

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

**Introduced by Reps. Cotter, Lipton and Huuki**

# **ENROLLED HOUSE BILL No. 5082**

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 sections 1201, 2103, 2104, 2310, 2323, 2401, 2503, 2505, 2506, 2509, 2605, 2705, 2A103, 2A514, 2A526, 4104, 4210, 7101, 7102, 7103, 7104, 7105, 7201, 7202, 7203, 7204, 7205, 7206, 7207, 7208, 7209, 7210, 7301, 7302, 7303, 7304, 7305, 7307, 7308, 7309, 7401, 7402, 7403, 7404, 7501, 7502, 7503, 7504, 7505, 7506, 7507, 7508, 7509, 7601, 7602, 7603, 8103, 9102, 9203, 9207, 9208, 9301, 9310, 9312, 9313, 9314, 9317, 9338, and 9601 (MCL 440.1201, 440.2103, 440.2104, 440.2310, 440.2323, 440.2401, 440.2503, 440.2505, 440.2506, 440.2509, 440.2605, 440.2705, 440.2803, 440.2964, 440.2976, 440.4104, 440.4210, 440.7101, 440.7102, 440.7103, 440.7104, 440.7105, 440.7201, 440.7202, 440.7203, 440.7204, 440.7205, 440.7206, 440.7207, 440.7208, 440.7209, 440.7210, 440.7301, 440.7302, 440.7303, 440.7304, 440.7305, 440.7307, 440.7308, 440.7309, 440.7401, 440.7402, 440.7403, 440.7404, 440.7501, 440.7502, 440.7503, 440.7504, 440.7505, 440.7506, 440.7507, 440.7508, 440.7509, 440.7601, 440.7602, 440.7603, 440.8103, 440.9102, 440.9203, 440.9207, 440.9208, 440.9301, 440.9310, 440.9312, 440.9313, 440.9314, 440.9317, 440.9338, and 440.9601), sections 1201, 2103, 2A103, 4210, 7503, 8103, 9102, 9203, 9207, 9208, 9301, 9310, 9312, 9313, 9314, and 9317 as amended and sections 9338 and 9601 as added by 2000 PA 348, sections 2A514 and 2A526 as added by 1992 PA 101, and section 4104 as amended by 1998 PA 278, and by adding section 7106 and part 7.

*The People of the State of Michigan enact:*

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.

(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 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.

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). |
| “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.

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.

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.

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.

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".

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.

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.

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.

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.

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.

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.

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 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 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.

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.

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 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.

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 2a 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.

"Bank". Section 4105.

"Collecting bank". Section 4105.

"Depository 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. |
| “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.

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 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.

Sec. 7101. This article shall be known and may be cited as “uniform commercial code—documents of title”.

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.

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.

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.

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.

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 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.

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.

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.

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:

(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.

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.

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.

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.

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.

(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.

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.

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.

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 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.

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 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.

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.

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.

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 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.

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.

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.

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.

(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.

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.

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.

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.

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.

(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.

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.

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.

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:

(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.

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.

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 lessee 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 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.

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.

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.

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.

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.

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.

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.

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.

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.

## PART 7

### MISCELLANEOUS PROVISIONS

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.

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.

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.

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.

(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.

(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).

(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 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 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  |
| “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<br>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.

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.

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 other obligor on the 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.

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 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.

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.

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.

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).

(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.

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.

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.

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.

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.

(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.

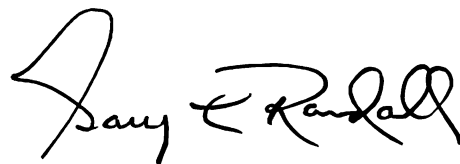
Enacting section 1. This amendatory act takes effect July 1, 2013.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

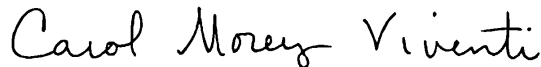
(a) House Bill No. 5081.

(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