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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Reps. Huuki, Cotter and Lipton

ENROLLED HOUSE BILL No. 5081

AN ACT to amend 1962 PA 174, entitled “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,” by amending the heading for part 1 and sections 1101, 1102, 1103, 1106, 1202, 1203, 1204, 1205, 1206, 2202, 2A501, 2A518, 2A519, 2A527, 2A528, 3103, 4A105, 4A106, 4A204, 5103, and 8102 (MCL 440.1101, 440.1102, 440.1103, 440.1106, 440.1202, 440.1203, 440.1204, 440.1205, 440.1206, 440.2202, 440.2951, 440.2968, 440.2969, 440.2977, 440.2978, 440.3103, 440.4605, 440.4606, 440.4704, 440.5103, and 440.8102), sections 1206 and 8102 as amended by 1998 PA 278, sections 2A501, 2A518, 2A519, 2A527, and 2A528 as added by 1992 PA 101, section 3103 as amended by 1993 PA 130, sections 4A105, 4A106, and 4A204 as added by 1992 PA 100, and section 5103 as amended by 1998 PA 488, and by adding a heading for part 3 and sections 1108, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, and 1310; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

PART 1
GENERAL PROVISIONS

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”.

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

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.

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.

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.

(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.

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.

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.

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

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

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.

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.

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

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.

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 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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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 elected not to cover and section 2A519 governs.

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.

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)).

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 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.

Sec. 3103. (1) As used in this article:

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(e) "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 alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(f) “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.

(g) “Party” means a party to an instrument.

(h) “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.

(i) “Prove” with respect to a fact means to meet the burden of establishing the fact under section 1201(2)(h).

(j) “Remitter” means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(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.
“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:

“Bank”	section 4105.
“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.

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.

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.

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.

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.

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.

(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
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.

Enacting section 1. Sections 1105, 1107, 1207, 1208, 1209, 1210, 1211, 2208, and 2A207 of the uniform commercial code, 1962 PA 174, MCL 440.1105, 440.1107, 440.1207, 440.1208, 440.1209, 440.1210, 440.1211, 440.2208, and 440.2857, are repealed.

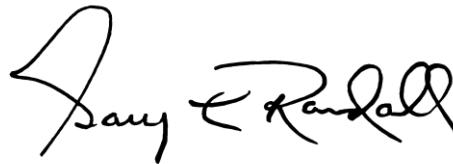
Enacting section 2. This amendatory act takes effect July 1, 2013.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

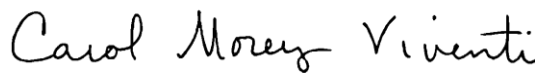
(a) House Bill No. 5082.

(b) House Bill No. 5083.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: House Bill No. 5082, referred to in enacting section 3, was filed with the Secretary of State April 11, 2012, and became 2012 PA 87, Eff. July 1, 2013.

House Bill No. 5083, also referred to in enacting section 3, was filed with the Secretary of State April 11, 2012, and became 2012 PA 88, Eff. July 1, 2013.