 Securities intermediary as purchaser for value of financial asset; acquisition of security entitlement for value.

Sec. 8116. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

## PART 2
## ISSUE—ISSUER

### 440.8201 “Issuer” defined.

Sec. 8201. (1) With respect to an obligation on or a defense to a security, an “issuer” includes a person that


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does 1 or more of the following:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or similar person, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate.

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security.

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate.

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8202 Terms of security; effect of defect going to validity of security; rules; defenses; right of party to cancel contract.

Sec. 8202. (1) Even against a purchaser for value and without notice, the terms of a certified security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, or order, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subdivision (a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issuer or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in section 8205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject to the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8203 Conditions to charging purchaser with notice of defect.

Sec. 8203. After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(a) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or


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security is available on the date set for payment or exchange, and the purchaser takes the security more than 1 year after that date.

(b) Is not covered by subdivision (a) and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8204 Restriction on transfer of security.

Sec. 8204. A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(a) The security is certificated and the restriction is noted conspicuously on the certificate.

(b) The security is uncertificated and the registered owner has been notified of the restriction.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8205 Unauthorized signature.

Sec. 8205. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(a) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate, or of similar security certificates, or the immediate preparation for signing of any of them.

(b) An employee of the issuer, or of any of the persons listed in subdivision (a) entrusted with responsible handling of the security certificate.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8206 Completion or alteration of security certificate.

Sec. 8206. (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect, it may be completed as follows:

(a) Any person may complete it by filling in the blanks as authorized.

(b) Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8207 Rights of issuer or indenture trustee with respect to registered owner.

Sec. 8207. (1) Before due presentment for registration of transfer of a certificated security in registered form, or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8208 Warranty of person signing security certificate.

Sec. 8208. (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of the particular defect, that:

(a) The certificate is genuine.

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer.

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility for the validity of the security in other respects.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8210 Overissue.

Sec. 8210. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4), the provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

## PART 3
## PURCHASE

### 440.8301 Delivery of certificated or uncertificated security to purchaser.

Sec. 8301. (1) Delivery of a certificated security to a purchaser occurs when 1 of the following occurs:

(a) The purchaser acquires possession of the security certificate.

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser.

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (*i*) registered in the name of the purchaser, (*ii*) payable to the order of the purchaser, or (*iii*) specially indorsed to the purchaser by an effective indorsement and has not been endorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when either of the following occurs:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer.

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.8302 Purchaser of security; rights acquired.

Sec. 8302. (1) Except as otherwise provided in subsections (2) and (3), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.8303 "Protected purchaser" defined.

Sec. 8303. (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest in a certificated or uncertificated security and meets all of the following:

(a) Gives value.

(b) Does not have notice of any adverse claim to the security.

(c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8304 Indorsement.

Sec. 8304. (1) An indorsement may be in blank or special. An indorsement in blank includes an


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indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in Section 8108 and not an obligation that the security will be honored by the issuer.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8305 Initiation or origination of instruction; completion; reliance; assumption of obligations.

Sec. 8305. (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by Section 8108 and not an obligation that the security will be honored by the issuer.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8306 Warranties generally.

Sec. 8306. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing all of the following are true:

(a) The signature was genuine.

(b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person.

(c) The signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing all of the following are true:

(a) The signature was genuine.

(b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty.

(c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner.

(b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of


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instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8307 Transfer of security on due demand; supplying requisite necessary to obtain registration; effect of noncompliance.

Sec. 8307. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8308-440.8321 Repealed. 1998, Act 278, Imd. Eff. July 27, 1998.

**Compiler's note:** The repealed sections pertained to indorsement, transfer, sale, and delivery of securities.

## PART 4
## REGISTRATION

### 440.8401 Registration of transfer; duty and liability of issuer.

Sec. 8401. (1) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name.

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person.

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized in accordance with section 8402.

(d) Any applicable law relating to the collection of taxes has been complied with.

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 8204.

(f) A demand that the issuer not register transfer has not become effective under section 8403, or the issuer has complied with section 8403(2) but no legal process or indemnity bond is obtained as provided in section 8403(4).

(g) The transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8402 Indorsement as genuine and authorized; assurance; definitions.

Sec. 8402. (1) The issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guarantee of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity.

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign.

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to section 8107(1)(d) or (e), appropriate evidence of appointment or incumbency.

(d) If there is more than 1 fiduciary, reasonable assurance that all who are required to sign have done so.

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of


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this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) As used in this section:

(a) "Guarantee of the signature" means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if the standards are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" means either of the following:

(*i*) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer of that court and dated within 60 days before the date of presentation for transfer.

(*ii*) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8403 Demand; effect; notification; period of time; liability of issuer.

Sec. 8403. (1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to the person who initiated the demand at the address provided in the demand and the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating all of the following:

(a) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received.

(b) A demand that the issuer not register transfer had previously been received.

(c) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(c) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, do either of the following:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer.

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8404 Liability of issuer for wrongful registration or transfer.

Sec. 8404. (1) Except as otherwise provided in section 8406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered in 1 or more of the following ways:

(a) Pursuant to an ineffective indorsement or instruction.

(b) After a demand that the issuer not register transfer became effective under section 8403(1) and the issuer did not comply with section 8403(2).

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable


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opportunity to act on the injunction, restraining order, or other legal process.

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 8210.

(3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8405 Lost, destroyed, or wrongfully taken securities.

Sec. 8405. (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner does all of the following:

(a) Requests before the issuer has notice that the certificate has been acquired by a protected purchaser.

(b) Files with the issuer a sufficient indemnity bond.

(c) Satisfies other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by section 8210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8406 Lost, destroyed, or wrongfully taken security certificate; failure to notify issuer.

Sec. 8406. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 8404 or a claim to a new security certificate under section 8405.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8407 Authenticating trustee, transfer agent, registrar, or other agent; obligation to holder or owner of certificate.

Sec. 8407. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

**History:** Add. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8408 Repealed. 1998, Act 278, Imd. Eff. July 27, 1998.

**Compiler's note:** The repealed section pertained to written statements sent by issuer to new registered owner.

## PART 5
## SECURITY ENTITLEMENTS

### 440.8501 "Securities account" defined; acquisition of security entitlement; conditions; directly held financial asset; issuance not as security entitlement.

Sec. 8501. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary does 1 or more of the following:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account.


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(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account.

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If 1 or more conditions described in subsection (2)(a), (b), or (c) have been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8502 Action based on adverse claim.

Sec. 8502. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 8501 for value and without notice of the adverse claim.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8503 Entitlement holder property interest.

Sec. 8503. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 8511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 8505 through 8508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset or interest in the financial asset only if all of the following apply:

(a) Insolvency proceedings have been initiated by or against the securities intermediary.

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset.

(c) The securities intermediary violated its obligations under section 8504 by transferring the financial asset or interest therein to the purchaser.

(d) The purchaser is not protected under subsection (5). The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest in a financial asset, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 8504.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8504 Maintenance of financial asset by securities intermediary; quantity; manner; limitation; duties; applicability to clearing corporation.

Sec. 8504. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through 1 or more other securities intermediaries.


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(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

(3) A securities intermediary satisfies the duty in subsection (1) if the securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8505 Obtaining payment or distribution made by issuer of financial asset; duties and obligations of securities intermediary.

Sec. 8505. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. This duty is satisfied if the securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercise due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8506 Duty of securities intermediary to exercise rights with respect to financial asset; conditions.

Sec. 8506. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. The duty is satisfied if the securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8507 Compliance with entitlement order by securities intermediary; conditions; wrongful transfer of financial asset pursuant to ineffective entitlement order; liability.

Sec. 8507. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. The duty is satisfied if a securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8508 Changing security entitlement into another form of holding; transferring financial asset to securities account of entitlement holder; duties of securities intermediary; conditions.

Sec. 8508. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. The duty is satisfied if a securities intermediary does either of the following:

(a) Acts as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercises due care in accordance with reasonable commercial standards to


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follow the direction of the entitlement holder.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8509 Performance of duties by securities intermediary.

Sec. 8509. (1) If the substance of a duty imposed upon a securities intermediary by sections 8504 through 8508 is the subject of other statute, regulation, or rule, compliance with the statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by sections 8504 through 8508 is subject to both of the following:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise.

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) Sections 8504 through 8508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

### 440.8510 Assertion of action based on adverse claim; prohibition; conditions; priority.

Sec. 8510. (1) In a case not covered by the priority rules in article 9 or the rules stated in subsection (3), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under section 8502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from the entitlement holder.

(3) In a case not covered by the priority rules in article 9, a purchaser for value of a security entitlement, or an interest in a security entitlement, who obtains control has priority over a purchaser of a security entitlement, or an interest in a security entitlement, who does not obtain control. Except as otherwise provided in subsection (4), purchasers who have control rank according to priority in time of 1 of the following:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 8106(4)(a).

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 8106(4)(b).

(c) If the purchaser obtained control through another person under section 8106(4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.8511 Priority of claims.

Sec. 8511. (1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interest in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor


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has priority over the claims of entitlement holders.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

PART 6

### 440.8601 Action or proceeding commenced before act takes effect; security interest perfected at date act takes effect.

Sec. 8601. (1) This amendatory act does not affect an action or proceeding commenced before this amendatory act that added this section takes effect.

(2) If a security interest in a security is perfected at the date this amendatory act that added this section takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this amendatory act no further action is required to continue perfection. If a security interest in a security is perfected at the date this amendatory act that added this section takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this amendatory act, the security interest remains perfected for a period of 4 months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at the date this amendatory act that added this section takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

**History:** Add. 1998, Act 278, Imd. Eff. July 27, 1998.

ARTICLE 9
SECURED TRANSACTIONS

PART 1
GENERAL PROVISIONS

SUBPART 1.
SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

### 440.9101 Uniform commercial code—secured transactions; short title.

Sec. 9101. This article shall be known and may be cited as “uniform commercial code—secured transactions”.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.9102 Definitions and index of definitions.

Sec. 9102. (1) As used in this article:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, for services rendered or to be rendered, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit or charge card or information contained on or for use with the card, or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include rights to payment evidenced by chattel paper or an instrument, commercial tort claims, deposit accounts, investment property, letter-of-credit rights or letters of credit, or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting", except as used in "accounting for", means a record that meets all of the following requirements:

(*i*) Authenticated by a secured party.

(*ii*) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record.


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(*iii*) Identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products that meets all of the following requirements:

(*i*) The interest secures payment or performance of an obligation for 1 or more of the following:

(A) Goods or services furnished in connection with a debtor's farming operation.

(B) Rent on real property leased by a debtor in connection with its farming operation.

(*ii*) The interest is created by statute in favor of a person that did 1 or more of the following:

(A) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation.

(B) Leased real property to a debtor in connection with the debtor's farming operation.

(*iii*) The effectiveness of the interest does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means 1 or more of the following:

(*i*) Oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted.

(*ii*) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means either of the following:

(*i*) To sign.

(*ii*) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(h) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. As used in this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel, or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(*l*) "Collateral" means the property subject to a security interest or agricultural lien. The term includes 1 or more of the following:

(*i*) Proceeds to which a security interest attaches.

(*ii*) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(*iii*) Goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort with respect to which of the following applies:

(*i*) The claimant is an organization.

(*ii*) The claimant is an individual and the claim arose in the course of the claimant's business or profession and does not include damages arising out of personal injury to or the death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is 1 of the following:

(*i*) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws.

(*ii*) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.


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(q) "Commodity intermediary" means 1 of the following:

(*i*) A person that is registered as a futures commission merchant under federal commodities law.

(*ii*) A person that in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means 1 or more of the following:

(*i*) To send a written or other tangible record.

(*ii*) To transmit a record by any means agreed upon by the persons sending and receiving the record.

(*iii*) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and that meets all of the following:

(*i*) The merchant deals in goods of that kind under a name other than the name of the person making delivery, is not an auctioneer, and is not generally known by its creditors to be substantially engaged in selling the goods of others.

(*ii*) With respect to each delivery, the aggregate value of the goods is $1,000.00 or more at the time of delivery.

(*iii*) The goods are not consumer goods immediately before delivery.

(*iv*) The transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a consumer transaction in which an individual incurs an obligation primarily for personal, family, or household purposes and a security interest in consumer goods secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes, a security interest secures the obligation, and the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(aa) "Continuation statement" means an amendment of a financing statement which identifies, by its file number, the initial financing statement to which it relates and indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means 1 of the following:

(*i*) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

(*ii*) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(*iii*) A consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in section 7201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are 1 of the following:

(*i*) Crops grown, growing, or to be grown, including crops produced on trees, vines, and bushes, and aquatic goods produced in aquacultural operations.

(*ii*) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(*iii*) Supplies used or produced in a farming operation.

(*iv*) Products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to section 9519(1).


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(kk) "Filing office" means an office designated in section 9501 as the place to file a financing statement.

(*ll*) "Filing-office rule" means a rule adopted pursuant to section 9526.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9502(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(qq) "Goods" means all things that are movable when a security interest attaches. The term includes fixtures, standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(rr) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(ss) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(tt) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include investment property, letters of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(uu) "Inventory" means goods, other than farm products, that meet 1 of the following:

(*i*) Are leased by a person as lessor.

(*ii*) Are held by a person for sale or lease or to be furnished under a contract of service.

(*iii*) Are furnished by a person under a contract of service.

(*iv*) Consist of raw materials, work in process, or materials used or consumed in a business.

(vv) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(ww) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(xx) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(yy) "Lien creditor" means 1 or more of the following:

(*i*) A creditor that has acquired a lien on the property involved by attachment, levy, or the like.

(*ii*) An assignee for benefit of creditors from the time of assignment.

(*iii*) A trustee in bankruptcy from the date of the filing of the petition.

(*iv*) A receiver in equity from the time of appointment.

(zz) "Manufactured home" means a structure, transportable in 1 or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer


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voluntarily files a certification required by the secretary of the department of housing and urban development and complies with the standards established under title 42 of the United States Code.

(aaa) "Manufactured-home transaction" means a secured transaction that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory, or in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(bbb) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(ccc) "New debtor" means a person that becomes bound as debtor under section 9203(4) by a security agreement previously entered into by another person.

(ddd) "New value" means money, money's worth in property, services, or new credit, or release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(eee) "Noncash proceeds" means proceeds other than cash proceeds.

(fff) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, owes payment or other performance of the obligation, has provided property other than the collateral to secure payment or other performance of the obligation, or is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(ggg) "Original debtor" means, except as used in section 9310(3), a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9203(4).

(hhh) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(iii) "Person related to", with respect to an individual, means 1 or more of the following:

(*i*) The spouse of the individual.

(*ii*) A brother, brother-in-law, sister, or sister-in-law of the individual.

(*iii*) An ancestor or lineal descendant of the individual or the individual's spouse.

(*iv*) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(jjj) "Person related to", with respect to an organization, means 1 or more of the following:

(*i*) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(*ii*) An officer or director of, or a person performing similar functions with respect to, the organization.

(*iii*) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (*i*).

(*iv*) The spouse of an individual described in subparagraph (*i*), (*ii*), or (*iii*).

(*v*) An individual who is related by blood or marriage to an individual described in subparagraph (*i*), (*ii*), (*iii*), or (*iv*) and shares the same home with the individual.

(kkk) "Proceeds" means, except as used in section 9609(2), 1 or more of the following property:

(*i*) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(*ii*) Whatever is collected on, or distributed on account of, collateral.

(*iii*) Rights arising out of collateral.

(*iv*) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(*v*) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(*lll*) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(mmm) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9620, 9621, and 9622.

(nnn) "Public organic record" means a record that is available to the public for inspection and is any of the following:

(*i*) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record.

(*ii*) An organic record of a business trust consisting of the record initially filed with a state and any record


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filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state.

(*iii*) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(ooo) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(ppp) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(qqq) "Registered organization" means an organization organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(rrr) "Secondary obligor" means an obligor to the extent that the obligor's obligation is secondary or the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(sss) "Secured party" means 1 or more of the following:

(*i*) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.

(*ii*) A person that holds an agricultural lien.

(*iii*) A consignor.

(*iv*) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.

(*v*) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.

(*vi*) A person that holds a security interest arising under section 2401, 2505, 2711(3), 2A508(5), 4210, or 5118.

(ttt) "Security agreement" means an agreement that creates or provides for a security interest.

(uuu) "Send", in connection with a record or notification, means 1 of the following:

(*i*) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances.

(*ii*) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (*i*).

(vvv) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(www) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(xxx) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(yyy) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(zzz) "Termination statement" means an amendment of a financing statement that identifies, by its file number, the initial financing statement to which it relates and indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(aaaa) "Transmitting utility" means a person primarily engaged in the business of 1 of the following:

(*i*) Operating a railroad, subway, street railway, or trolley bus.

(*ii*) Transmitting communications electrically, electromagnetically, or by light.

(*iii*) Transmitting goods by pipeline or sewer.

(*iv*) Transmitting or producing and transmitting electricity, steam, gas, or water.

(2) "Control" as provided in section 7106 and the following definitions in other articles apply to this article:

| | |
|---|---|
| "Applicant" | Section 5102 |
| "Beneficiary" | Section 5102 |


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| | |
|---|---|
| "Broker" | Section 8102 |
| "Certificated security" | Section 8102 |
| "Check" | Section 3104 |
| "Clearing corporation" | Section 8102 |
| "Contract for sale" | Section 2106 |
| "Customer" | Section 4104 |
| "Entitlement holder" | Section 8102 |
| "Financial asset" | Section 8102 |
| "Holder in due course" | Section 3302 |
| "Issuer" (with respect to a document of title) | Section 7102 |
| "Issuer" (with respect to a letter of credit or letter-of-credit right) | Section 5102 |
| "Issuer" (with respect to a security) | Section 8201 |
| "Lease" | Section 2A103 |
| "Lease agreement" | Section 2A103 |
| "Lease contract" | Section 2A103 |
| "Leasehold interest" | Section 2A103 |
| "Lessee" | Section 2A103 |
| "Lessee in ordinary course of business" | Section 2A103 |
| "Lessor" | Section 2A103 |
| "Lessor's residual interest" | Section 2A103 |
| "Letter of credit" | Section 5102 |
| "Merchant" | Section 2104 |
| "Negotiable instrument" | Section 3104 |
| "Nominated person" | Section 5102 |
| "Note" | Section 3104 |
| "Proceeds of a letter of credit" | Section 5114 |
| "Prove" | Section 3103 |
| "Sale" | Section 2106 |
| "Securities account" | Section 8501 |
| "Securities intermediary" | Section 8102 |
| "Security" | Section 8102 |
| "Security certificate" | Section 8102 |
| "Security entitlement" | Section 8102 |
| "Uncertificated security" | Section 8102. |

(3) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

**Compiler's note:** In subsection (1)(m), the words "with respect to which of the following..." evidently should read "with respect to which 1 of the following... ."

### 440.9103 Purchase-money security interest; application of payments; burden of establishing.

Sec. 9103. (1) As used in this section:

(a) “Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral.

(b) “Purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(2) A security interest in goods is a purchase-money security interest to the following extent, as applicable:

(a) To the extent that the goods are purchase-money collateral with respect to that security interest.

(b) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest.

(c) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(3) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if the debtor acquired its interest in the software in an


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integrated transaction in which it acquired an interest in the goods, and the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(5) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied in 1 of the following, as applicable:

(a) In accordance with any reasonable method of application to which the parties agree.

(b) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment.

(c) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(*i*) To obligations that are not secured.

(*ii*) If more than 1 obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(6) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if the purchase-money collateral also secures an obligation that is not a purchase-money obligation, collateral that is not purchase-money collateral also secures the purchase-money obligation, or the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(7) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(8) The limitation of the rules in subsections (5), (6), and (7) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9104 Control of deposit account.

Sec. 9104. (1) A secured party has control of a deposit account if 1 or more of the following apply:

(a) The secured party is the bank with which the deposit account is maintained.

(b) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor.

(c) The secured party becomes the bank's customer with respect to the deposit account.

(2) A secured party that has satisfied subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9105 Control of electronic chattel paper.

Sec. 9105. (1) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(2) A system satisfies subsection (1) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that all of the following apply:

(a) A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in subdivisions (d), (e), and (f), unalterable.

(b) The authoritative copy identifies the secured party as the assignee of the record or records.

(c) The authoritative copy is communicated to and maintained by the secured party or its designated custodian.

(d) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party.

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

(f) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9106 Control of investment property.

Sec. 9106. (1) A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 8106.

(2) A secured party has control of a commodity contract if either of the following is met:

(a) The secured party is the commodity intermediary with which the commodity contract is carried.

(b) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(3) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9107 Control of letter-of-credit right.

Sec. 9107. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 5114(3) or otherwise applicable law or practice.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9108 Sufficiency of description.

Sec. 9108. (1) Except as otherwise provided in subsections (3), (4), and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) Except as otherwise provided in subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by 1 or more of the following:

(a) Specific listing.

(b) Category.

(c) Except as otherwise provided in subsection (5), a type of collateral defined in the uniform commercial code.

(d) Quantity.

(e) Computational or allocational formula or procedure.

(f) Except as otherwise provided in subsection (3), any other method, if the identity of the collateral is objectively determinable.

(3) A description of collateral as “all the debtor's assets” or “all the debtor's personal property” or using words of similar import does not reasonably identify the collateral.

(4) Except as otherwise provided in subsection (5), a description of a security entitlement, securities account, or commodity account is sufficient if it describes 1 or more of the following:

(a) The collateral by the term security entitlement, securities account, or commodity account, or as investment property.

(b) The underlying financial asset or commodity contract.

(5) A description only by type of collateral defined in the uniform commercial code is an insufficient description of either of the following:

(a) A commercial tort claim.

(b) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

## SUBPART 2.
## APPLICABILITY OF ARTICLE

### 440.9109 Scope.

Sec. 9109. (1) Except as otherwise provided in subsections (3) and (4), this article applies to all of the following:

(a) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

(b) An agricultural lien.


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(c) A sale of accounts, chattel paper, payment intangibles, or promissory notes.

(d) A consignment.

(e) A security interest arising under section 2401, 2505, 2711(3), or 2A508(5), as provided in section 9110.

(f) A security interest arising under section 4210 or 5118.

(2) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(3) This article does not apply to the extent that 1 or more of the following apply:

(a) A statute, regulation, or treaty of the United States preempts this article.

(b) Another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state.

(c) A statute of another state, a foreign country, or a governmental unit of another state or foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by that state, country, or governmental unit.

(d) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5114.

(4) This article does not apply to any of the following:

(a) A landlord's lien, other than an agricultural lien.

(b) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 9333 applies with respect to priority of the lien.

(c) An assignment of a claim for wages, salary, or other compensation of an employee.

(d) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose.

(e) An assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only.

(f) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(g) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness.

(h) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(i) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral.

(j) A right of recoupment of set-off, but section 9340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts and section 9404 applies with respect to defenses or claims of an account debtor.

(k) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for 1 or more of the following:

(*i*) Liens on real property in sections 9203 and 9308.

(*ii*) Fixtures in section 9334.

(*iii*) Fixture filings in sections 9501, 9502, 9512, 9516, and 9519.

(*iv*) Security agreements covering personal and real property in section 9604.

(*l*) The creation of or transfer of an interest in or lien on a land contract mortgage governed by sections 6 through 11 of 1879 PA 237, MCL 565.356 to 565.361.

(m) A transfer by a governmental unit or governmental subdivision or agency.

(n) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(o) An assignment of a deposit account in a consumer transaction, but sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9110 Security interests arising under article 2 or 2A.

Sec. 9110. A security interest arising under section 2401, 2505, 2711(3), or 2A508(5) is subject to this article. However, until the debtor obtains possession of the goods, all of the following apply:

(a) The security interest is enforceable, even if section 9203(2)(c) has not been satisfied.

(b) Filing is not required to perfect the security interest.

(c) The rights of the secured party after default by the debtor are governed by article 2 or 2A.



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(d) The security interest has priority over a conflicting security interest created by the debtor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9111 Repealed. 1998, Act 489, Imd. Eff. Jan. 4, 1999.

**Compiler's note:** The repealed section pertained to creation of security interest as bulk transfer.

### 440.9112-440.9116 Repealed. 2000, Act 348, Eff. July 1, 2001.

**Compiler's note:** The repealed sections pertained to collateral not owned by debtor, security interests arising under article on sales, consignment, attachment or perfection, and buyer obligations.

## PART 2
## EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

## SUBPART 1.
## EFFECTIVENESS AND ATTACHMENT

### 440.9201 General effectiveness of security agreement.

Sec. 9201. (1) Except as otherwise provided in this act, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(2) A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and to each of the following, as applicable:

(a) The regulatory loan act of 1963, 1939 PA 21, MCL 493.1 to 493.26.

(b) 1939 PA 305, MCL 566.301 to 566.302.

(c) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(d) The mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2349.

(e) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(f) 1978 PA 387, MCL 257.931 to 257.937.

(g) 1986 PA 87, MCL 257.1401 to 257.1410.

(h) The grain dealers act, 1939 PA 141, MCL 285.61 to 285.82a.

(i) The Michigan family farm development act, 1982 PA 220, MCL 285.251 to 285.279.

(j) The natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(k) 1982 PA 459, MCL 325.851 to 325.858.

(*l*) 1970 PA 90, MCL 442.311 to 442.315.

(m) 1971 PA 227, MCL 445.111 to 445.117.

(n) The retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873.

(o) The Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

(p) The home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(q) 1941 PA 238, MCL 566.1.

(r) The garage keeper's lien act, 1915 PA 312, MCL 570.301 to 570.309.

(s) 1939 PA 3, MCL 460.1 to 460.10cc.

(t) 1981 PA 155, MCL 445.611 to 445.620c.

(u) The special tools lien act.

(3) In case of conflict between this article and a rule of law, statute, or regulation described in subsection (2), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (2) has only the effect the statute or regulation specifies.

(4) This article does not validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (2), or extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2002, Act 18, Imd. Eff. Mar. 1, 2002;—Am. 2002, Act 480, Imd. Eff. June 27, 2002.

### 440.9202 Title to collateral immaterial.

Sec. 9202. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9203 Attachment and enforcement of security interest; proceeds; supporting


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**obligations; formal requisites.**

Sec. 9203. (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if all of the following are met:

(a) Value has been given.

(b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(c) One or more of the following conditions are met:

(*i*) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned.

(*ii*) The collateral is not a certificated security and is in the possession of the secured party under section 9313 pursuant to the debtor's security agreement.

(*iii*) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8301 pursuant to the debtor's security agreement.

(*iv*) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 7106, 9104, 9105, 9106, or 9107 pursuant to the debtor's security agreement.

(3) Subsection (2) is subject to section 4210 on the security interest of a collecting bank, section 5118 on the security interest of a letter-of-credit issuer or nominated person, section 9110 on a security interest arising under article 2 or 2A, and section 9206 on security interests in investment property.

(4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract, either of the following occurs:

(a) The security agreement becomes effective to create a security interest in the person's property.

(b) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(5) If a new debtor becomes bound as debtor by a security agreement entered into by another person, the agreement satisfies subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement, and another agreement is not necessary to make a security interest in the property enforceable.

(6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9315 and is also attachment of a security interest in a supporting obligation for the collateral.

(7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 489, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

## 440.9204 After-acquired property; future advances.

Sec. 9204. (1) Except as otherwise provided in subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.

(2) A security interest does not attach under a term constituting an after-acquired property clause to either of the following:

(a) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value.

(b) A commercial tort claim.

(3) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001.

## 440.9205 Use or disposition of collateral permissible.


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Sec. 9205. (1) A security interest is not invalid or fraudulent against creditors solely because of either of the following:

(a) The debtor has the right or ability to do 1 or more of the following:

(*i*) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods.

(*ii*) Collect, compromise, enforce, or otherwise deal with collateral.

(*iii*) Accept the return of collateral or make repossessions.

(*iv*) Use, commingle, or dispose of proceeds.

(b) The secured party fails to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession if attachment, perfection, or enforcement or a security interest depends upon possession of the collateral by the secured party.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9206 Security interest arising in purchase or delivery of financial asset.

Sec. 9206. (1) A security interest in favor of a securities intermediary attaches to a person's security entitlement if the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

(3) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if both of the following are met:

(a) The security or other financial asset in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment, and is delivered under an agreement between persons in the business of dealing with the securities or financial assets.

(b) The agreement calls for delivery against payment.

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

## SUBPART 2.
## RIGHTS AND DUTIES

### 440.9207 Rights and duties of secured party having possession or control of collateral.

Sec. 9207. (1) Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral all of the following apply:

(a) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral.

(b) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage.

(c) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

(d) The secured party may use or operate the collateral for the purpose of preserving the collateral or its value; as permitted by an order of a court having competent jurisdiction; or except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(3) Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under section 7106, 9104, 9105, 9106, or 9107 may hold as additional security any proceeds, except money or funds, received from the collateral, shall apply money or funds received from the collateral to reduce the secured obligation unless remitted to the debtor, and may create a security interest in the collateral.

(4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, subsections (2) and (3) do not apply, and subsection (1) does not apply unless the secured party is entitled under an agreement to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or


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other obligor on the collateral.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9208 Additional duties of secured party having control of collateral.

Sec. 9208. (1) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall do all of the following that apply to the secured party:

(a) A secured party having control of a deposit account under section 9104(1)(b) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party.

(b) A secured party having control of a deposit account under section 9104(1)(c) shall pay the debtor the balance on deposit in the deposit account or transfer the balance on deposit into a deposit account in the debtor's name.

(c) A secured party, other than a buyer, having control of electronic chattel paper under section 9105 shall do all of the following:

(*i*) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian.

(*ii*) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor.

(*iii*) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.

(d) A secured party having control of investment property under section 8106(4)(b) or section 9106(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.

(e) A secured party having control of a letter-of-credit right under section 9107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

(f) A secured party having control of an electronic document shall do all of the following:

(*i*) Give control of the electronic document to the debtor or its designated custodian.

(*ii*) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor.

(*iii*) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9209 Duties of secured party if account debtor has been notified of assignment.

Sec. 9209. (1) Except as otherwise provided in subsection (3), this section applies if there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 9406(1) an authenticated record that releases the account debtor from any further obligation to the secured party.

(3) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.


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### 440.9210 Request for accounting; request regarding list of collateral or statement of account.

Sec. 9210. (1) As used in this section:

(a) "Request" means a record of a type described in subdivision (b), (c), or (d).

(b) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(c) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(d) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request in the following manner within 14 days after the receipt of the request:

(a) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting.

(b) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(4) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record disclaiming any interest in the collateral, and if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(5) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record disclaiming any interest in the obligations, and if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(6) A debtor is entitled without charge to 1 response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding $25.00 for each additional response.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

## PART 3
## PERFECTION AND PRIORITY

## SUBPART 1.
## LAW GOVERNING PERFECTION AND PRIORITY

### 440.9301 Law governing perfection and priority of security interests.

Sec. 9301. Except as otherwise provided in sections 9303 through 9306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(a) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(b) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(c) Except as otherwise provided in subdivision (d), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs perfection of a security interest in the goods by filing a fixture filing, perfection of a security interest in timber to be cut, and the effect of perfection or nonperfection and the priority of a nonpossessory security


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interest in the collateral.

(d) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1984, Act 170, Imd. Eff. June 29, 1984;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9302 Law governing perfection and priority of agricultural liens.

Sec. 9302. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 235, Eff. Aug. 28, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1978, Act 607, Eff. Jan. 6, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1996, Act 72, Imd. Eff. Feb. 26, 1996;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9303 Law governing perfection and priority of security interests in goods covered by certificate of title.

Sec. 9303. (1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9304 Law governing perfection and priority of security interests in deposit accounts.

Sec. 9304. (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(2) The following rules determine a bank's jurisdiction for purposes of this part:

(a) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for the purpose of this part, this article, or this act, that jurisdiction is the bank's jurisdiction.

(b) If subdivision (a) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(c) If neither subdivision (a) nor (b) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(d) If none of the preceding subdivisions apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(e) If none of the preceding subdivisions apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9305 Law governing perfection and priority of security interests in investment property.

Sec. 9305. (1) Except as otherwise provided in subsection (3), the following rules apply:

(a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(b) The local law of the issuer's jurisdiction as specified in section 8110(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(c) The local law of the securities intermediary's jurisdiction as specified in section 8110(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security


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entitlement or securities account.

(d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or this act, that jurisdiction is the commodity intermediary's jurisdiction.

(b) If subdivision (a) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(c) If neither subdivision (a) nor (b) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(d) If none of the preceding subdivisions apply, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(e) If none of the preceding subdivisions apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(3) The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in investment property by filing, automatic perfection of a security interest in investment property created by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9306 Law governing perfection and priority of security interests in letter-of-credit rights.

Sec. 9306. (1) Subject to subsection (3), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(2) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 5116.

(3) This section does not apply to a security interest that is perfected only under section 9308(4).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9307 "Place of business" defined; location of debtor.

Sec. 9307. (1) As used in this section, "place of business" means a place where a debtor conducts its affairs.

(2) Except as otherwise provided in this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal residence.

(b) A debtor that is an organization and has only 1 place of business is located at its place of business.

(c) A debtor that is an organization and has more than 1 place of business is located at its chief executive office.

(3) Subsection (2) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) does not apply, the debtor is located in the District of Columbia.

(4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3).

(5) A registered organization that is organized under the law of a state is located in that state.

(6) Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located in 1 of the following:

(a) In the state that the law of the United States designates, if the law designates a state of location.


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(b) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office.

(c) In the District of Columbia, if neither subdivision (a) nor (b) applies.

(7) A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) notwithstanding the occurrence of 1 of the following:

(a) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization.

(b) The dissolution, winding up, or cancellation of the existence of the registered organization.

(8) The United States is located in the District of Columbia.

(9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only 1 state.

(10) A foreign air carrier is located at the designated office of the agent upon which service of process may be made on behalf of the carrier under section 46103 of title 49 of the United States Code, 49 USC 46103.

(11) This section applies only for purposes of this part.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1984, Act 170, Eff. Apr. 1, 1985;—Am. 1985, Act 199, Eff. Jan. 1, 1986;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

SUBPART 2.
PERFECTION

### 440.9308 When security interest or agricultural lien is perfected; continuity of perfection.

Sec. 9308. (1) Except as otherwise provided in this section and section 9309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 9310 through 9316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 9310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(3) A security interest or agricultural lien is perfected continuously if it is originally perfected by 1 method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(4) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(5) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(6) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(7) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9309 Security interest perfected upon attachment.

Sec. 9309. Each of the following security interests is perfected when it attaches:

(a) A purchase-money security interest in consumer goods, except as otherwise provided in section 9311(2) with respect to consumer goods that are subject to a statute or treaty described in section 9311(1).

(b) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles.

(c) A sale of a payment intangible.

(d) A sale of a promissory note.

(e) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services.

(f) A security interest arising under section 2401, 2505, 2711(3), or 2A508(5), until the debtor obtains possession of the collateral.

(g) A security interest of a collecting bank arising under section 4210.

(h) A security interest of an issuer or nominated person arising under section 5118.


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(i) A security interest arising in the delivery of a financial asset under section 9206(3).

(j) A security interest in investment property created by a broker or securities intermediary.

(k) A security interest in a commodity contract or a commodity account created by a commodity intermediary.

(*l*) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

(m) A security interest created by an assignment of a beneficial interest in a decedent's estate.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

Sec. 9310. (1) Except as otherwise provided in subsection (2) and section 9312(2), a financing statement must be filed to perfect all security interests and agricultural liens.

(2) The filing of a financing statement is not necessary to perfect 1 or more of the following:

(a) A security interest that is perfected under section 9308(4), (5), (6), or (7).

(b) A security interest that is perfected under section 9309 when it attaches.

(c) A security interest in property subject to a statute, regulation, or treaty described in section 9311(1).

(d) A security interest in goods in possession of a bailee that is perfected under section 9312(4)(a) or (b).

(e) A security interest in certificated securities, documents, goods, or instruments that is perfected without filing, control, or possession under section 9312(5), (6), or (7).

(f) A security interest in collateral in the secured party's possession under section 9313.

(g) A security interest in a certificated security that is perfected by delivery of the security certificate to the secured party under section 9313.

(h) A security interest in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights that is perfected by control under section 9314.

(i) A security interest in proceeds that is perfected under section 9315.

(j) A security interest that is perfected under section 9316.

(3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

Sec. 9311. (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to 1 or more of the following:

(a) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9310(1).

(b) The following statutes of this state:

(*i*) Chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259.

(*ii*) Part 803 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80301 to 324.80322.

(*iii*) Part 811 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101 to 324.81150.

(*iv*) Sections 30 through 30i of the mobile home commission act, 1987 PA 96, MCL 125.2330 to 125.2330i.

(c) A statute of another jurisdiction that provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (4) and sections 9313 and 9316(4) and (5) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in subsection (4) and section 9316(4) and (5), duration and renewal of


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perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2001, Act 145, Eff. Jan. 1, 2002;—Am. 2005, Act 25, Imd. Eff. May 23, 2005;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

Sec. 9312. (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(2) Except as otherwise provided in section 9315(3) and (4) for proceeds, a security interest in a deposit account, a letter-of-credit right, or money may be perfected only as follows:

(a) A security interest in a deposit account may be perfected only by control under section 9314.

(b) Except as otherwise provided in section 9308(4), a security interest in a letter-of-credit right may be perfected only by control under section 9314.

(c) A security interest in money may be perfected only by the secured party's taking possession under section 9313.

(3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods, a security interest in the goods may be perfected by perfecting a security interest in the document, and a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by 1 or more of the following:

(a) Issuance of a document in the name of the secured party.

(b) The bailee's receipt of notification of the secured party's interest.

(c) Filing as to the goods.

(5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(6) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange, or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of ultimate sale or exchange or for the purpose of presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon compliance with this article.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1984, Act 170, Imd. Eff. June 29, 1984;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9313 Possession by or delivery to secured party perfecting security interest without filing.

Sec. 9313. (1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8301.

(2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9316(5).


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(3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit, or the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(4) If the perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(7) If a person acknowledges that it holds possession for the secured party's benefit, the acknowledgment is effective under subsection (3) or section 8301(1), even if the acknowledgment violates the rights of a debtor, and unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery to hold possession of the collateral for the secured party's benefit, or to redeliver the collateral to the secured party.

(9) A secured party does not relinquish possession, even if a delivery under subsection (8) violates the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9314 Perfection by control.

Sec. 9314. (1) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7106, 9104, 9105, 9106, or 9107.

(2) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 7106, 9104, 9105, or 9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(3) A security interest in investment property is perfected by control under section 9106 from the time the secured party obtains control and remains perfected by control until both of the following occur:

(a) The secured party does not have control.

(b) One of the following occurs:

(*i*) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate.

(*ii*) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner.

(*iii*) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9315 Secured party's rights on disposition of collateral and in proceeds.

Sec. 9315. (1) Except as otherwise provided in this article and in section 2403(2), both of the following apply:

(a) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien.

(b) A security interest attaches to any identifiable proceeds of collateral.

(2) Proceeds that are commingled with other property are identifiable proceeds to 1 of the following extents:

(a) If the proceeds are goods, to the extent provided by section 9336.

(b) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of


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tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(3) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(4) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless 1 of the following is met:

(a) All of the following conditions are satisfied:

(*i*) A filed financing statement covers the original collateral.

(*ii*) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed.

(*iii*) The proceeds are not acquired with cash proceeds.

(b) The proceeds are identifiable cash proceeds.

(c) The security interest in the proceeds is perfected other than under subsection (3) when the security interest attaches to the proceeds or within 20 days thereafter.

(5) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (4)(a) becomes unperfected at the later of when the effectiveness of the filed financing statement lapses under section 9515 or is terminated under section 9513, or the twenty-first day after the security interest attaches to the proceeds.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9316 Continued perfection of security interest following change in governing law.

Sec. 9316. (1) A security interest perfected pursuant to the law of the jurisdiction designated in section 9301(a) or 9305(3) remains perfected until the earliest of the following:

(a) The time perfection would have ceased under the law of that jurisdiction.

(b) The expiration of 4 months after a change of the debtor's location to another jurisdiction.

(c) The expiration of 1 year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(2) If a security interest described in subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if all of the following are met:

(a) The collateral is located in 1 jurisdiction and subject to a security interest perfected under the law of that jurisdiction.

(b) Thereafter, the collateral is brought into another jurisdiction.

(c) Upon entry of the collateral into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(4) Except as otherwise provided in subsection (5), a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(5) A security interest described in subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9311(2) or 9313 are not satisfied before the earlier of the following:

(a) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state.

(b) The expiration of 4 months after the goods had become so covered.

(6) A security interest in deposit accounts, letter-of-credit rights, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of the following:

(a) The time the security interest would have become unperfected under the law of that jurisdiction.

(b) The expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

(7) If a security interest described in subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains


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perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(8) The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 9301(a) or 9305(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(b) If a security interest perfected by a financing statement that is effective under subdivision (a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9301(a) or 9305(3) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 9301(a) or 9305(3) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under section 9203(4), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9301(a) or 9305(3) or the expiration of the 4-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

SUBPART 3.
PRIORITY

### 440.9317 Interests that take priority over or take free of unperfected security interest or agricultural lien.

Sec. 9317. (1) A security interest or agricultural lien is subordinate to the rights of 1 or more of the following:

(a) A person entitled to priority under section 9322.

(b) Except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the following:

(*i*) The time the security interest or agricultural lien is perfected.

(*ii*) The time 1 of the conditions specified in section 9203(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in sections 9320 and 9321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.


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**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

Sec. 9318. (1) A debtor that has sold an account, chattel paper, payment intangibles, or promissory note does not retain a legal or equitable interest in the collateral sold.

(2) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9319 Rights and title of consignee with respect to creditors and purchasers.

Sec. 9319. (1) Except as otherwise provided in subsection (2), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(2) For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9320 Buyer of goods.

Sec. 9320. (1) Except as otherwise provided in subsection (5), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(2) Except as otherwise provided in subsection (5), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys without knowledge of the security interest, for value, primarily for the buyer's personal, family, or household purposes, and before the filing of a financing statement covering the goods.

(3) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9316(1) and (2).

(4) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(5) Subsections (1) and (2) do not affect a security interest in goods in the possession of the secured party under section 9313.

(6) Subsections (7) to (14) shall apply in the case of a person buying farm products from a person engaged in farming operations.

(7) If requested by the secured party, a debtor engaged in farming operations who gives a security interest in farm products shall provide to the secured party a written list identifying potential buyers and points of delivery of the farm products. Except as otherwise provided by subsection (8), the number of potential buyers for each commodity shall not exceed 5. If a potential buyer has more than 1 point of delivery, each additional point of delivery shall be counted as a potential buyer.

(8) A debtor engaged in farming operations who provides a written list of potential buyers to a secured party pursuant to subsection (7) shall not sell farm products that secure the debt to a buyer who is not identified on the list without the prior written consent of the secured party. A person who knowingly or intentionally violates this subsection is guilty of a felony, punishable by imprisonment for not more than 3 years or a fine of not more than $10,000.00, or both. If appropriate given the facts and circumstances of the case, the court shall place the person on probation upon the condition that restitution be made to the secured party. Payment of, or application of the proceeds to, the debt upon which the security interest is based is an absolute defense to a prosecution under this subsection if the payment or application is made prior to commencement of prosecution.

(9) A secured party who is provided with a written list of potential buyers pursuant to subsection (7) may notify buyers identified on the list of the security interest as provided in this subsection. A secured party shall not notify a person not identified on the list, except that the secured party may notify a buyer concerning whom the secured party has given prior written consent pursuant to subsection (8) or to whom the secured


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party has reasonable cause to believe the debtor is about to sell the farm products. A notice provided pursuant to this subsection shall be in writing and shall be mailed by certified mail or delivered by another method by which receipt can be verified. The notice may be in a form agreed upon in writing by the buyer and the secured party, but in absence of such an agreement the notice shall be an original financing statement or a carbon, photographic, or other reproduction of an original or a statement that contains all of the following:

(a) The full name and address of the debtor.

(b) The full name and address of the secured party.

(c) A description of the collateral.

(d) The date and location of the filing of the security interest.

(e) The date and signature of the secured party.

(10) If the debt that is the basis of the security interest is satisfied, the secured party shall notify in writing each potential buyer to whom the secured party sent notice under subsection (9). The notice may be given within a time period agreed upon in writing by the buyer and the secured party, but in absence of such an agreement the notice shall be given within 11 days after the debt is satisfied.

(11) A secured party who does any of the following is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both:

(a) Knowingly or intentionally gives false or misleading information in a notice provided pursuant to subsection (9).

(b) Sends notice to a potential buyer other than as permitted in subsection (9).

(c) Fails to notify a potential buyer of the satisfaction of a debt within the time period prescribed by subsection (10).

(12) A buyer of farm products who receives notice pursuant to subsection (9) of a security interest in the farm products shall make payment for the farm products by check or other instrument made payable to the seller and the secured party jointly, except that payment may be made directly to the secured party if authorized in writing by the seller. This subsection does not apply to any payment or partial payment made before notice under subsection (9) has been received by the buyer. A buyer of farm products who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both. Payment of the debt upon which the security interest is based is an absolute defense to a prosecution under this subsection if payment is made prior to commencement of prosecution.

(13) As used in subsections (6) to (12), "person buying farm products" or "buyer" includes a commission merchant or selling agent who sells farm products in the ordinary course of business for a person engaged in farming operations.

(14) A buyer in ordinary course of business who receives notice pursuant to subsection (9), who buys farm products from a person engaged in farming operations, and who withholds all or part of the proceeds of the sale from the seller in order to satisfy a debt owed by the seller to the buyer, takes subject to a security interest in those farm products created by the seller, unless the debt owed by the seller to the buyer was secured by a prior perfected security interest. For purposes of this subsection, "debt" does not include the cost of harvesting; processing, including packaging, freezing, canning, and drying; storing; marketing; or transporting farm products to market.

(15) Except as otherwise provided by subsection (16), a commission merchant or selling agent who sells farm products, in the ordinary course of business, for a person engaged in farming operations is not liable to the holder of a security interest in those farm products even though the security interest is perfected and even though the commission merchant or selling agent knows of its existence.

(16) A commission merchant or selling agent who sells farm products, in the ordinary course of business, for a person engaged in farming operations, and who receives notice pursuant to subsection (9), shall not be protected from liability under subsection (15) if the commission merchant or selling agent withholds from the seller all or part of the proceeds of a sale of the farm products in order to satisfy a debt owed by the seller to the commission merchant or selling agent, unless the debt was secured by a prior perfected security interest. For purposes of this subsection, "debt" does not include the cost of harvesting; processing, including packaging, freezing, canning, and drying; storing; marketing; or transporting farm products to market.

(17) A prosecution under subsections (12) to (14) shall not be commenced after the expiration of 2 years following the date the violation occurred.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9321 Licensee of general intangible and lessee of goods in ordinary course of business.

Sec. 9321. (1) As used in this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of


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licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(2) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(3) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9322 Priorities among conflicting security interests in and agricultural liens on same collateral.

Sec. 9322. (1) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(c) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(2) For the purposes of subsection (1)(a), both of the following apply:

(a) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds.

(b) The time of filing of perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(3) Except as otherwise provided in subsection (6), a security interest in collateral that qualifies for priority over a conflicting security interest under section 9327, 9328, 9329, 9330, or 9331 also has priority over a conflicting security interest in 1 or more of the following:

(a) Any supporting obligation for the collateral.

(b) Proceeds of the collateral if all of the following are met:

(*i*) The security interest in proceeds is perfected.

(*ii*) The proceeds are cash proceeds or of the same type as the collateral.

(*iii*) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(4) Subject to subsection (5) and except as otherwise provided in subsection (6), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(5) Subsection (4) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(6) Subsections (1) through (5) are subject to all of the following:

(a) Subsection (7) and the other provisions of this part.

(b) Section 4210 with respect to a security interest of a collecting bank.

(c) Section 5118 with respect to a security interest of an issuer or nominated person.

(d) Section 9110 with respect to a security interest arising under article 2 or 2A.

(7) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9323 Future advances.

Sec. 9323. (1) Except as otherwise provided in subsection (3), for purposes of determining the priority of a perfected security interest under section 9322(1)(a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that meets both of the following:

(a) Is made while the security interest is perfected only under 1 of the following:

(*i*) Under section 9309 when it attaches.

(*ii*) Temporarily under section 9312(5), (6), or (7).


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(b) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 9309 or 9312(5), (6), or (7).

(2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made without knowledge of the lien, or pursuant to a commitment entered into without knowledge of the lien.

(3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(4) Except as otherwise provided in subsection (5), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of the following:

(a) The time the secured party acquires knowledge of the buyer's purchase.

(b) Forty-five days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(6) Except as otherwise provided in subsection (7), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of the following:

(a) The time the secured party acquires knowledge of the lease.

(b) Forty-five days after the lease contract becomes enforceable.

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9324 Priority of purchase-money security interests.

Sec. 9324. (1) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Subject to subsection (3) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9330, and, except as otherwise provided in section 9327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if all of the following are met:

(a) The purchase-money security interest is perfected when the debtor receives possession of the inventory.

(b) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest.

(c) The holder of the conflicting security interest receives the notification within 5 years before the debtor receives possession of the inventory.

(d) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(3) Subsection (2)(b) through (d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory before 1 of the following:

(a) If the purchase-money security interest is perfected by filing, before the date of the filing.

(b) If the purchase-money security interest is temporarily perfected without filing or possession under section 9312(6), before the beginning of the 20-day period thereunder.

(4) Subject to subsection (5) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if all of the following are met:

(a) The purchase-money security interest is perfected when the debtor receives possession of the livestock.

(b) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest.

(c) The holder of the conflicting security interest receives the notification within 6 months before the


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debtor receives possession of the livestock.

(d) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(5) Subsection (4)(b) through (d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock before 1 of the following:

(a) If the purchase-money security interest is perfected by filing, before the date of the filing.

(b) If the purchase-money security interest is temporarily perfected without filing or possession under section 9312(6), before the beginning of the 20-day period thereunder.

(6) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(7) If more than 1 security interest qualifies for priority in the same collateral under subsection (1), (2), (4), or (6), 1 of the following applies:

(a) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral.

(b) In all other cases, section 9322(1) applies to the qualifying security interest.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9325 Priority of security interests in transferred collateral.

Sec. 9325. (1) Except as otherwise provided in subsection (2), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if all of the following are met:

(a) The debtor acquired the collateral subject to the security interest created by the other person.

(b) The security interest created by the other person was perfected when the debtor acquired the collateral.

(c) There is no period thereafter when the security interest is unperfected.

(2) Subsection (1) subordinates a security interest only if the security interest otherwise would have priority solely under section 9322(1) or 9324, or arose solely under section 2711(3) or 2A508(5).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9326 Priority of security interests created by new debtor.

Sec. 9326. (1) Subject to subsection (2), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of section 9316(9)(a) or 9508 is subordinate to a security interest in the same collateral that is perfected other than by such a filed financing statement.

(2) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (1). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9327 Priority of security interests in deposit account.

Sec. 9327. The following rules govern priority among conflicting security interests in the same deposit account:

(a) A security interest held by a secured party having control of the deposit account under section 9104 has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in subdivisions (c) and (d), security interests perfected by control under section 9314 rank according to priority in time of obtaining control.

(c) Except as otherwise provided in subdivision (d), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(d) A security interest perfected by control under section 9104(1)(c) has priority over a security interest held by the bank with which the deposit account is maintained.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9328 Priority of security interests in investment property.


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Sec. 9328. The following rules govern priority among conflicting security interests in the same investment property:

(a) A security interest held by a secured party having control of investment property under section 9106 has priority over a security interest held by a secured party that does not have control of the investment property.

(b) Except as otherwise provided in subdivisions (c) and (d), conflicting security interests held by secured parties each of which has control under section 9106 rank according to priority in time of 1 of the following:

(*i*) If the collateral is a security, obtaining control.

(*ii*) If the collateral is a security entitlement carried in a securities account, according to 1 of the following:

(A) If the secured party obtained control under section 8106(4)(a), the secured party's becoming the person for which the securities account is maintained.

(B) If the secured party obtained control under section 8106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account.

(C) If the secured party obtained control through another person under section 8106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party.

(*iii*) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 9106(2)(b) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(c) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(d) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(e) A security interest in a certificated security in registered form that is perfected by taking delivery under section 9313(1) and not by control under section 9314 has priority over a conflicting security interest perfected by a method other than control.

(f) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary that are perfected without control under section 9106 rank equally.

(g) In all other cases, priority among conflicting security interests in investment property is governed by sections 9322 and 9323.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9329 Priority of security interests in letter-of-credit right.

Sec. 9329. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(a) A security interest held by a secured party having control of the letter-of-credit right under section 9107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(b) Security interests perfected by control under section 9314 rank according to priority in time of obtaining control.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9330 Priority of purchaser of chattel paper or instrument.

Sec. 9330. (1) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if both of the following are met:

(a) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9105.

(b) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(2) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(3) Except as otherwise provided in section 9327, a purchaser having priority in chattel paper under subsection (1) or (2) also has priority in proceeds of the chattel paper to the extent that section 9322 provides


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for priority in the proceeds, or the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(4) Except as otherwise provided in section 9331(1), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(5) For purposes of subsections (1) and (2), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(6) For purposes of subsections (2) and (4), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article 8.

Sec. 9331. (1) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, and 8.

(2) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under article 8.

(3) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (1) and (2).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9332 Transfer of money; transfer of funds from deposit account.

Sec. 9332. (1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9333 Priority of certain liens arising by operation of law.

Sec. 9333. (1) As used in this section, “possessory lien” means an interest, other than a security interest or an agricultural lien, that meets all of the following:

(a) It secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business.

(b) It is created by statute or rule of law in favor of the person.

(c) Its effectiveness depends on the person's possession of the goods.

(2) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9334 Priority of security interests in fixtures and crops.

Sec. 9334. (1) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(2) This article does not prevent creation of an encumbrance upon fixtures under real property law.

(3) In cases not governed by subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(4) Except as otherwise provided in subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and all of the following are met:

(a) The security interest is a purchase-money security interest.

(b) The interest of the encumbrancer or owner arises before the goods become fixtures.

(c) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.


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(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property in each of the following circumstances:

(a) If the debtor has an interest of record in the real property or is in possession of the real property, and the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record and has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner.

(b) If before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real property, or readily removable replacements of domestic appliances that are consumer goods.

(c) If the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(d) If the security interest is created in a manufactured home in a manufactured-home transaction and perfected pursuant to a statute described in section 9311(1)(b).

(6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if either of the following is met:

(a) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures.

(b) The debtor has a right to remove the goods as against the encumbrancer or owner.

(7) The priority of the security interest under subsection (6)(b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest or record in or is in possession of the real property.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9335 Accessions.

Sec. 9335. (1) A security interest may be created in an accession and continues in collateral that becomes an accession.

(2) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(3) Except as otherwise provided in subsection (4), the other provisions of this part determine the priority of a security interest in an accession.

(4) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 9311(2).

(5) After default, subject to part 6 of this article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(6) A secured party that removes an accession from other goods under subsection (5) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9336 Commingled goods.

Sec. 9336. (1) As used in this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.


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(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.

(5) Except as otherwise provided in subsection (6), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than 1 security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than 1 security interest is perfected under subsection (4), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9337 Priority of security interests in goods covered by certificate of title.

Sec. 9337. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate, both of the following apply:

(a) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(b) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 9311(2), after issuance of the certificate and without the conflicting secured party's knowledge of the security interests.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9338 Priority of security interests or agricultural lien perfected by filed financing statement providing certain incorrect information.

Sec. 9338. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9516(2)(e) that is incorrect at the time the financing statement is filed, all of the following apply:

(a) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information.

(b) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9339 Priority subject to subordination.

Sec. 9339. This article does not preclude subordination by agreement by a person entitled to priority.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

## SUBPART 4.
## RIGHTS OF BANK

### 440.9340 Effectiveness of right of recoupment or setoff against deposit account.

Sec. 9340. (1) Except as otherwise provided in subsection (3), a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in subsection (3), the application of this article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(3) The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under section 9104(1)(c), if the setoff is based on a claim against the debtor.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.


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### 440.9341 Bank's rights and duties with respect to deposit account.

Sec. 9341. Except as otherwise provided in section 9340(3), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by 1 or more of the following:

(a) The creation, attachment, or perfection of a security interest in the deposit account.

(b) The bank's knowledge of the security interest.

(c) The bank's receipt of instructions from the secured party.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9342 Bank's right to refuse to enter into or disclose existence of control agreement.

Sec. 9342. This article does not require a bank to enter into an agreement of the kind described in section 9104(1)(b), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

## PART 4
## RIGHTS OF THIRD PARTIES

### 440.9401 Alienability of debtor's rights.

Sec. 9401. (1) Except as otherwise provided in subsection (2) and sections 9406, 9407, 9408, and 9409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(2) An agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980;—Am. 1990, Act 288, Imd. Eff. Dec. 14, 1990;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9402 Secured party not obligated on contract of debtor or in tort.

Sec. 9402. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 1989, Act 216, Imd. Eff. Nov. 27, 1989;—Am. 1998, Act 489, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9403 Agreement not to assert defenses against assignee.

Sec. 9403. (1) As used in this section, “value” has the meaning provided in section 3303(1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment for value, in good faith, without notice of a claim of a property or possessory right to the property assigned, and without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 3305(1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 3305(2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement, all of the following apply:

(a) The record has the same effect as if the record included such a statement.

(b) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(5) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(6) Except as otherwise provided in subsection (4), this section does not displace law other than this article


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that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1969, Act 74, Imd. Eff. July 21, 1969;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 1992, Act 186, Imd. Eff. Oct. 5, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9404 Rights acquired by assignee; claims and defenses against assignee.

Sec. 9404. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (2) through (5), the rights of an assignee are subject to all of the following:

(a) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract.

(b) Any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(2) Subject to subsection (3) and except as otherwise provided in subsection (4), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (1) only to reduce the amount the account debtor owes.

(3) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(5) This section does not apply to an assignment of a health-care-insurance receivable.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 1992, Act 186, Imd. Eff. Oct. 5, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9405 Modification of assigned contract.

Sec. 9405. (1) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (2) through (4).

(2) Subsection (1) applies to the extent that the right to payment or a part thereof under an assigned contract has not been fully earned by performance, or to the extent that the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 9406(1).

(3) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) This section does not apply to an assignment of a health-care-insurance receivable.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

Sec. 9406. (1) Subject to subsections (2) through (9), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection (8), notification is ineffective under subsection (1) if 1 or more of the following apply:

(a) If notification does not reasonably identify the rights assigned.

(b) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other


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than this article.

(c) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if 1 or more of the following occur:

(*i*) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee.

(*ii*) A portion has been assigned to another assignee.

(*iii*) The account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsection (8), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) Except as otherwise provided in subsection (5) and sections 2A303 and 9407, and subject to subsection (8), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it does 1 or more of the following:

(a) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note.

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to the following:

(a) A claim or right to receive an amount that would be excluded from gross income under section 104(a)(1) or (2) of the internal revenue code, 26 USC 104.

(b) A claim or right to receive benefits from a special needs trust. For purposes of this subdivision, a "special needs trust" is a trust described in section 1917(d)(4)(A), (B), or (C) of title XIX of the social security act, 42 USC 1396p.

(c) The sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 9610 or an acceptance of collateral under section 9620.

(6) Except as otherwise provided in sections 2A303 and 9407 and subject to subsections (8) and (9), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation does 1 or more of the following:

(a) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper.

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(7) Subject to subsection (8), an account debtor may not waive or vary its option under subsection (2)(c).

(8) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(9) This section does not apply to an assignment of a health-care-insurance receivable.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 1989, Act 216, Imd. Eff. Nov. 27, 1989;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

Sec. 9407. (1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it does 1 or more of the following:

(a) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods.

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.


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(2) Except as otherwise provided in section 2A303(7), a term described in subsection (1)(b) is effective to the extent that there is 1 or more of the following:

(a) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term.

(b) A delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 2A303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1988, Act 130, Eff. Sept. 1, 1988;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

Sec. 9408. (1) Except as otherwise provided in subsection (2) or (4), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest.

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 9610 or an acceptance of collateral under section 9620.

(3) Except as otherwise provided in subsection (4), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest.

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) would be effective under law other than this article but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible is not or does not do all of the following:

(a) Is not enforceable against the person obligated on the promissory note or the account debtor.

(b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.

(c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(d) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible.

(e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.

(f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) Subsections (1) and (3) do not apply to either of the following:


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(a) A claim or right to receive an amount that would be excluded from gross income under section 104(a)(1) or (2) of the internal revenue code, 26 USC 104.

(b) A claim or right to receive benefits from a special needs trust. For purposes of this subdivision, a "special needs trust" is a trust described in section 1917(d)(4)(A), (B), or (C) of title XIX of the social security act, 42 USC 1396p.

**History:** Add. 1963, Act 223, Eff. Sept. 6, 1963;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9408a Repealed. 2000, Act 348, Eff. July 1, 2001.

**Compiler's note:** The repealed section pertained to financing statement of consignor or lessor of goods.

### 440.9409 Restrictions on assignment of letter-of-credit rights ineffective.

Sec. 9409. (1) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right.

(b) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right, the term is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary, imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary, and does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

**History:** Add. 1976, Act 27, Imd. Eff. Mar. 4, 1976;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9410 Repealed. 2000, Act 348, Eff. July 1, 2001.

**Compiler's note:** The repealed section pertained to establishment of subscription service.

## PART 5
## FILING

## SUBPART 1.
## FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

### 440.9501 Filing office.

Sec. 9501. (1) Except as otherwise provided in subsection (2), the office in which to file a financing statement to perfect the security interest or agricultural lien is 1 of the following:

(a) The office designated for the filing or recording of a record of a mortgage on the related real property, if the collateral is as-extracted collateral or timber to be cut, or the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures.

(b) The office of secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

(3) Any financing statement filed under subsection (1)(a) with a register of deeds and any continuation statement, termination statement, amendment, or assignment relating to the financing statement and meeting the formal requisites of this part shall be recorded by the register of deeds, notwithstanding the provisions for witnessing and acknowledging instruments to be recorded in the real property records contained in section 47 of 1846 RS 65, MCL 565.47.

(4) If the office of secretary of state receives a financing statement under subsection (1)(b) or (2) for filing, and any debtor identified on the financing statement is an individual, the secretary of state shall provide written notice of the filing of the financing statement to that debtor. The secretary of state shall determine the


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form of the written notice and the written notice shall contain at least all of the following information:

(a) The debtor's name and address as shown on the financing statement.

(b) The secured party's name and address as shown on the financing statement.

(c) The remedies available to the debtor under this act if he or she believes that the financing statement is erroneously or fraudulently filed.

(5) In addition to the written notice described in subsection (4), the secretary of state shall provide at no charge to a debtor described in that subsection a copy or image of the filed financing statement and any attachments. If the debtor requests additional copies or searches, the fees provided in section 9525 apply to that request.

(6) A person shall not knowingly or intentionally file a false or fraudulent financing statement with the office of the secretary of state under subsection (1)(b) or (2). In addition to any other penalty provided by law, a violation of this subsection is a felony punishable by imprisonment for not more than 5 years or a fine of not more than $2,500.00, or both. If the person is convicted of the violation, the court may find that the financing statement is ineffective and may order the office of the secretary of state to terminate the financing statement and may order restitution.

(7) If a person files a false or fraudulent financing statement with the office of the secretary of state under subsection (1)(b) or (2), a debtor named in that financing statement may file an action against the person that filed the financing statement seeking appropriate equitable relief or damages, including, but not limited to, an order declaring the financing statement ineffective and ordering the office of the secretary of state to terminate the financing statement, and reasonable attorney fees.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2004, Act 212, Eff. Jan. 1, 2005.

### 440.9501a Fraudulent financing statement; affidavit; form; notice; termination of financing statement; filing fee; notice of termination; action to reinstate financing statement; court order; payment of costs and expenses; violation as felony; penalty; "regulated financial institution" defined.

Sec. 9501a. (1) A person identified as a debtor in a financing statement filed with the secretary of state may file an affidavit with the secretary of state in the form prescribed under subsection (2) stating that the financing statement is fraudulent. A person shall not file an affidavit under this subsection with respect to a financing statement filed by a regulated financial institution or a representative of a regulated financial institution.

(2) The secretary of state shall adopt and make available a form affidavit to be used to give notice of a fraudulent financing statement under subsection (1).

(3) On receipt of an affidavit under subsection (1), the secretary of state shall terminate the financing statement effective on the date the affidavit is filed.

(4) The secretary of state shall not charge a fee to file an affidavit under this section. The secretary of state shall not return any filing fee paid for filing the financing statement, regardless of whether the financing statement is terminated under this section.

(5) The secretary of state shall send notice of the termination of a financing statement under subsection (3) to the filer of the financing statement advising the filer that the financing statement has been terminated. If the filer of the financing statement believes in good faith that the statement was legally filed and is not fraudulent, the filer may file an action to reinstate the financing statement.

(6) If the court in an action under this section or section 9520(7) determines that the financing statement should be reinstated or accepted, the court shall provide a copy of its order to the secretary of state. On receipt of an order reinstating a financing statement, the secretary of state shall file a record that identifies by its file number the initial financing statement to which the record relates and indicates that the financing statement has been reinstated.

(7) On the filing of a record reinstating a financing statement under subsection (6), the financing statement is effective as a filed record from the initial filing date. If a financing statement that is reinstated would have lapsed during the period of termination, the secured party may file a continuation statement within 30 days after the record reinstating the financing statement is filed. The continuation statement is effective as a filed record from the date the financing statement would have lapsed. However, a financing or continuation statement is not retroactive as provided in this subsection as against a purchaser of the collateral that gives value in reasonable reliance on the absence of the record from the files.

(8) If the court in an action under this section determines that the financing statement is fraudulent, the filer of the financing statement shall pay the costs and expenses incurred by the person identified as a debtor in the financing statement in the action.


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(9) An individual who files a materially false or fraudulent affidavit under subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or a $2,500.00 fine, or both.

(10) As used in this section, "regulated financial institution" means a financial institution subject to regulatory oversight or examination by a state or federal agency. Regulated financial institution includes a bank, savings bank, savings association, building and loan association, credit union, consumer finance company, industrial bank, industrial loan company, insurance company, investment company, installment seller, mortgage servicer, sales finance company, or leasing company.

**History:** Add. 2008, Act 381, Eff. Mar. 29, 2009.

### 440.9502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

Sec. 9502. (1) Subject to subsection (2), a financing statement is sufficient only if it does all of the following:

(a) Provides the name of the debtor.

(b) Provides the name of the secured party or a representative of the secured party.

(c) Indicates the collateral covered by the financing statement.

(2) Except as otherwise provided in section 9501(2), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (1) and also do all of the following:

(a) Indicate that it covers this type of collateral.

(b) Indicate that it is to be recorded in the real property records.

(c) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property.

(d) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(3) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if all of the following apply:

(a) The record indicates the goods or accounts that it covers.

(b) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut.

(c) The record satisfies the requirements for a financing statement in this section, subject to the following:

(*i*) The record need not indicate that it is to be filed in the real property records.

(*ii*) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 9503(1)(d) applies.

(d) The record is duly recorded.

(4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9503 Name of debtor and secured party; "name of the settlor or testator" defined.

Sec. 9503. (1) A financing statement sufficiently provides the name of the debtor if it meets all of the following that apply to the debtor:

(a) Except as otherwise provided in subdivision (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name.

(b) Subject to subsection (6), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative.

(c) If the collateral is held in a trust that is not a registered organization, only if the financing statement does both of the following:


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(*i*) Provides 1 of the following as the name of the debtor:

(A) If the organic record of the trust specifies a name for the trust, the name specified.

(B) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator.

(*ii*) Meets 1 of the following in a separate part of the financing statement:

(A) If the name is provided in accordance with subparagraph (*i*)(A), indicates that the collateral is held in a trust.

(B) If the name is provided in accordance with subparagraph (*i*)(B), provides additional information sufficient to distinguish the trust from other trusts having 1 or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates.

(d) Subject to subsection (7), if the debtor is an individual to whom this state has issued a driver license or state personal identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver license or state personal identification card.

(e) If the debtor is an individual to whom subdivision (d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor.

(f) In other cases, satisfies 1 of the following:

(*i*) If the debtor has a name, only if the financing statement provides the organizational name of the debtor.

(*ii*) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of 1 or more of the following:

(a) A trade name or other name of the debtor.

(b) Unless required under subsection (1)(f)(*ii*), names of partners, members, associates, or other persons comprising the debtor.

(3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(5) A financing statement may provide the name of more than 1 debtor and the name of more than 1 secured party.

(6) The name of the decedent indicated on the order appointing the personal representative of a decedent issued by the court that has jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (1)(b).

(7) If this state has issued to an individual more than 1 driver license or state personal identification card of a kind described in subsection (1)(d), the one that was issued most recently is the one to which subsection (1)(d) refers.

(8) As used in this section, the "name of the settlor or testator" means any of the following:

(a) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name.

(b) In other cases, the name of the settlor or testator indicated in the trust's organic record.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9504 Indication of collateral.

Sec. 9504. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides 1 of the following:

(a) A description of the collateral pursuant to section 9108.

(b) An indication that the financing statement covers all assets or all personal property.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

Sec. 9505. (1) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 9311(1), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words of similar import, instead of the terms “secured party” and “debtor”.


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(2) This part applies to the filing of a financing statement under subsection (1) and, as appropriate, to compliance that is equivalent to filing a financing statement under section 9311(2), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9506 Effect of errors or omissions.

Sec. 9506. (1) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9503(1) is seriously misleading.

(3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9503(1), the name provided does not make the financing statement seriously misleading.

(4) For purposes of section 9508(2), the “debtor's correct name” in subsection (3) means the correct name of the new debtor.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

### 440.9507 Effect of certain events on effectiveness of financing statement.

Sec. 9507. (1) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(2) Except as otherwise provided in subsection (3) and section 9508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9506.

(3) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under section 9503(1) so that the financing statement becomes seriously misleading under section 9506, both of the following apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within 4 months after, the filed financing statement becomes seriously misleading.

(b) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within 4 months after the financing statement became seriously misleading.

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9508 Effectiveness of financing statement if new debtor becomes bound by security agreement.

Sec. 9508. (1) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(2) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (1) to be seriously misleading under section 9506, both of the following apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under section 9203(4).

(b) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than 4 months after the new debtor becomes bound under section 9203(4) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 9507(1).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.


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### 440.9509 Persons entitled to file a record.

Sec. 9509. (1) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if 1 of the following occurs:

(a) The debtor authorizes the filing in an authenticated record or pursuant to subsection (2) or (3).

(b) The person holds an agricultural lien that has become effective at time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering both of the following:

(a) The collateral described in the security agreement.

(b) Property that becomes collateral under section 9315(1)(b), whether or not the security agreement expressly covers proceeds.

(3) By acquiring collateral in which a security interest or agricultural lien continues under section 9315(1)(a), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 9315(1)(b).

(4) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if 1 of the following applies:

(a) The secured party of record authorizes the filing.

(b) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 9513(1) or (3), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(5) If there is more than 1 secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (4).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9510 Effectiveness of filing record.

Sec. 9510. (1) A filed record is effective only to the extent that it was filed by a person that may file it under section 9509.

(2) A record authorized by 1 secured party of record does not affect the financing statement with respect to another secured party of record.

(3) A continuation statement that is not filed within the 6-month period prescribed by section 9515(4) is ineffective.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9511 Secured party of record.

Sec. 9511. (1) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 9514(1), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(2) If an amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 9514(2), the assignee named in the amendment is a secured party of record.

(3) A person remains a secured party of record until the filing of an amendment of the financing statement that deletes the person.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9512 Amendment of financing statement.

Sec. 9512. (1) Subject to section 9509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (5), otherwise amend the information provided in, a financing statement by filing an amendment that does both of the following:

(a) Identifies, by its file number, and, if applicable, by liber and page, the initial financing statement to which the amendment relates.

(b) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 9501(1)(a), provides the date that the initial financing statement was filed or recorded and the information specified in section 9502(2).

(2) Except as otherwise provided in section 9515, the filing of an amendment does not extend the period of effectiveness of the financing statement.


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(3) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(4) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(5) An amendment is ineffective to the extent 1 or more of the following apply to it:

(a) It purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement.

(b) It purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9513 Termination statement.

Sec. 9513. (1) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and 1 or more of the following apply:

(a) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(b) The debtor did not authorize the filing of the initial financing statement.

(2) To comply with subsection (1), a secured party shall cause the secured party of record to file the termination statement within 1 of the following periods:

(a) Within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(b) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(3) In cases not governed by subsection (1), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if 1 or more of the following apply:

(a) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(b) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation.

(c) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession.

(d) The debtor did not authorize the filing of the initial financing statement.

(4) Except as otherwise provided in section 9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 9510, for purposes of sections 9519(7), 9522(1), and 9523(3), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9514 Assignment of powers of secured party of record.

Sec. 9514. (1) Except as otherwise provided in subsection (3), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement providing the name and mailing address of the assignee as the name and address of the secured party.

(2) Except as otherwise provided in subsection (3), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement that does all of the following:

(a) Identifies, by its file number, the initial financing statement to which it relates.

(b) Provides the name of the assignor.

(c) Provides the name and mailing address of the assignee.

(3) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 9502(3) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than this act.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9515 Duration and effectiveness of financing statement; effect of lapsed financing


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**statement; continuation statement; termination.**

Sec. 9515. (1) Except as otherwise provided in subsections (2), (5), (6), and (7), a filed financing statement is effective for a period of 5 years after the date of filing.

(2) Except as otherwise provided in subsections (5), (6), and (7), an initial financing statement filed in connection with a manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a manufactured-home transaction.

(3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (1) or the 30-year period specified in subsection (2), whichever is applicable.

(5) Except as otherwise provided in section 9510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (3), unless, before the lapse, another continuation statement is filed pursuant to subsection (4). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(6) If a debtor is an organization identified as a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed. A financing statement that is filed before March 29, 2009 is effective for a period of 5 years after the date of filing and shall not be continued under this section if the financing statement indicates either of the following:

(a) That the debtor is an individual purporting to be a transmitting utility.

(b) That the debtor is an individual showing his or her name as an organization and purporting to be a transmitting utility.

(7) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 9502(3) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009;—Am. 2012, Act 88, Eff. July 1, 2013.

## 440.9516 Filing; requirements; communication of record with tender of filing fee; effectiveness.

Sec. 9516. (1) Except as otherwise provided in subsection (2), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because of 1 or more of the following:

(a) The record is not communicated by a method or medium of communication authorized by the filing office.

(b) An amount equal to or greater than the applicable filing fee is not tendered.

(c) The filing office is unable to index the record because of 1 or more of the following:

(*i*) In the case of an initial financing statement, the record does not provide a name for the debtor.

(*ii*) In the case of an amendment or information statement, the record does not identify the initial financing statement as required by section 9512 or 9518, as applicable, or identifies an initial financing statement whose effectiveness has lapsed under section 9515.

(*iii*) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname.

(*iv*) In the case of a record filed or recorded in the filing office described in section 9501(1)(a), the record does not provide a sufficient description of the real property to which it relates.

(d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record.

(e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not provide or indicate 1 or more of the following:

(*i*) Provide a mailing address for the debtor.


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(*ii*) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization.

(f) In the case of an assignment reflected in an initial financing statement under section 9514(1) or an amendment filed under section 9514(2), the record does not provide a name and mailing address for the assignee.

(g) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by section 9515(4).

(3) For purposes of subsection (2), both of the following apply:

(a) A record does not provide information if the filing office is unable to read or decipher the information.

(b) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9512, 9514, or 9518, is an initial financing statement.

(4) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (2) or section 9520(5), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9517 Effect of indexing errors.

Sec. 9517. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9518 Information statement concerning inaccurate or wrongfully filed record.

Sec. 9518. (1) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) An information statement under subsection (1) must do all of the following:

(a) Identify the record to which it relates by both of the following:

(*i*) The file number assigned to the initial financing statement to which the record relates.

(*ii*) If the information statement relates to a record filed or recorded in a filing office described in section 9501(1)(a), the date that the initial financing statement was filed or recorded and the information specified in section 9502(2).

(b) Indicate that it is an information statement.

(c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 9509(4).

(4) An information statement under subsection (3) must do all of the following:

(a) Identify the record to which it relates by both of the following:

(*i*) The file number assigned to the initial financing statement to which the record relates.

(*ii*) If the information statement relates to a record filed or recorded in a filing office described in section 9501(1)(a), the date and time that the initial financing statement was filed or recorded and the information specified in section 9502(2).

(b) Indicate that it is an information statement.

(c) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under section 9509(4).

(5) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

## SUBPART 2.
## DUTIES AND OPERATION OF FILING OFFICE

### 440.9519 Numbering, maintaining, and indexing records; communicating information provided in records.

Sec. 9519. (1) For each record filed in a filing office, the filing office shall do all of the following:


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(a) Assign a unique number to the filed record.

(b) Create a record that bears the number assigned to the filed record and the date and time of filing.

(c) Maintain the filed record for public inspection.

(d) Index the filed record in accordance with subsections (3), (4), and (5).

(2) A file number assigned after January 1, 2002 must include a digit that is mathematically derived from or related to the other digits of the file number, and aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(3) Except as otherwise provided in subsections (4) and (5), the filing office shall do both of the following:

(a) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.

(b) Index a record that provides a name of a debtor that was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(4) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it under both of the following:

(a) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described.

(b) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(5) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 9514(1) or an amendment filed under section 9514(2) under both of the following:

(a) Under the name of the assignor as grantor.

(b) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(6) The filing office shall maintain a capability to do both of the following:

(a) To retrieve a record by the name of the debtor and by 1 of the following:

(*i*) If the filing office is described in section 9501(1)(a), by the file number assigned to the initial financing statement to which the record relates and the date that the record was filed or recorded.

(*ii*) If the filing office is described in section 9501(1)(b), by the file number assigned to the initial financing statement to which the record relates.

(b) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(7) The filing office shall not remove a debtor's name from the index until 1 year after the effectiveness of a financing statement naming the debtor lapses under section 9515 with respect to all secured parties of record.

(8) The filing office shall perform the acts required by subsections (1) through (5) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the record in question.

(9) Subsections (2) and (8) do not apply to a filing office described in section 9501(1)(a).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9520 Acceptance and refusal to accept record; wrongful filing; action to require secretary of state to accept record; personal liability; filing by regulated financial institution.

Sec. 9520. (1) A filing office shall refuse to accept a record for filing for a reason set forth in section 9516(2) or, if the filing office is the secretary of state, subsection (5) and may refuse to accept a record for filing only for a reason set forth in section 9516(2) or, if the filing office is the secretary of state, subsection (5).

(2) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in section 9501(1)(b), in no event more than 2 business days after the filing office receives the record.

(3) A filed financing statement satisfying section 9502(1) and (2) is effective, even if the filing office is required to refuse to accept it for filing under subsection (1). However, section 9338 applies to a filed


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financing statement providing information described in section 9516(2)(e) that is incorrect at the time the financing statement is filed.

(4) If a record communicated to a filing office provides information that relates to more than 1 debtor, this part applies as to each debtor separately.

(5) Notwithstanding any other provision of this act, if a person presents a record to the secretary of state for filing or recording, the secretary of state may refuse to accept the record for filing or recording if 1 or more of the following circumstances exist:

(a) The record is not required or authorized to be filed or recorded with the secretary of state.

(b) The record is being filed or recorded for a purpose outside the scope of this article.

(c) The secretary of state has reasonable cause to believe the record is materially false or fraudulent.

(d) The record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction.

(e) The record indicates that the debtor and the secured party are substantially the same or that an individual debtor is a transmitting utility.

(6) If a correction statement filed with the secretary of state under section 9518 alleges that a previously filed record was wrongfully filed, the secretary of state shall, without undue delay, determine whether the contested record was wrongfully filed. To determine whether the record was wrongfully filed, the secretary of state may require the person who filed the correction statement or the secured party to provide any additional relevant information requested by the secretary of state, including an original or copy of a security agreement that is related to the record. If the secretary of state finds that the record was wrongfully filed, the secretary of state shall terminate the record and the record is void and ineffective. The secretary of state shall notify the secured party named in the contested record of the termination.

(7) If the secretary of state refuses to accept a record for filing or recording pursuant to subsection (5), the person who presented the record to the secretary of state may commence an action under section 9501a to require the secretary of state to accept the record for filing or recording. A record ordered by the court to be accepted is effective as a filed record from the initial filing date except as against a purchaser of the collateral which gives value in reasonable reliance on the absence of the record from the files.

(8) A filing officer who, acting in a manner that does not subject the filing officer to personal liability under the statutes of this state, improperly refuses to accept a record for filing or recording under subsection (5) is not personally liable for the improper refusal or determination.

(9) Subsection (5) does not apply to a financing statement filed by a regulated financial institution or a representative of a regulated financial institution. If a regulated financial institution that is attempting to file a financing statement is organized under the law of a governmental unit other than this state, the secretary of state may request the regulated financial institution or its representative to provide verification of regulation or licensure in the jurisdiction under whose law the institution is organized. As used in this subsection, "regulated financial institution" means that term as defined in section 9501a.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009.

### 440.9521 Form and format of written initial financing statement and amendment.

Sec. 9521. (1) Except for a reason set forth in section 9516(2) or 9520(5), a filing office that accepts written records for filing shall not refuse to accept a written initial financing statement that conforms to the form and format of the UCC financing statement (Form UCC1)(rev. 04/20/11) or the UCC financing statement addendum (Form UCC1Ad)(rev. 04/20/11), promulgated by the American law institute and the uniform law commission, or to the form and format of any other revision to or version of either of those forms that are promulgated by the American law institute and the uniform law commission and adopted by the secretary of state.

(2) Except for a reason set forth in section 9516(2) or 9520(5), a filing office that accepts written records for filing shall not refuse to accept a written financing statement amendment that conforms to the form and format of the UCC financing statement amendment (Form UCC3)(rev. 04/20/11) or the UCC financing statement amendment addendum (Form UCC3Ad)(rev. 04/20/11), promulgated by the American law institute and the uniform law commission, or to the form and format of any other revision to or version of either of those forms that are promulgated by the American law institute and the uniform law commission and adopted by the secretary of state.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9522 Maintenance and destruction of records.


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Sec. 9522. (1) The filing office shall maintain a record of the information provided in a filed financing statement for at least 1 year after the effectiveness of the financing statement has lapsed under section 9515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and 1 of the following:

(a) If the record was filed or recorded in the filing office described in section 9501(1)(a), by using the file number assigned to the initial financing statement to which the record relates and the date that the record was filed or recorded.

(b) If record was filed in the filing office described in section 9501(1)(b), by using the file number assigned to the initial financing statement to which the record relates.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement that complies with subsection (1).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9523 Information from filing office; sale or license of records.

Sec. 9523. (1) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9519(1)(a) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead do both of the following:

(a) Note upon the copy the number assigned to the record pursuant to section 9519(1)(a) and the date and time of the filing of the record.

(b) Send the copy to the person.

(2) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides all of the following:

(a) The information in the record.

(b) The number assigned to the record pursuant to section 9519(1)(a).

(c) The date and time of the filing of the record.

(3) The filing office shall communicate or otherwise make available in a record 1 or more of the following information to any person that requests it:

(a) Whether there is on file on a date and time specified by the filing office, but not a date earlier than 3 business days before the filing office receives the request, any financing statement that meets all of the following:

(*i*) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request.

(*ii*) Has not lapsed under section 9515 with respect to all secured parties of record.

(*iii*) If the request so states, has lapsed under section 9515 and a record of which is maintained by the filing office under section 9522(1).

(b) The date and time of filing of each financing statement.

(c) The information provided in each financing statement.

(4) In complying with its duty under subsection (3), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate or another record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(5) The filing office shall perform the acts required by subsections (1) through (4) at the time and in the manner prescribed by filing-office rule, but, in the case of a filing office described in section 9501(1)(b), not later than 2 business days after the filing office receives the request.

(6) At least weekly, at the per record rate under section 9525, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9524 Delay by filing office.

Sec. 9524. Delay by the filing office beyond a time limit prescribed by this part is excused if both of the following apply:

(a) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office.

(b) The filing office exercises reasonable diligence under the circumstances.


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**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9525 Fees.

Sec. 9525. (1) Except as otherwise provided in subsection (3) or (4), the fee for filing and indexing a record under this part is $15.00.

(2) A filing office shall charge a person a fee for responding to a request for a search of the records filed with a filing office concerning a debtor, including issuance of a certificate describing each presently effective record filed concerning the debtor if requested. The fee is $6.00, plus 1 or more of the following, if applicable:

(a) If the person requests expediting of the regular search process, an additional fee of $25.00.

(b) If the person requests copies of the presently effective records disclosed by the search, an additional fee of $2.00 per page.

(c) If the filing office is the secretary of state and the person requests that the secretary of state include an impression of the official seal of the secretary of state on the certificate, an additional fee of $6.00.

(3) This section does not require a fee with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9502(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(4) There is no fee for filing and indexing a correction statement filed with the office of the secretary of state under section 9518, filed by an individual named as a debtor on a record indexed by the secretary of state.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2004, Act 212, Eff. Jan. 1, 2005.

### 440.9526 Filing-office rules.

Sec. 9526. (1) The secretary of state shall adopt and publish rules to implement this article. The filing-office rules must be consistent with this article and adopted and published in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall do all of the following:

(a) Consult with filing offices in other jurisdictions that enact substantially this part.

(b) Consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization.

(c) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

**Administrative rules:** R 440.101 et seq. of the Michigan Administrative Code.

### 440.9527 Repealed. 2008, Act 383, Eff. Mar. 29, 2009.

**Compiler's note:** The repealed section pertained to submission of report by secretary of state on the operation of the filing office.

## PART 6
## DEFAULT

## SUBPART 1.
## DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

### 440.9601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Sec. 9601. (1) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9602, those provided by agreement of the parties. A secured party may do 1 or more of the following:

(a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure.

(b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under section 7106, 9104, 9105, 9106, or 9107 has the rights and duties provided in section 9207.


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(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in subsection (7) and section 9605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of the following:

(a) The date of perfection of the security interest or agricultural lien in the collateral.

(b) The date of filing a financing statement covering the collateral.

(c) Any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(7) Except as otherwise provided in section 9607(3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

### 440.9602 Waiver and variance of rights and duties.

Sec. 9602. Except as otherwise provided in section 9624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(a) Section 9207(2)(d)(*iii*), which deals with use and operation of the collateral by the secured party.

(b) Section 9210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account.

(c) Section 9607(3), which deals with collection and enforcement of collateral.

(d) Sections 9608(1) and 9615(3) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition.

(e) Sections 9608(1) and 9615(4) to the extent that they require accounting for or payment of surplus proceeds of collateral.

(f) Section 9609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace.

(g) Sections 9610(2), 9611, 9613, and 9614, which deal with disposition of collateral.

(h) Section 9615(6), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor.

(i) Section 9616, which deals with explanation of the calculation of a surplus or deficiency.

(j) Sections 9620, 9621, and 9622, which deal with acceptance of collateral in satisfaction of obligation.

(k) Section 9623, which deals with redemption of collateral.

(*l*) Section 9624, which deals with permissible waivers.

(m) Sections 9625 and 9626, which deal with the secured party's liability for failure to comply with this article.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9603 Agreement on standards concerning rights and duties.

Sec. 9603. (1) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9602 if the standards are not manifestly unreasonable.

(2) Subsection (1) does not apply to the duty under section 9609 to refrain from breaching the peace.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9604 Procedure if security agreement covers real property or fixtures.

Sec. 9604. (1) If a security agreement covers both personal and real property, a secured party may do either of the following:

(a) Proceed under this part as to the personal property without prejudicing any rights with respect to the real property.

(b) Proceed as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(2) Subject to subsection (3), if a security agreement covers goods that are or become fixtures, a secured party may do either of the following:

(a) Proceed under this part.

(b) Proceed in accordance with the rights with respect to real property, in which case the other provisions


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of this part do not apply.

(3) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9605 Unknown debtor or secondary obligor.

Sec. 9605. A secured party does not owe a duty based on its status as secured party to either of the following:

(a) To a person that is a debtor or obligor, unless the secured party knows all of the following:

(*i*) That the person is a debtor or obligor.

(*ii*) The identity of the person.

(*iii*) How to communicate with the person.

(b) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows both of the following:

(*i*) That the person is a debtor.

(*ii*) The identity of the person.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9606 Time of default for agricultural lien.

Sec. 9606. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9607 Collection and enforcement by secured party.

Sec. 9607. (1) If so agreed, and in any event after default, a secured party may do 1 or more of the following:

(a) Notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party.

(b) Take any proceeds to which the secured party is entitled under section 9315.

(c) Enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral.

(d) If it holds a security interest in a deposit account perfected by control under section 9104(1)(a), apply the balance of the deposit account to the obligation secured by the deposit account.

(e) If it holds a security interest in a deposit account perfected by control under section 9104(1)(b) or (c), instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(2) If necessary to enable a secured party to exercise under subsection (1)(c) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record both of the following in the office in which a record of the mortgage is recorded:

(a) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage.

(b) The secured party's sworn affidavit in recordable form stating both of the following:

(*i*) That a default has occurred with respect to the obligation secured by the mortgage.

(*ii*) That the secured party is entitled to enforce the mortgage nonjudicially.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party meets both of the following:

(a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral.

(b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.


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(4) A secured party may deduct from the collections made pursuant to subsection (3) reasonable expenses of collection and enforcement, including reasonable attorney fees and legal expenses incurred by the secured party.

(5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.

### 440.9608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

Sec. 9608. (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 9607 in the following order to:

(*i*) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party.

(*ii*) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made.

(*iii*) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subdivision (a)(*iii*).

(c) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9609 Secured party's right to take possession after default.

Sec. 9609. (1) After default, a secured party may do 1 or more of the following:

(a) Take possession of the collateral.

(b) Without removal, render equipment unusable and dispose of collateral on a debtor's premises under section 9610.

(2) A secured party may proceed under subsection (1) either pursuant to judicial process, or without judicial process if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9610 Disposition of collateral after default.

Sec. 9610. (1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by 1 or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral either at a public disposition, or at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of


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property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4) either in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition, or by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9611 Notification before disposition of collateral.

Sec. 9611. (1) As used in this section, "notification date" means the earlier of the date on which 1 of the following occurs:

(a) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition.

(b) The debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under section 9610 shall send to the persons specified in subsection (3) a reasonable authenticated notification of disposition.

(3) To comply with subsection (2), the secured party shall send an authenticated notification of disposition to all of the following:

(a) The debtor.

(b) Any secondary obligor.

(c) If the collateral is other than consumer goods, all of the following, as applicable:

(*i*) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.

(*ii*) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.

(*iii*) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9311(1).

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed by subsection (3)(c)(*ii*) if the secured party does both of the following:

(a) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)(*ii*).

(b) Before the notification date, 1 of the following applies:

(*i*) The secured party did not receive a response to the request for information.

(*ii*) The secured party received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9612 Timeliness of notification before disposition of collateral.

Sec. 9612. (1) Except as otherwise provided in subsection (2), whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9613 Contents and form of notification before disposition of collateral; generally.

Sec. 9613. Except in a consumer-goods transaction, the following rules apply:

(a) The contents of a notification of disposition are sufficient if the notification does all of the following:

(*i*) Describes the debtor and the secured party.

(*ii*) Describes the collateral that is the subject of the intended disposition.


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(*iii*) States the method of intended disposition.

(*iv*) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting.

(*v*) States the time and place of a public disposition or the time after which any other disposition is to be made.

(b) Whether the contents of a notification that lacks any of the information specified in subdivision (a) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subdivision (a) are sufficient, even if the notification includes information not specified by that paragraph or minor errors that are not seriously misleading.

(d) A particular phrasing of the notification is not required.

(e) The following form of notification and the form appearing in section 9614(c), when completed, each provides sufficient information:

```
              NOTIFICATION OF DISPOSITION OF COLLATERAL
To:                        [Name of debtor, obligor, or other
                           person to which the notification is
                           sent]
From:                      [Name, address, and telephone number
                           of secured party]
Name of Debtor(s):         [Include only if debtor(s) are not
                           an addressee]
[For a public disposition:]
```

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

```
Day and Date:              _______________
Time:                      _______________
Place:                     _______________
[For a private disposition:]
```

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $_____]. You may request an accounting by calling us at [telephone number].

```
                           [End of Form]
```

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9614 Contents and form of notification before disposition of collateral; consumer-goods transaction.

Sec. 9614. In a consumer-goods transaction, the following rules apply:

(a) A notification of disposition must provide all of the following information:

(*i*) The information specified in section 9613(a).

(*ii*) A description of any liability for a deficiency of the person to which the notification is sent.

(*iii*) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 9623 is available.

(*iv*) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(b) A particular phrasing of the notification is not required.

(c) The following form of notification, when completed, provides sufficient information:

```
[Name and address of secured party]
[Date]
                NOTICE OF OUR PLAN TO SELL PROPERTY
[Name and address of any obligor who is also a debtor]
Subject:          [Identification of Transaction]
     We have your [describe collateral], because you broke
promises in our agreement.
[For a public disposition:]
     We will sell [describe collateral] at public sale. A sale
could include a lease or license. The sale will be held as
follows:
```


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Date: _____
Time: _____
Place: _____
You may attend the sale and bring bidders if you want.
[For a private disposition:]
We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.
The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.
You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].
If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you $_____for the explanation if we sent you another written explanation of the amount you owe us within the last 6 months.]
If you need more information about the sale, call us at [telephone number] [or write us at [secured party's address]].
We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement: [Names of all other debtors and obligors, if any].

[End of Form]

(d) A notification in the form of subdivision (c) is sufficient, even if additional information appears at the end of the form.

(e) A notification in the form of subdivision (c) is sufficient, even if it includes errors in information not required by subdivision (a), unless the error is misleading with respect to rights arising under this article.

(f) If a notification under this section is not in the form of subdivision (c), law other than this article determines the effect of including information not required by subdivision (a).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9615 Application of proceeds of disposition; liability for deficiency and right to surplus.

Sec. 9615. (1) A secured party shall apply or pay over for application the cash proceeds of disposition under section 9610 in the following order:

(a) To the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party.

(b) To the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

(c) To the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if both of the following, if applicable, are met:

(*i*) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed.

(*ii*) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor.

(d) To a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under section 9610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.


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(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3), both of the following apply:

(a) Unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus.

(b) The obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if both of the following apply:

(a) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor.

(b) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) All of the following apply to a secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) The secured party takes the cash proceeds free of the security interest or other lien.

(b) The secured party is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien.

(c) The secured party is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9616 Explanation of calculation of surplus or deficiency.

Sec. 9616. (1) As used in this section:

(a) "Explanation" means a writing that does all of the following:

(*i*) States the amount of the surplus or deficiency.

(*ii*) Provides an explanation in accordance with subsection (3) of how the secured party calculated the surplus or deficiency.

(*iii*) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency.

(*iv*) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(b) "Request" means a record that meets all of the following:

(*i*) Authenticated by a debtor or consumer obligor.

(*ii*) Requesting that the recipient provide an explanation.

(*iii*) Sent after disposition of the collateral under section 9610.

(2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 9615, the secured party shall do 1 or both of the following:

(a) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and in accordance with both of the following:

(*i*) Sent before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency.

(*ii*) Sent within 14 days after receipt of a request.

(b) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(3) To comply with subsection (1)(a)(*ii*), a writing must provide the following information in the following order:

(a) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date, that is 1 of the following:

(*i*) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession.

(*ii*) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition.


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(b) The amount of proceeds of the disposition.

(c) The aggregate amount of the obligations after deducting the amount of proceeds.

(d) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney fees secured by the collateral that are known to the secured party and relate to the current disposition.

(e) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in subdivision (a).

(f) The amount of the surplus or deficiency.

(4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1) is sufficient, even if it includes minor errors that are not seriously misleading.

(5) A debtor or consumer obligor is entitled without charge to 1 response to a request under this section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding $25.00 for each additional response.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2001, Act 145, Eff. Jan. 1, 2002.

### 440.9617 Rights of transferee of collateral.

Sec. 9617. (1) A secured party's disposition of collateral after default does all of the following:

(a) Transfers to a transferee for value all of the debtor's rights in the collateral.

(b) Discharges the security interest under which the disposition is made.

(c) Discharges any subordinate security interest or other subordinate lien.

(2) A transferee that acts in good faith takes free of the rights and interests described in subsection (1), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(3) If a transferee does not take free of the rights and interests described in subsection (1), the transferee takes the collateral subject to all of the following:

(a) The debtor's rights in the collateral.

(b) The security interest or agricultural lien under which the disposition is made.

(c) Any other security interest or other lien.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9618 Rights and duties of certain secondary obligors.

Sec. 9618. (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after all of the following:

(a) The secondary obligor receives an assignment of a secured obligation from the secured party.

(b) The secondary obligor receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party.

(c) The secondary obligor is subrogated to the rights of a secured party with respect to collateral.

(2) An assignment, transfer, or subrogation described in subsection (1) results in both of the following:

(a) It is not a disposition of collateral under section 9610.

(b) It relieves the secured party of further duties under this article.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9619 Transfer of record or legal title.

Sec. 9619. (1) As used in this section, “transfer statement” means a record authenticated by a secured party stating all of the following:

(a) That the debtor has defaulted in connection with an obligation secured by specified collateral.

(b) That the secured party has exercised its postdefault remedies with respect to the collateral.

(c) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral.

(d) The name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall do all of the following:

(a) Accept the transfer statement.

(b) Promptly amend its records to reflect the transfer.

(c) If applicable, issue a new appropriate certificate of title in the name of the transferee.


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(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

Sec. 9620. (1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if all of the following are met:

(a) The debtor consents to the acceptance under subsection (3).

(b) The secured party does not receive, within the time set forth in subsection (4), a notification of objection to the proposal authenticated by 1 of the following:

(*i*) A person to which the secured party was required to send a proposal under section 9621.

(*ii*) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal.

(c) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(d) Subsection (5) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 9624.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless both of the following occur:

(a) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor.

(b) The conditions of subsection (1) are met.

(3) All of the following apply for purposes of this section:

(a) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default.

(b) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party meets all of the following requirements:

(*i*) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained.

(*ii*) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures.

(*iii*) Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(4) To be effective under subsection (1)(b), a notification of objection must be received by the secured party within or before 1 of the following:

(a) In the case of a person to which the proposal was sent pursuant to section 9621, within 20 days after notification was sent to that person.

(b) In other cases, 1 of the following:

(*i*) Within 20 days after the last notification was sent pursuant to section 9621.

(*ii*) If a notification was not sent, before the debtor consents to the acceptance under subsection (3).

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 9610 within the time specified in subsection (6) if 1 of the following is met:

(a) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods.

(b) Sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(6) To comply with subsection (5), the secured party shall dispose of the collateral within 1 of the following:

(a) Within 90 days after taking possession.

(b) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9621 Notification of proposal to accept collateral.


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Sec. 9621. (1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to all of the following:

(a) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral.

(b) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that met all of the following:

(*i*) Identified the collateral.

(*ii*) Was indexed under the debtor's name as of that date.

(*iii*) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date.

(c) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9311(1).

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1).

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9622 Effect of acceptance of collateral.

Sec. 9622. (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures does all of the following:

(a) Discharges the obligation to the extent consented to by the debtor.

(b) Transfers to the secured party all of a debtor's rights in the collateral.

(c) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien.

(d) Terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under subsection (1), even if the secured party fails to comply with this article.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9623 Right to redeem collateral.

Sec. 9623. (1) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral, a person shall tender both of the following:

(a) Fulfillment of all obligations secured by the collateral.

(b) The reasonable expenses and attorney fees described in section 9615(1)(a).

(3) A redemption may occur at any time before a secured party has done 1 of the following:

(a) Has collected collateral under section 9607.

(b) Has disposed of collateral or entered into a contract for its disposition under section 9610.

(c) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 9622.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9624 Waiver.

Sec. 9624. (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 9611 only by an agreement to that effect entered into and authenticated after default.

(2) A debtor may waive the right to require disposition of collateral under section 9620(5) only by an agreement to that effect entered into and authenticated after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 9623 only by an agreement to that effect entered into and authenticated after default.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

## SUBPART 2.
## NONCOMPLIANCE WITH ARTICLE

### 440.9625 Remedies for secured party's failure to comply with article.

Sec. 9625. (1) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4), and (6), a person is liable for damages in the amount of any loss caused


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by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in section 9628, both of the following apply:

(a) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss.

(b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge paid plus 10% of the principal amount of the obligation or the time-price differential paid plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under section 9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 9626 may not otherwise recover under subsection (2) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance. Regardless of whether the debtor's or secondary obligor's deficiency is eliminated or reduced under section 9626 or other applicable law, any damages recovered by the debtor or secondary obligor under subsection (3) shall be reduced by the amount that the sum of the secured obligation, expenses, and attorney's fees exceeds the proceeds of collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500.00 in each case from a person that does 1 or more of the following:

(a) Fails to comply with section 9208.

(b) Fails to comply with section 9209.

(c) Files a record that the person is not entitled to file under section 9509(1).

(d) Fails to cause the secured party of record to file or send a termination statement as required by section 9513(1) or (3).

(e) Fails to comply with section 9616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(f) Fails to comply with section 9616(2)(b).

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, $500.00 in each case from a person that, without reasonable cause, fails to comply with a request under section 9210. A recipient of a request under section 9210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2014, Act 104, Imd. Eff. Apr. 10, 2014.

### 440.9626 Action in which deficiency or surplus is in issue.

Sec. 9626. In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(c) Except as otherwise provided in section 9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney fees exceeds the greater of 1 of the following:

(*i*) The proceeds of the collection, enforcement, disposition, or acceptance.

(*ii*) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(d) For purposes of subdivision (c)(*ii*), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under section 9615(6), the debtor or obligor has the burden of


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establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2014, Act 104, Imd. Eff. Apr. 10, 2014.

### 440.9627 Determination of whether conduct was commercially reasonable.

Sec. 9627. (1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner on any recognized market, at the price current in any recognized market at the time of the disposition, or otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved in a judicial proceeding, by a bona fide creditors' committee, by a representative of creditors, or by an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9628 Nonliability and limitation on liability of secured party; liability of secondary obligor.

Sec. 9628. (1) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person, both of the following apply:

(a) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article.

(b) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(2) A secured party is not liable because of its status as secured party to either of the following:

(a) To a person that is a debtor or obligor, unless the secured party knows all of the following:

(*i*) That the person is a debtor or obligor.

(*ii*) The identity of the person.

(*iii*) How to communicate with the person.

(b) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows both of the following:

(*i*) That the person is a debtor.

(*ii*) The identity of the person.

(3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on 1 or more of the following:

(a) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held.

(b) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(4) A secured party is not liable to any person under section 9625(3)(b) for its failure to comply with section 9616.

(5) A secured party is not liable under section 9625(3)(b) more than once with respect to any 1 secured obligation.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

## PART 7
## TRANSITION

### 440.9701 “This amendatory act” defined.

Sec. 9701. As used in this part, “this amendatory act” means the amendatory act that added this part.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9702 Savings clause.


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Sec. 9702. (1) Except as otherwise provided in this part, this amendatory act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this amendatory act takes effect.

(2) Except as otherwise provided in subsection (3) and sections 9703 through 9709, both of the following apply:

(a) Transactions and liens that were not governed by this article before this amendatory act takes effect, were validly entered into or created before this amendatory act takes effect, and would be subject to this amendatory act if they had been entered into or created after this amendatory act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this amendatory act takes effect.

(b) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this amendatory act or by the law that otherwise would apply if this amendatory act had not taken effect.

(3) This amendatory act does not affect an action, case, or proceeding commenced before this amendatory act takes effect.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9703 Security interest perfected before effective date.

Sec. 9703. (1) A security interest that is enforceable immediately before this amendatory act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this amendatory act if, when this amendatory act takes effect, the applicable requirements for enforceability and perfection under this amendatory act are satisfied without further action.

(2) Except as otherwise provided in section 9705, if, immediately before this amendatory act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this amendatory act are not satisfied when this amendatory act takes effect, all of the following apply to the security interest:

(a) The security interest is a perfected security interest for 1 year after this amendatory act takes effect.

(b) The security interest remains enforceable thereafter only if the security interest becomes enforceable under section 9203 before the year expires.

(c) The security interest remains perfected thereafter only if the applicable requirements for perfection under this amendatory act are satisfied before the year expires.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9704 Security interest unperfected before effective date.

Sec. 9704. All of the following apply to a security interest that is enforceable immediately before this amendatory act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(a) The security interest remains an enforceable security interest for 1 year after this amendatory act takes effect.

(b) The security interest remains enforceable thereafter if the security interest becomes enforceable under section 9203 when this amendatory act takes effect or within 1 year thereafter.

(c) The security interest becomes perfected under 1 of the following:

(*i*) Without further action, when this amendatory act takes effect if the applicable requirements for perfection under this amendatory act are satisfied before or at that time.

(*ii*) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9705 Effectiveness of action taken before effective date.

Sec. 9705. (1) If action, other than the filing of a financing statement, is taken before this amendatory act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this amendatory act takes effect, the action is effective to perfect a security interest that attaches under this amendatory act within 1 year after this amendatory act takes effect. An attached security interest becomes unperfected 1 year after this amendatory act takes effect unless the security interest becomes a perfected security interest under this amendatory act before the expiration of that period.

(2) The filing of a financing statement before this amendatory act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this


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amendatory act.

(3) This amendatory act does not render ineffective an effective financing statement that, before this amendatory act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9103 before this amendatory act takes effect. However, except as otherwise provided in subsections (4) and (5) and section 9706, the financing statement ceases to be effective at the earlier of the following:

(a) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed.

(b) June 30, 2006.

(4) The filing of a continuation statement after this amendatory act takes effect does not continue the effectiveness of the financing statement filed before this amendatory act takes effect. However, upon the timely filing of a continuation statement after this amendatory act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this amendatory act takes effect continues for the period provided by the law of that jurisdiction.

(5) Subsection (3)(b) applies to a financing statement that, before this amendatory act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9103 before this amendatory act takes effect only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(6) A financing statement that includes a financing statement filed before this amendatory act takes effect and a continuation statement filed after this amendatory act takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9706 When initial financing statement suffices to continue effectiveness of financing statement.

Sec. 9706. (1) The filing of an initial financing statement in the office specified in section 9501 continues the effectiveness of a financing statement filed before this amendatory act takes effect if all of the following apply:

(a) The filing of an initial financing statement in that office would be effective to perfect a security interest under this amendatory act.

(b) The pre-effective-date financing statement was filed in an office in another state or another office in this state.

(c) The initial financing statement satisfies subsection (3).

(2) The filing of an initial financing statement under subsection (1) continues the effectiveness of the pre-effective-date financing statement if both of the following apply:

(a) If the initial financing statement is filed before this amendatory act takes effect, for the period provided in section 9403 before this amendatory act takes effect with respect to a financing statement.

(b) If the initial financing statement is filed after this amendatory act takes effect, for the period provided in section 9515 with respect to an initial financing statement.

(3) To be effective for purposes of subsection (1), an initial financing statement must do all of the following:

(a) Satisfy the requirements of part 5 for an initial financing statement.

(b) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement.

(c) Indicate that the pre-effective-date financing statement remains effective.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9707 Pre-effective-date financing statement.

Sec. 9707. (1) As used in this section, “pre-effective-date financing statement” means a financing statement filed before this amendatory act takes effect.

(2) After this amendatory act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.


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(3) Except as otherwise provided in subsection (4), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this amendatory act takes effect only if 1 of the following is met:

(a) The pre-effective-date financing statement and an amendment are filed in the office specified in section 9501.

(b) An amendment is filed in the office specified in section 9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9706(3).

(c) An initial financing statement that provides the information as amended and satisfies section 9706(3) is filed in the office specified in section 9501.

(4) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 9705(4) and (6) or 9706.

(5) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this amendatory act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 9706(3) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9708 Persons entitled to file initial financing statement or continuation statement.

Sec. 9708. A person may file an initial financing statement or a continuation statement under this part if both of the following apply:

(a) The secured party of record authorizes the filing.

(b) The filing is necessary under this part to do 1 of the following:

(*i*) To continue the effectiveness of a financing statement filed before this amendatory act takes effect.

(*ii*) To perfect or continue the perfection of a security interest.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

### 440.9709 Priority.

Sec. 9709. (1) This amendatory act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this amendatory act takes effect, this article as in effect before this amendatory act takes effect determines priority.

(2) For purposes of section 9322(1), the priority of a security interest that becomes enforceable under section 9203 of this amendatory act dates from the time this amendatory act takes effect if the security interest is perfected under this amendatory act by the filing of a financing statement before this amendatory act takes effect which would not have been effective to perfect the security interest under this article as in effect before this amendatory act takes effect. This subsection does not apply to conflicting security interests each of which is perfected by the filing of a financing statement described in this subsection.

**History:** Add. 2000, Act 348, Eff. July 1, 2001.

## PART 8
## TRANSITION PROVISIONS FOR 2010 AMENDMENTS

### 440.9801 Definitions.

Sec. 9801. As used in this part:

(a) "Pre-effective-date financing statement" means a financing statement filed before the effective date of this amendatory act.

(b) "This amendatory act" means the amendatory act that added this part.

(c) "This amended article" means this article as amended by this amendatory act.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

### 440.9802 Applicability; scope.

Sec. 9802. (1) Except as otherwise provided in this part, this amendatory act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of this amendatory act.

(2) This amendatory act does not affect an action, case, or proceeding commenced before the effective date of this amendatory act.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.


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### 440.9803 Perfected security interest before effective date of amendatory act.

Sec. 9803. (1) A security interest that is a perfected security interest immediately before the effective date of this amendatory act is a perfected security interest under this amended article if, on the effective date of this amendatory act, the applicable requirements for attachment and perfection under this amended article are satisfied without further action.

(2) Except as otherwise provided in section 9805, if, immediately before the effective date of this amendatory act, a security interest is a perfected security interest, but the applicable requirements for perfection under this amended article are not satisfied on the effective date of this amendatory act, the security interest remains perfected thereafter only if the applicable requirements for perfection under this amended article are satisfied within 1 year after the effective date of this amendatory act.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

### 440.9804 Unperfected security interest before effective date of amendatory act.

Sec. 9804. A security interest that is an unperfected security interest immediately before the effective date of this amendatory act becomes a perfected security interest when either of the following occurs:

(a) Without further action, on the effective date of this amendatory act if the applicable requirements for perfection under this amended article are satisfied before or at that time.

(b) When the applicable requirements for perfection are satisfied if the requirements are satisfied after the effective date of this amendatory act.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

### 440.9805 Filing of financing statement or continuation statement before effective date of amendatory act.

Sec. 9805. (1) The filing of a financing statement before the effective date of this amendatory act is effective to perfect a security interest to the extent that the filing would satisfy the applicable requirements for perfection under this amended article.

(2) This amendatory act does not render ineffective an effective financing statement that is filed before the effective date of this amendatory act and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before the effective date of this amendatory act. However, except as otherwise provided in subsections (3) and (4) and section 9806, the financing statement ceases to be effective at 1 of the following times, as applicable:

(a) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this amendatory act not taken effect.

(b) If the financing statement is filed in another jurisdiction, at the earlier of the following:

(*i*) The time the financing statement would have ceased to be effective under the law of that jurisdiction.

(*ii*) June 30, 2018.

(3) The filing of a continuation statement after the effective date of this amendatory act does not continue the effectiveness of a financing statement filed before the effective date of this amendatory act. However, upon the timely filing of a continuation statement after the effective date of this amendatory act and in accordance with the law of the jurisdiction governing perfection as provided in this amended article, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of this amendatory act continues for the period provided by the law of that jurisdiction.

(4) Subsection (2)(b)(*ii*) applies to a financing statement that is filed before the effective date of this amendatory act against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article before the effective date of this amendatory act, only to the extent that this amended article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(5) A financing statement that includes a financing statement filed before the effective date of this amendatory act and a continuation statement filed after the effective date of this amendatory act is effective only to the extent that it satisfies the requirements of part 5 as amended by this amendatory act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 9503(1)(b) as amended by this amendatory act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 9503(1)(c) as amended by this amendatory act.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.


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### 440.9806 Continuation of effectiveness of pre-effective-date financing statement; filing of initial financing statement.

Sec. 9806. (1) The filing of an initial financing statement in the office specified in section 9501 continues the effectiveness of a pre-effective-date financing statement if all of the following are met:

(a) The filing of an initial financing statement in that office would be effective to perfect a security interest under this amended article.

(b) The pre-effective-date financing statement was filed in an office in another state.

(c) The initial financing statement satisfies subsection (3).

(2) The filing of an initial financing statement under subsection (1) continues the effectiveness of the pre-effective-date financing statement for 1 of the following periods:

(a) If the initial financing statement is filed before the effective date of this amendatory act, for the period provided in section 9515 as it existed before the effective date of this amendatory act with respect to an initial financing statement.

(b) If the initial financing statement is filed after the effective date of this amendatory act, for the period provided in section 9515 as amended by this amendatory act with respect to an initial financing statement.

(3) To be effective for purposes of subsection (1), an initial financing statement must do all of the following:

(a) Satisfy the requirements of part 5 as amended by this amendatory act for an initial financing statement.

(b) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement.

(c) Indicate that the pre-effective-date financing statement remains effective.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

### 440.9807 Amending information in pre-effective-date financing statement; filing termination statement.

Sec. 9807. (1) After the effective date of this amendatory act, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this amended article. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(2) Except as otherwise provided in subsection (3), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the effective-date of this amendatory act only if 1 of the following is met:

(a) The pre-effective-date financing statement and an amendment are filed in the office specified in section 9501.

(b) An amendment is filed in the office specified in section 9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9806(3).

(c) An initial financing statement that provides the information as amended and satisfies section 9806(3) is filed in the office specified in section 9501.

(3) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 9805(3) and (5) or 9806.

(4) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the effective date of this amendatory act by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 9806(3) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this amended article as the office in which to file a financing statement.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

### 440.9808 Filing initial financing statement or continuation statement; conditions.

Sec. 9808. A person may file an initial financing statement or a continuation statement under this part if all of the following are met:

(a) The secured party of record authorizes the filing.

(b) The filing is necessary under this part to do any of the following:

(*i*) To continue the effectiveness of a financing statement filed before the effective date of this amendatory act.


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(*ii*) To perfect or continue the perfection of a security interest.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

### 440.9809 Priority of conflicting claims to collateral; establishment before effective date of amendatory act.

Sec. 9809. This amendatory act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of this amendatory act, this article as it existed before the effective date of this amendatory act determines priority.

**History:** Add. 2012, Act 88, Eff. July 1, 2013.

EFFECTIVE DATE AND REPEALER

### 440.9991 Effective date of act; application to future transactions.

Sec. 9991. This act shall become effective on January 1, 1964. It applies to transactions entered into and events occurring after that date.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.9992 Repeal.

Sec. 9992. The following acts and parts of acts, as amended, are hereby repealed:

(1) Revised Statutes of 1846.

| Chapter | Section Numbers | Compiled Law Sections (1948) |
|---|---|---|
| 81 | 7 to 16 | 566.137 to 566.146 |

(2) Public Acts.

| Year of Act | Public Act Number | Section Numbers | Compiled Law Sections (1948) |
|---|---|---|---|
| 1877 | 57 | | 566.191 |
| 1881 | 117 | | 566.201 and 566.202 |
| 1893 | 81 | | 469.291 to 469.293 |
| 1895 | 220 | 2 to 6 | 444.2 to 444.6 |
| 1895 | 220 | 8 | 444.8 |
| 1895 | 220 | 11 | 444.11 |
| 1895 | 220 | 12 | 444.12 |
| 1895 | 220 | 14 to 22 | 444.14 to 444.22 |
| 1899 | 84 | | 442.301 to 442.303 |
| 1901 | 236 | | 468.321 |
| 1905 | 223 | | 442.1 to 442.3 |
| 1905 | 265 | | 439.1 to 439.191 |
| 1907 | 95 | | 487.661 |
| 1909 | 303 | 1 to 49 | 443.1 to 443.49 |
| 1909 | 303 | 56 to 58 | 443.56 to 443.58 |
| 1911 | 165 | 1 to 43 | 482.1 to 482.43 |
| 1911 | 165 | 51 to 56 | 482.51 to 482.56 |
| 1913 | 100 | | 440.1 to 440.78 |
| 1913 | 106 | | 441.1 to 441.25 |
| 1915 | 64 | | 442.101 |
| 1919 | 386 | | 487.641 |
| 1919 | 378 | | 487.671 |
| 1925 | 348 | | 487.681 and 487.682 |
| 1925 | 390 | | 487.621 |
| 1929 | 200 | | 442.51 to 442.53 |
| 1931 | 327 | 26 | 450.26 |
| 1931 | 240 | | 487.601 to 487.617 |
| 1933 | 154 | | 442.151 |
| 1937 | 341 | 48 | 487.48 |


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| | | | |
|---|---|---|---|
| 1937 | 341 | 154 | 487.154 |
| 1937 | 341 | 213 | 487.213 |
| 1939 | 290 | | 566.401 to 566.412 |
| 1939 | 305 | 3 to 14 | 566.303 to 566.314 |
| 1943 | 187 | | 566.501 |
| 1947 | 180 | | 570.501 to 570.512 |
| 1950 (Ex. Sess.) | 27 | 23 to 27 | 492.123 to 492.127 |
| 1952 | 19 | | 555.401 to 555.419 |
| 1961 | 236 | 2150 | 600.2150 |
| 1961 | 236 | 5401 to 5445 | 600.5401 to 600.5445 |

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.9993 Saving clause.

Sec. 9993. Transactions validly entered into before the effective date specified in section 9991 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment had not occurred.

**History:** 1962, Act 174, Eff. Jan. 1, 1964.

### 440.9994 Effect of Article 7.

Sec. 9994. The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein. The fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 1201).

**History:** 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

## ARTICLE 11
## EFFECTIVE DATE AND PROVISIONS FOR TRANSITION TO AMENDATORY ACT

### 440.11101 Repealed. 2012, Act 88, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to effective date.

### 440.11102 Repealed. 2012, Act 88, Eff. July 1, 2013.

**Compiler's note:** The repealed section pertained to continuation statement and transactions entered into before effective date of amendatory act.


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