

AMENDMENTS TO LB 570

1           1. Strike the original sections and insert the following  
2 new sections:

3           "Section 1. Section 45-1,109, Reissue Revised Statutes  
4 of Nebraska, is amended to read:

5           45-1,109. Sections 45-1,105 to 45-1,110 shall apply to  
6 all consumer credit transactions in this state subject to a  
7 security interest, as defined in subdivision ~~(37) of section 1-201,~~  
8 ~~Uniform Commercial Code~~ (35) of section 1-201 Uniform Commercial  
9 Code, entered into, extended, or renewed on or after January 1,  
10 1984.

11          Sec. 2. Section 53-208, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13          53-208. Good faith shall mean honesty in fact and the  
14 observance of reasonable commercial standards of fair dealing in  
15 the trade.  ~~, as defined in and interpreted under section 1-201,~~  
16 ~~Uniform Commercial Code.~~

17          Sec. 3. Section 69-2103, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19          69-2103. For purposes of the Consumer Rental Purchase  
20 Agreement Act:

21           (1) Advertisement ~~shall mean~~ means a commercial message  
22 in any medium that aids, promotes, or assists directly or  
23 indirectly a consumer rental purchase agreement but ~~shall~~ does not  
24 include in-store merchandising aids such as window signs and

1 ceiling banners;

2 (2) Cash price ~~shall mean~~ means the price at which the  
3 lessor would have sold the property to the consumer for cash on the  
4 date of the consumer rental purchase agreement for the property;

5 (3) Consumer ~~shall mean~~ means a natural person who rents  
6 property under a consumer rental purchase agreement;

7 (4) Consumer rental purchase agreement ~~shall mean~~ means  
8 an agreement which is for the use of property by a consumer  
9 primarily for personal, family, or household purposes, which is for  
10 an initial period of four months or less, whether or not there is  
11 any obligation beyond the initial period, which is automatically  
12 renewable with each payment, and which permits the consumer to  
13 become the owner of the property. A consumer rental purchase  
14 agreement in compliance with the act shall not be construed to be a  
15 lease or agreement which constitutes a credit sale as defined in 12  
16 C.F.R. 226.2(a)(16), as such regulation existed on September 1,  
17 2001, and 15 U.S.C. 1602(g), as such section existed on September  
18 1, 2001, or a lease which constitutes a consumer lease as defined  
19 in 12 C.F.R. 213.2(e), as such regulation existed on September 1,  
20 2001. Consumer rental purchase agreement ~~shall~~ does not include:

21 (a) Any lease for agricultural, business, or commercial  
22 purposes;

23 (b) Any lease made to an organization;

24 (c) A lease or agreement which constitutes an installment  
25 sale or installment contract as defined in section 45-335;

26 (d) A security interest as defined in ~~section 1-201,~~  
27 ~~Uniform Commercial Code~~ subdivision (35) of section 1-201, Uniform

1 Commercial Code; and

2 (e) A home solicitation sale as defined in section  
3 69-1601;

4 (5) Consummation ~~shall mean~~ means the occurrence of an  
5 event which causes a consumer to become contractually obligated on  
6 a consumer rental purchase agreement;

7 (6) Department ~~shall mean~~ means the Department of Banking  
8 and Finance;

9 (7) Lease payment ~~shall mean~~ means a payment to be made  
10 by the consumer for the right of possession and use of the property  
11 for a specific lease period but shall not include taxes imposed on  
12 such payment;

13 (8) Lease period ~~shall mean~~ means a week, month, or other  
14 specific period of time, during which the consumer has the right to  
15 possess and use the property after paying the lease payment and  
16 applicable taxes for such period;

17 (9) Lessor ~~shall mean~~ means a person who in the ordinary  
18 course of business operates a commercial outlet which regularly  
19 leases, offers to lease, or arranges for the leasing of property  
20 under a consumer rental purchase agreement;

21 (10) Property ~~shall mean~~ means any property that is not  
22 real property under the laws of this state when made available for  
23 a consumer rental purchase agreement; and

24 (11) Total of payments to acquire ownership ~~shall mean~~  
25 means the total of all charges imposed by the lessor and payable by  
26 the consumer as a condition of acquiring ownership of the property.  
27 Total of payments to acquire ownership ~~shall~~ include lease payments

1 and any initial nonrefundable administrative fee or required  
2 delivery charge but ~~shall~~ do not include taxes, late charges,  
3 reinstatement fees, or charges for optional products or services.

4 Sec. 4. Section 86-630, Revised Statutes Supplement,  
5 2004, is amended to read:

6 86-630. (1) Except as otherwise provided in subsection  
7 (2) of this section, the Uniform Electronic Transactions Act  
8 applies to electronic records and electronic signatures relating to  
9 a transaction.

10 (2) The act does not apply to a transaction to the extent  
11 it is governed by:

12 (a) A law governing the creation and execution of wills,  
13 codicils, or testamentary trusts; or

14 (b) The Uniform Commercial Code other than ~~sections 1-107~~  
15 ~~and 1-206~~, article 2, and article 2A.

16 (3) The act applies to an electronic record or electronic  
17 signature otherwise excluded from the application of the act under  
18 subsection (2) of this section to the extent it is governed by a  
19 law other than those specified in subsection (2) of this section.

20 (4) A transaction subject to the act is also subject to  
21 other applicable substantive law.

22 Sec. 5. Section 86-643, Revised Statutes Supplement,  
23 2004, is amended to read:

24 86-643. (1) In this section, transferable record means  
25 an electronic record that:

26 (a) Would be a note under article 3 of the Uniform  
27 Commercial Code or a document under ~~article 7 of the Uniform~~

1 ~~Commercial Code~~ article 7 of the Uniform Commercial Code if the  
2 electronic record were in writing; and

3 (b) The issuer of the electronic record expressly has  
4 agreed is a transferable record.

5 (2) A person has control of a transferable record if a  
6 system employed for evidencing the transfer of interests in the  
7 transferable record reliably establishes that person as the person  
8 to which the transferable record was issued or transferred.

9 (3) A system satisfies subsection (2) of this section,  
10 and a person is deemed to have control of a transferable record, if  
11 the transferable record is created, stored, and assigned in such a  
12 manner that:

13 (a) A single authoritative copy of the transferable  
14 record exists which is unique, identifiable, and, except as  
15 otherwise provided in subdivisions (d), (e), and (f) of this  
16 subsection, unalterable;

17 (b) The authoritative copy identifies the person  
18 asserting control as:

19 (i) The person to which the transferable record was  
20 issued; or

21 (ii) If the authoritative copy indicates that the  
22 transferable record has been transferred, the person to which the  
23 transferable record was most recently transferred;

24 (c) The authoritative copy is communicated to and  
25 maintained by the person asserting control or its designated  
26 custodian;

27 (d) Copies or revisions that add or change an identified

1 assignee of the authoritative copy can be made only with the  
2 consent of the person asserting control;

3 (e) Each copy of the authoritative copy and any copy of a  
4 copy is readily identifiable as a copy that is not the  
5 authoritative copy; and

6 (f) Any revision of the authoritative copy is readily  
7 identifiable as authorized or unauthorized.

8 (4) (a) Prior to July 1, 2001, except as otherwise agreed,  
9 a person having control of a transferable record is the holder, as  
10 defined in subdivision ~~(20) of section 1-201, Uniform Commercial~~  
11 ~~Code~~ (21) of section 1-201, Uniform Commercial Code, of the  
12 transferable record and has the same rights and defenses as a  
13 holder of an equivalent record or writing under the Uniform  
14 Commercial Code, including, if the applicable statutory  
15 requirements under subsection (a) of section 3-302, Uniform  
16 Commercial Code, or section ~~7-501~~ 7-501 or 9-308, Uniform  
17 Commercial Code, are satisfied, the rights and defenses of a holder  
18 in due course, a holder to which a negotiable document of title has  
19 been duly negotiated, or a purchaser, respectively. Delivery,  
20 possession, and indorsement are not required to obtain or exercise  
21 any of the rights under this subdivision.

22 (b) On or after July 1, 2001, except as otherwise agreed,  
23 a person having control of a transferable record is the holder, as  
24 defined in subdivision ~~(20) of section 1-201, Uniform Commercial~~  
25 ~~Code~~ (21) of section 1-201, Uniform Commercial Code, of the  
26 transferable record and has the same rights and defenses as a  
27 holder of an equivalent record or writing under the Uniform

1 Commercial Code, including, if the applicable statutory  
2 requirements under subsection (a) of section 3-302, Uniform  
3 Commercial Code, or section ~~7-501~~ 7-501 or 9-330, Uniform  
4 Commercial Code, are satisfied, the rights and defenses of a holder  
5 in due course, a holder to which a negotiable document of title has  
6 been duly negotiated, or a purchaser, respectively. Delivery,  
7 possession, and indorsement are not required to obtain or exercise  
8 any of the rights under this subdivision.

9 (5) Except as otherwise agreed, an obligor under a  
10 transferable record has the same rights and defenses as an  
11 equivalent obligor under equivalent records or writings under the  
12 Uniform Commercial Code.

13 (6) If requested by a person against which enforcement is  
14 sought, the person seeking to enforce the transferable record shall  
15 provide reasonable proof that the person is in control of the  
16 transferable record. Proof may include access to the authoritative  
17 copy of the transferable record and related business records  
18 sufficient to review the terms of the transferable record and to  
19 establish the identity of the person having control of the  
20 transferable record.

21 Sec. 6. The Uniform Commercial Code is amended by adding  
22 new section:

23 1-101. Short titles.

24 (a) Sections 1-101 to 10-103 of this code may be cited as  
25 the Uniform Commercial Code.

26 (b) This article may be cited as Uniform Commercial  
27 Code--General Provisions.

1           Sec. 7. The Uniform Commercial Code is amended by adding  
2 new section:

3 1-102. Scope of article.

4           This article applies to a transaction to the extent that  
5 it is governed by another article of the Uniform Commercial Code.

6           Sec. 8. The Uniform Commercial Code is amended by adding  
7 new section:

8 1-103. Construction of Uniform Commercial Code to promote its  
9 purposes and policies; applicability of supplemental principles of  
10 law.

11           (a) The Uniform Commercial Code must be liberally  
12 construed and applied to promote its underlying purposes and  
13 policies, which are:

14           (1) to simplify, clarify, and modernize the law governing  
15 commercial transactions;

16           (2) to permit the continued expansion of commercial  
17 practices through custom, usage, and agreement of the parties; and

18           (3) to make uniform the law among the various  
19 jurisdictions.

20           (b) Unless displaced by the particular provisions of the  
21 Uniform Commercial Code, the principles of law and equity,  
22 including the law merchant and the law relative to capacity to  
23 contract, principal and agent, estoppel, fraud, misrepresentation,  
24 duress, coercion, mistake, bankruptcy, or other validating or  
25 invalidating cause supplement its provisions.

26           Sec. 9. The Uniform Commercial Code is amended by adding  
27 new section:

1 1-104. Construction against implied repeal.

2 The Uniform Commercial Code being a general act intended  
3 as a unified coverage of its subject matter, no part of it shall be  
4 deemed to be impliedly repealed by subsequent legislation if such  
5 construction can reasonably be avoided.

6 Sec. 10. The Uniform Commercial Code is amended by  
7 adding new section:

8 1-105. Severability.

9 If any provision or clause of the Uniform Commercial Code  
10 or its application to any person or circumstance is held invalid,  
11 the invalidity does not affect other provisions or applications of  
12 the code which can be given effect without the invalid provision or  
13 application, and to this end the provisions of the code are  
14 severable.

15 Sec. 11. The Uniform Commercial Code is amended by  
16 adding new section:

17 1-106. Use of singular and plural; gender.

18 In the Uniform Commercial Code, unless the statutory  
19 context otherwise requires:

20 (1) words in the singular number include the plural, and  
21 those in the plural include the singular; and

22 (2) words of any gender also refer to any other gender.

23 Sec. 12. The Uniform Commercial Code is amended by  
24 adding new section:

25 1-107. Section captions.

26 Section captions are part of the Uniform Commercial Code.

27 Sec. 13. The Uniform Commercial Code is amended by

1 adding new section:

2 1-108. Relation to Electronic Signatures in Global and National  
3 Commerce Act.

4 This article modifies, limits, and supersedes the federal  
5 Electronic Signatures in Global and National Commerce Act, 15  
6 U.S.C. section 7001 et seq., except that nothing in this article  
7 modifies, limits, or supersedes section 7001(c) of that act or  
8 authorizes electronic delivery of any of the notices described in  
9 section 7003(b) of that act.

10 Sec. 14. The Uniform Commercial Code is amended by  
11 adding new section:

12 1-201. General definitions.

13 (a) Unless the context otherwise requires, words or  
14 phrases defined in this section, or in the additional definitions  
15 contained in other articles of the Uniform Commercial Code that  
16 apply to particular articles or parts thereof, have the meanings  
17 stated.

18 (b) Subject to definitions contained in other articles of  
19 the code that apply to particular articles or parts thereof:

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

23 (2) "Aggrieved party" means a party entitled to pursue a  
24 remedy.

25 (3) "Agreement", as distinguished from "contract", means  
26 the bargain of the parties in fact, as found in their language or  
27 inferred from other circumstances, including course of performance,

1 course of dealing, or usage of trade as provided in section 1-303.

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

5 (5) "Bearer" means a person in control of a negotiable  
6 electronic document of title or a person in possession of a  
7 negotiable instrument, negotiable tangible document of title, or  
8 certificated security that is payable to bearer or indorsed in  
9 blank.

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

14 (7) "Branch" includes a separately incorporated foreign  
15 branch of a bank.

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

19 (9) "Buyer in ordinary course of business" means a person  
20 that buys goods in good faith, without knowledge that the sale  
21 violates the rights of another person in the goods, and in the  
22 ordinary course from a person, other than a pawnbroker, in the  
23 business of selling goods of that kind. A person buys goods in the  
24 ordinary course if the sale to the person comports with the usual  
25 or customary practices in the kind of business in which the seller  
26 is engaged or with the seller's own usual or customary practices. A  
27 person that sells oil, gas, or other minerals at the wellhead or

1 minehead is a person in the business of selling goods of that kind.  
2 A buyer in ordinary course of business may buy for cash, by  
3 exchange of other property, or on secured or unsecured credit, and  
4 may acquire goods or documents of title under a preexisting  
5 contract for sale. Only a buyer that takes possession of the goods  
6 or has a right to recover the goods from the seller under article 2  
7 may be a buyer in ordinary course of business. "Buyer in ordinary  
8 course of business" does not include a person that acquires goods  
9 in a transfer in bulk or as security for or in total or partial  
10 satisfaction of a money debt.

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

16 (A) a heading in capitals equal to or greater in size  
17 than the surrounding text, or in contrasting type, font, or color  
18 to the surrounding text of the same or lesser size; and

19 (B) language in the body of a record or display in larger  
20 type than the surrounding text, or in contrasting type, font, or  
21 color to the surrounding text of the same size, or set off from  
22 surrounding text of the same size by symbols or other marks that  
23 call attention to the language.

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

26 (12) "Contract", as distinguished from "agreement", means  
27 the total legal obligation that results from the parties' agreement

1 as determined by the Uniform Commercial Code as supplemented by any  
2 other applicable laws.

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

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

11 (15) "Delivery", with respect to an electronic document  
12 of title means voluntary transfer of control and with respect to an  
13 instrument, a tangible document of title, or chattel paper, means  
14 voluntary transfer of possession.

15 (16) "Document of title" means a record (i) that in the  
16 regular course of business or financing is treated as adequately  
17 evidencing that the person in possession or control of the record  
18 is entitled to receive, control, hold, and dispose of the record  
19 and the goods the record covers and (ii) that purports to be issued  
20 by or addressed to a bailee and to cover goods in the bailee's  
21 possession which are either identified or are fungible portions of  
22 an identified mass. The term includes a bill of lading, transport  
23 document, dock warrant, dock receipt, warehouse receipt, and order  
24 for delivery of goods. An electronic document of title means a  
25 document of title evidenced by a record consisting of information  
26 stored in an electronic medium. A tangible document of title means  
27 a document of title evidenced by a record consisting of information

1 that is inscribed on a tangible medium.

2 (17) "Fault" means a default, breach, or wrongful act or  
3 omission.

4 (18) "Fungible goods" means:

5 (A) goods of which any unit, by nature or usage of trade,  
6 is the equivalent of any other like unit; or

7 (B) goods that by agreement are treated as equivalent.

8 (19) "Genuine" means free of forgery or counterfeiting.

9 (20) "Good faith" means honesty in fact in the conduct or  
10 transaction concerned.

11 (21) "Holder" means:

12 (A) the person in possession of a negotiable instrument  
13 that is payable either to bearer or to an identified person that is  
14 the person in possession;

15 (B) the person in possession of a negotiable tangible  
16 document of title if the goods are deliverable either to bearer or  
17 to the order of the person in possession; or

18 (C) the person in control of a negotiable electronic  
19 document of title.

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

23 (23) "Insolvent" means:

24 (A) having generally ceased to pay debts in the ordinary  
25 course of business other than as a result of bona fide dispute;

26 (B) being unable to pay debts as they become due; or

27 (C) being insolvent within the meaning of federal

1 bankruptcy law.

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

7 (25) "Organization" means a person other than an  
8 individual.

9 (26) "Party", as distinguished from "third party", means  
10 a person that has engaged in a transaction or made an agreement  
11 subject to the Uniform Commercial Code.

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

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

25 (29) "Purchase" means taking by sale, lease, discount,  
26 negotiation, mortgage, pledge, lien, security interest, issue or  
27 reissue, gift, or any other voluntary transaction creating an

1 interest in property.

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

3 (31) "Record" means information that is inscribed on a  
4 tangible medium or that is stored in an electronic or other medium  
5 and is retrievable in perceivable form.

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

8 (33) "Representative" means a person empowered to act for  
9 another, including an agent, an officer of a corporation or  
10 association, and a trustee, a personal representative, an executor,  
11 or an administrator of an estate.

12 (34) "Right" includes remedy.

13 (35) "Security interest" means an interest in personal  
14 property or fixtures which secures payment or performance of an  
15 obligation. "Security interest" includes any interest of a  
16 consignor and a buyer of accounts, chattel paper, a payment  
17 intangible, or a promissory note in a transaction that is subject  
18 to article 9. "Security interest" does not include the special  
19 property interest of a buyer of goods on identification of those  
20 goods to a contract for sale under section 2-401, but a buyer may  
21 also acquire a "security interest" by complying with article 9.  
22 Except as otherwise provided in section 2-505, the right of a  
23 seller or lessor of goods under article 2 or 2A to retain or  
24 acquire possession of the goods is not a "security interest", but a  
25 seller or lessor may also acquire a "security interest" by  
26 complying with article 9. The retention or reservation of title by  
27 a seller of goods notwithstanding shipment or delivery to the buyer

1 under section 2-401 is limited in effect to a reservation of a  
2 "security interest". Whether a transaction in the form of a lease  
3 creates a "security interest" is determined pursuant to section  
4 1-203. "Security interest" does not include a consumer rental  
5 purchase agreement as defined in the Consumer Rental Purchase  
6 Agreement Act.

7 (36) "Send" in connection with a writing, record, or  
8 notice means:

9 (A) to deposit in the mail or deliver for transmission by  
10 any other usual means of communication with postage or cost of  
11 transmission provided for and properly addressed and, in the case  
12 of an instrument, to an address specified thereon or otherwise  
13 agreed, or if there be none to any address reasonable under the  
14 circumstances; or

15 (B) in any other way to cause to be received any record  
16 or notice within the time it would have arrived if properly sent.

17 (37) "Signed" includes using any symbol executed or  
18 adopted with present intention to adopt or accept a writing.

19 (38) "State" means a state of the United States, the  
20 District of Columbia, Puerto Rico, the United States Virgin  
21 Islands, or any territory or insular possession subject to the  
22 jurisdiction of the United States.

23 (39) "Surety" includes a guarantor or other secondary  
24 obligor.

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

27 (41) "Unauthorized signature" means a signature made

1 without actual, implied, or apparent authority. The term includes a  
2 forgery.

3 (42) "Warehouse receipt" means a receipt issued by a  
4 person engaged in the business of storing goods for hire.

5 (43) "Writing" includes printing, typewriting, or any  
6 other intentional reduction to tangible form. "Written" has a  
7 corresponding meaning.

8 Sec. 15. The Uniform Commercial Code is amended by  
9 adding new section:

10 1-202. Notice; knowledge.

11 (a) Subject to subsection (f), a person has "notice" of a  
12 fact if the person:

13 (1) has actual knowledge of it;

14 (2) has received a notice or notification of it; or

15 (3) from all the facts and circumstances known to the  
16 person at the time in question, has reason to know that it exists.

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

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

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

25 (e) Subject to subsection (f), a person "receives" a  
26 notice or notification when:

27 (1) it comes to that person's attention; or

1           (2) it is duly delivered in a form reasonable under the  
2 circumstances at the place of business through which the contract  
3 was made or at another location held out by that person as the  
4 place for receipt of such communications.

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

19           Sec. 16. The Uniform Commercial Code is amended by  
20 adding new section:

21 1-203. Lease distinguished from security interest.

22           (a) Whether a transaction in the form of a lease creates  
23 a lease or security interest is determined by the facts of each  
24 case.

25           (b) A transaction in the form of a lease creates a  
26 security interest if the consideration that the lessee is to pay  
27 the lessor for the right to possession and use of the goods is an

1 obligation for the term of the lease and is not subject to  
2 termination by the lessee, and:

3 (1) the original term of the lease is equal to or greater  
4 than the remaining economic life of the goods;

5 (2) the lessee is bound to renew the lease for the  
6 remaining economic life of the goods or is bound to become the  
7 owner of the goods;

8 (3) the lessee has an option to renew the lease for the  
9 remaining economic life of the goods for no additional  
10 consideration or for nominal additional consideration upon  
11 compliance with the lease agreement; or

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

15 (c) A transaction in the form of a lease does not create  
16 a security interest merely because:

17 (1) the present value of the consideration the lessee is  
18 obligated to pay the lessor for the right to possession and use of  
19 the goods is substantially equal to or is greater than the fair  
20 market value of the goods at the time the lease is entered into;

21 (2) the lessee assumes risk of loss of the goods;

22 (3) the lessee agrees to pay, with respect to the goods,  
23 taxes, insurance, filing, recording, or registration fees, or  
24 service or maintenance costs;

25 (4) the lessee has an option to renew the lease or to  
26 become the owner of the goods;

27 (5) the lessee has an option to renew the lease for a

1 fixed rent that is equal to or greater than the reasonably  
2 predictable fair market rent for the use of the goods for the term  
3 of the renewal at the time the option is to be performed; or

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

8 (d) Additional consideration is nominal if it is less  
9 than the lessee's reasonably predictable cost of performing under  
10 the lease agreement if the option is not exercised. Additional  
11 consideration is not nominal if:

12 (1) when the option to renew the lease is granted to the  
13 lessee, the rent is stated to be the fair market rent for the use  
14 of the goods for the term of the renewal determined at the time the  
15 option is to be performed; or

16 (2) when the option to become the owner of the goods is  
17 granted to the lessee, the price is stated to be the fair market  
18 value of the goods determined at the time the option is to be  
19 performed.

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

25 Sec. 17. The Uniform Commercial Code is amended by  
26 adding new section:

27 1-204. Value.

1           Except as otherwise provided in articles 3, 4, and 5, a  
2 person gives value for rights if the person acquires them:

3           (1) in return for a binding commitment to extend credit  
4 or for the extension of immediately available credit, whether or  
5 not drawn upon and whether or not a chargeback is provided for in  
6 the event of difficulties in collection;

7           (2) as security for, or in total or partial satisfaction  
8 of, a preexisting claim;

9           (3) by accepting delivery under a preexisting contract  
10 for purchase; or

11           (4) in return for any consideration sufficient to support  
12 a simple contract.

13           Sec. 18. The Uniform Commercial Code is amended by  
14 adding new section:

15 1-205. Reasonable time; seasonableness.

16           (a) Whether a time for taking an action required by the  
17 Uniform Commercial Code is reasonable depends on the nature,  
18 purpose, and circumstances of the action.

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

22           Sec. 19. The Uniform Commercial Code is amended by  
23 adding new section:

24 1-206. Presumptions.

25           Whenever the Uniform Commercial Code creates a  
26 "presumption" with respect to a fact, or provides that a fact is  
27 "presumed", the trier of fact must find the existence of the fact

1 unless and until evidence is introduced that supports a finding of  
2 its nonexistence.

3           Sec. 20.    The Uniform Commercial Code is amended by  
4 adding new section:

5 1-301.   Territorial applicability; parties' power to choose  
6 applicable law.

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

12           (b) In the absence of an agreement effective under  
13 subsection (a), and except as provided in subsection (c), this code  
14 applies to transactions bearing an appropriate relation to this  
15 state.

16           (c) If one of the following provisions of the Uniform  
17 Commercial Code specifies the applicable law, that provision  
18 governs and a contrary agreement is effective only to the extent  
19 permitted by the law so specified:

- 20           (1) Section 2-402;  
21           (2) Sections 2A-105 and 2A-106;  
22           (3) Section 4-102;  
23           (4) Section 4A-507;  
24           (5) Section 5-116;  
25           (6) Section 8-110;  
26           (7) Sections 9-301 through 9-307.

27           Sec. 21.   The Uniform Commercial Code is amended by

1 adding new section:

2 1-302. Variation by agreement.

3 (a) Except as otherwise provided in subsection (b) or  
4 elsewhere in the Uniform Commercial Code, the effect of provisions  
5 of the code may be varied by agreement.

6 (b) The obligations of good faith, diligence,  
7 reasonableness, and care prescribed by the code may not be  
8 disclaimed by agreement. The parties, by agreement, may determine  
9 the standards by which the performance of those obligations is to  
10 be measured if those standards are not manifestly unreasonable.  
11 Whenever the code requires an action to be taken within a  
12 reasonable time, a time that is not manifestly unreasonable may be  
13 fixed by agreement.

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

18 Sec. 22. The Uniform Commercial Code is amended by  
19 adding new section:

20 1-303. Course of performance, course of dealing, and usage of  
21 trade.

22 (a) A "course of performance" is a sequence of conduct  
23 between the parties to a particular transaction that exists if:

24 (1) the agreement of the parties with respect to the  
25 transaction involves repeated occasions for performance by a party;  
26 and

27 (2) the other party, with knowledge of the nature of the

1 performance and opportunity for objection to it, accepts the  
2 performance or acquiesces in it without objection.

3 (b) A "course of dealing" is a sequence of conduct  
4 concerning previous transactions between the parties to a  
5 particular transaction that is fairly to be regarded as  
6 establishing a common basis of understanding for interpreting their  
7 expressions and other conduct.

8 (c) A "usage of trade" is any practice or method of  
9 dealing having such regularity of observance in a place, vocation,  
10 or trade as to justify an expectation that it will be observed with  
11 respect to the transaction in question. The existence and scope of  
12 such a usage must be proved as facts. If it is established that  
13 such a usage is embodied in a trade code or similar record, the  
14 interpretation of the record is a question of law.

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

24 (e) Except as otherwise provided in subsection (f), the  
25 express terms of an agreement and any applicable course of  
26 performance, course of dealing, or usage of trade must be construed  
27 whenever reasonable as consistent with each other. If such a

1 construction is unreasonable:

2 (1) express terms prevail over course of performance,  
3 course of dealing, and usage of trade;

4 (2) course of performance prevails over course of dealing  
5 and usage of trade; and

6 (3) course of dealing prevails over usage of trade.

7 (f) Subject to section 2-209, a course of performance is  
8 relevant to show a waiver or modification of any term inconsistent  
9 with the course of performance.

10 (g) Evidence of a relevant usage of trade offered by one  
11 party is not admissible unless that party has given the other party  
12 notice that the court finds sufficient to prevent unfair surprise  
13 to the other party.

14 Sec. 23. The Uniform Commercial Code is amended by  
15 adding new section:

16 1-304. Obligation of good faith.

17 Every contract or duty within the Uniform Commercial Code  
18 imposes an obligation of good faith in its performance and  
19 enforcement.

20 Sec. 24. The Uniform Commercial Code is amended by  
21 adding new section:

22 1-305. Remedies to be liberally administered.

23 (a) The remedies provided by the Uniform Commercial Code  
24 must be liberally administered to the end that the aggrieved party  
25 may be put in as good a position as if the other party had fully  
26 performed but neither consequential or special damages nor penal  
27 damages may be had except as specifically provided in the code or

1 by other rule of law.

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

5 Sec. 25. The Uniform Commercial Code is amended by  
6 adding new section:

7 1-306. Waiver or renunciation of claim or right after breach.

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

11 Sec. 26. The Uniform Commercial Code is amended by  
12 adding new section:

13 1-307. Prima facie evidence by third-party documents.

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

21 Sec. 27. The Uniform Commercial Code is amended by  
22 adding new section:

23 1-308. Performance or acceptance under reservation of rights.

24 (a) A party that with explicit reservation of rights  
25 performs or promises performance or assents to performance in a  
26 manner demanded or offered by the other party does not thereby  
27 prejudice the rights reserved. Such words as "without prejudice",

1 "under protest", or the like are sufficient.

2 (b) Subsection (a) does not apply to an accord and  
3 satisfaction.

4 Sec. 28. The Uniform Commercial Code is amended by  
5 adding new section:

6 1-309. Option to accelerate at will.

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

15 Sec. 29. The Uniform Commercial Code is amended by  
16 adding new section:

17 1-310. Subordinated obligations.

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

25 Sec. 30. Section 2-103, Uniform Commercial Code, is  
26 amended to read:

27 2-103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires

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

4 (b) "Good faith" in the case of a merchant means honesty  
5 in fact and the observance of reasonable commercial standards of  
6 fair dealing in the trade.

7 (c) "Receipt" of goods means taking physical possession  
8 of them.

9 (d) "Seller" means a person who sells or contracts to  
10 sell goods.

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

13 "Acceptance". Section 2-606.

14 "Banker's credit". Section 2-325.

15 "Between merchants". Section 2-104.

16 "Cancellation". Section 2-106(4).

17 "Commercial unit". Section 2-105.

18 "Confirmed credit". Section 2-325.

19 "Conforming to contract". Section 2-106.

20 "Contract for sale". Section 2-106.

21 "Cover". Section 2-712.

22 "Entrusting". Section 2-403.

23 "Financing agency". Section 2-104.

24 "Future goods". Section 2-105.

25 "Goods". Section 2-105.

26 "Identification". Section 2-501.

27 "Installment contract". Section 2-612.

1	"Letter of credit".	Section 2-325.
2	"Lot".	Section 2-105.
3	"Merchant".	Section 2-104.
4	"Overseas".	Section 2-323.
5	"Person in position of seller".	Section 2-707.
6	"Present sale".	Section 2-106.
7	"Sale".	Section 2-106.
8	"Sale on approval".	Section 2-326.
9	"Sale or return".	Section 2-326.
10	"Termination".	Section 2-106.

11 (3) ~~The~~ "Control" as provided in section 7-106 and the  
12 following definitions in other articles apply to this article:

13	"Check".	Section 3-104.
14	"Consignee".	Section 7-102.
15	"Consignor".	Section 7-102.
16	"Consumer goods".	Section 9-102.
17	"Dishonor".	Section 3-502.
18	"Draft".	Section 3-104.

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

22 Sec. 31. Section 2-104, Uniform Commercial Code, is  
23 amended to read:

24 2-104. Definitions; merchant; between merchants; financing agency.

25 (1) "Merchant" means a person who deals in goods of the  
26 kind or otherwise by his or her occupation holds himself or herself  
27 out as having knowledge or skill peculiar to the practices or goods

1 involved in the transaction or to whom such knowledge or skill may  
2 be attributed by his or her employment of an agent or broker or  
3 other intermediary who by his or her occupation holds himself or  
4 herself out as having such knowledge or skill.

5 (2) "Financing agency" means a bank, finance company, or  
6 other person who in the ordinary course of business makes advances  
7 against goods or documents of title or who by arrangement with  
8 either the seller or the buyer intervenes in ordinary course to  
9 make or collect payment due or claimed under the contract for sale,  
10 as by purchasing or paying the seller's draft or making advances  
11 against it or by merely taking it for collection whether or not  
12 documents of title accompany or are associated with the draft.  
13 "Financing agency" includes also a bank or other person who  
14 similarly intervenes between persons who are in the position of  
15 seller and buyer in respect to the goods (section 2-707).

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

19 Sec. 32. Section 2-202, Uniform Commercial Code, is  
20 amended to read:

21 2-202. Final written expression; parol or extrinsic evidence.

22 Terms with respect to which the confirmatory memoranda of  
23 the parties agree or which are otherwise set forth in a writing  
24 intended by the parties as a final expression of their agreement  
25 with respect to such terms as are included therein may not be  
26 contradicted by evidence of any prior agreement or of a  
27 contemporaneous oral agreement but may be explained or supplemented

1           (a) by course of performance, course of dealing or usage  
2 of trade (section ~~1-205~~ 1-303); ~~or by course of performance~~  
3 ~~(section 2-208)~~; and

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

7           Sec. 33.     Section 2-310, Uniform Commercial Code, is  
8 amended to read:

9     2-310. Open time for payment or running of credit; authority to  
10 ship under reservation.

11           Unless otherwise agreed

12           (a) payment is due at the time and place at which the  
13 buyer is to receive the goods even though the place of shipment is  
14 the place of delivery; and

15           (b) if the seller is authorized to send the goods he or  
16 she may ship them under reservation, and may tender the documents  
17 of title, but the buyer may inspect the goods after their arrival  
18 before payment is due unless such inspection is inconsistent with  
19 the terms of the contract (section 2-513); and

20           (c) if delivery is authorized and made by way of  
21 documents of title otherwise than by subsection (b) then payment is  
22 due regardless of where the goods are to be received (i) at the  
23 time and place at which the buyer is to receive delivery of the  
24 tangible documents regardless of where the goods are to be received  
25 or (ii) at the time the buyer is to receive delivery of the  
26 electronic documents and at the seller's place of business or if  
27 none, the seller's residence; and

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

5           Sec. 34.     Section 2-323, Uniform Commercial Code, is  
6 amended to read:

7 2-323.   Form of bill of lading required in overseas shipment;  
8 overseas.

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

14           (2) Where in a case within subsection (1) a tangible bill  
15 of lading has been issued in a set of parts, unless otherwise  
16 agreed if the documents are not to be sent from abroad the buyer  
17 may demand tender of the full set; otherwise only one part of the  
18 bill of lading need be tendered. Even if the agreement expressly  
19 requires a full set

20           (a) due tender of a single part is acceptable within the  
21 provisions of this article on cure of improper delivery (subsection  
22 (1) of section 2-508); and

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

27           (3) A shipment by water or by air or a contract

1 contemplating such shipment is "overseas" insofar as by usage of  
2 trade or agreement it is subject to the commercial, financing, or  
3 shipping practices characteristic of international deep water  
4 commerce.

5           Sec. 35.     Section 2-401, Uniform Commercial Code, is  
6 amended to read:

7 2-401.     Passing of title; reservation for security; limited  
8 application of this section.

9           Each provision of this article with regard to the rights,  
10 obligations, and remedies of the seller, the buyer, purchasers, or  
11 other third parties applies irrespective of title to the goods  
12 except where the provision refers to such title. Insofar as  
13 situations are not covered by the other provisions of this article  
14 and matters concerning title become material the following rules  
15 apply:

16           (1) Title to goods cannot pass under a contract for sale  
17 prior to their identification to the contract (section 2-501), and  
18 unless otherwise explicitly agreed the buyer acquires by their  
19 identification a special property as limited by the Uniform  
20 Commercial Code. Any retention or reservation by the seller of the  
21 title (property) in goods shipped or delivered to the buyer is  
22 limited in effect to a reservation of a security interest. Subject  
23 to these provisions and to the provisions of the Article on Secured  
24 Transactions (Article 9), title to goods passes from the seller to  
25 the buyer in any manner and on any conditions explicitly agreed on  
26 by the parties.

27           (2) Unless otherwise explicitly agreed title passes to

1 the buyer at the time and place at which the seller completes  
2 performance with reference to the physical delivery of the goods,  
3 despite any reservation of a security interest and even though a  
4 document of title is to be delivered at a different time or place;  
5 and in particular and despite any reservation of a security  
6 interest by the bill of lading

7 (a) if the contract requires or authorizes the seller to  
8 send the goods to the buyer but does not require him or her to  
9 deliver them at destination, title passes to the buyer at the time  
10 and place of shipment; but

11 (b) if the contract requires delivery at destination,  
12 title passes on tender there.

13 (3) Unless otherwise explicitly agreed where delivery is  
14 to be made without moving the goods,

15 (a) if the seller is to deliver a tangible document of  
16 title, title passes at the time when and the place where he or she  
17 delivers such documents and if the seller is to deliver an  
18 electronic document of title, title passes when the seller delivers  
19 the document; or

20 (b) if the goods are at the time of contracting already  
21 identified and no documents of title are to be delivered, title  
22 passes at the time and place of contracting.

23 (4) A rejection or other refusal by the buyer to receive  
24 or retain the goods, whether or not justified, or a justified  
25 revocation of acceptance revests title to the goods in the seller.  
26 Such reversioning occurs by operation of law and is not a "sale".

27 Sec. 36. Section 2-503, Uniform Commercial Code, is

1 amended to read:

2 2-503. Manner of seller's tender of delivery.

3 (1) Tender of delivery requires that the seller put and  
4 hold conforming goods at the buyer's disposition and give the buyer  
5 any notification reasonably necessary to enable him or her to take  
6 delivery. The manner, time, and place for tender are determined by  
7 the agreement and this article, and in particular

8 (a) tender must be at a reasonable hour, and if it is of  
9 goods they must be kept available for the period reasonably  
10 necessary to enable the buyer to take possession; but

11 (b) unless otherwise agreed the buyer must furnish  
12 facilities reasonably suited to the receipt of the goods.

13 (2) Where the case is within the next section respecting  
14 shipment tender requires that the seller comply with its  
15 provisions.

16 (3) Where the seller is required to deliver at a  
17 particular destination tender requires that he or she comply with  
18 subsection (1) and also in any appropriate case tender documents as  
19 described in subsections (4) and (5) of this section.

20 (4) Where goods are in the possession of a bailee and are  
21 to be delivered without being moved

22 (a) tender requires that the seller either tender a  
23 negotiable document of title covering such goods or procure  
24 acknowledgment by the bailee of the buyer's right to possession of  
25 the goods; but

26 (b) tender to the buyer of a nonnegotiable document of  
27 title or of a ~~written direction to~~ record directing the bailee to

1 deliver is sufficient tender unless the buyer seasonably objects,  
2 and except as otherwise provided in article 9 receipt by the bailee  
3 of notification of the buyer's rights fixes those rights as against  
4 the bailee and all third persons; but risk of loss of the goods and  
5 of any failure by the bailee to honor the nonnegotiable document of  
6 title or to obey the direction remains on the seller until the  
7 buyer has had a reasonable time to present the document or  
8 direction, and a refusal by the bailee to honor the document or to  
9 obey the direction defeats the tender.

10 (5) Where the contract requires the seller to deliver  
11 documents

12 (a) he or she must tender all such documents in correct  
13 form, except as provided in this article with respect to bills of  
14 lading in a set (subsection (2) of section 2-323); and

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

18 Sec. 37. Section 2-505, Uniform Commercial Code, is  
19 amended to read:

20 2-505. Seller's shipment under reservation.

21 (1) Where the seller has identified goods to the contract  
22 by or before shipment:

23 (a) his or her procurement of a negotiable bill of lading  
24 to his or her own order or otherwise reserves in him or her a  
25 security interest in the goods. His or her procurement of the bill  
26 to the order of a financing agency or of the buyer indicates in  
27 addition only the seller's expectation of transferring that

1 interest to the person named.

2 (b) a nonnegotiable bill of lading to himself or herself  
3 or his or her nominee reserves possession of the goods as security  
4 but except in a case of conditional delivery (subsection (2) of  
5 section 2-507) a nonnegotiable bill of lading naming the buyer as  
6 consignee reserves no security interest even though the seller  
7 retains possession or control of the bill of lading.

8 (2) When shipment by the seller with reservation of a  
9 security interest is in violation of the contract for sale it  
10 constitutes an improper contract for transportation within the  
11 preceding section but impairs neither the rights given to the buyer  
12 by shipment and identification of the goods to the contract nor the  
13 seller's powers as a holder of a negotiable document of title.

14 Sec. 38. Section 2-506, Uniform Commercial Code, is  
15 amended to read:

16 2-506. Rights of financing agency.

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

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

1                   Sec. 39.   Section 2-509, Uniform Commercial Code, is  
2 amended to read:

3 2-509. Risk of loss in the absence of breach.

4                   (1) Where the contract requires or authorizes the seller  
5 to ship the goods by carrier

6                   (a) if it does not require him or her to deliver them at  
7 a particular destination, the risk of loss passes to the buyer when  
8 the goods are duly delivered to the carrier even though the  
9 shipment is under reservation (section 2-505); but

10                   (b) if it does require him or her to deliver them at a  
11 particular destination and the goods are there duly tendered while  
12 in the possession of the carrier, the risk of loss passes to the  
13 buyer when the goods are there duly so tendered as to enable the  
14 buyer to take delivery.

15                   (2) Where the goods are held by a bailee to be delivered  
16 without being moved, the risk of loss passes to the buyer

17                   (a) on his or her receipt of possession or control of a  
18 negotiable document of title covering the goods; or

19                   (b) on acknowledgment by the bailee of the buyer's right  
20 to possession of the goods; or

21                   (c) after his or her receipt of possession or control of  
22 a nonnegotiable document of title or other ~~written~~ direction to  
23 deliver in a record, as provided in subsection (4)(b) of section  
24 2-503.

25                   (3) In any case not within subsection (1) or (2), the  
26 risk of loss passes to the buyer on his or her receipt of the goods  
27 if the seller is a merchant; otherwise the risk passes to the buyer

1 on tender of delivery.

2 (4) The provisions of this section are subject to  
3 contrary agreement of the parties and to the provisions of this  
4 article on sale on approval (section 2-327) and on effect of breach  
5 on risk of loss (section 2-510).

6 Sec. 40. Section 2-605, Uniform Commercial Code, is  
7 amended to read:

8 2-605. Waiver of buyer's objections by failure to particularize.

9 (1) The buyer's failure to state in connection with  
10 rejection a particular defect which is ascertainable by reasonable  
11 inspection precludes him or her from relying on the unstated defect  
12 to justify rejection or to establish breach

13 (a) where the seller could have cured it if stated  
14 seasonably; or

15 (b) between merchants when the seller has after rejection  
16 made a request in writing for a full and final written statement of  
17 all defects on which the buyer proposes to rely.

18 (2) Payment against documents made without reservation of  
19 rights precludes recovery of the payment for defects apparent ~~on~~  
20 ~~the face of~~ in the documents.

21 Sec. 41. Section 2-705, Uniform Commercial Code, is  
22 amended to read:

23 2-705. Seller's stoppage of delivery in transit or otherwise.

24 (1) The seller may stop delivery of goods in the  
25 possession of a carrier or other bailee when he or she discovers  
26 the buyer to be insolvent (section 2-702) and may stop delivery of  
27 carload, truckload, planeload, or larger shipments of express or

1 freight when the buyer repudiates or fails to make a payment due  
2 before delivery or if for any other reason the seller has a right  
3 to withhold or reclaim the goods.

4 (2) As against such buyer the seller may stop delivery  
5 until

6 (a) receipt of the goods by the buyer; or

7 (b) acknowledgment to the buyer by any bailee of the  
8 goods except a carrier that the bailee holds the goods for the  
9 buyer; or

10 (c) such acknowledgment to the buyer by a carrier by  
11 reshipment or as ~~warehouseman~~ a warehouse; or

12 (d) negotiation to the buyer of any negotiable document  
13 of title covering the goods.

14 (3) (a) To stop delivery the seller must so notify as to  
15 enable the bailee by reasonable diligence to prevent delivery of  
16 the goods.

17 (b) After such notification the bailee must hold and  
18 deliver the goods according to the directions of the seller but the  
19 seller is liable to the bailee for any ensuing charges or damages.

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

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

26 Sec. 42. Section 2A-103, Uniform Commercial Code, is  
27 amended to read:

1 2A-103. Definitions and index of definitions.

2 (1) In this article unless the context otherwise  
3 requires:

4 (a) "Buyer in ordinary course of business" means a person  
5 who in good faith and without knowledge that the sale to him or her  
6 is in violation of the ownership rights or security interest or  
7 leasehold interest of a third party in the goods, buys in ordinary  
8 course from a person in the business of selling goods of that kind  
9 but does not include a pawnbroker. "Buying" may be for cash or by  
10 exchange of other property or on secured or unsecured credit and  
11 includes ~~receiving~~ acquiring goods or documents of title under a  
12 preexisting contract for sale but does not include a transfer in  
13 bulk or as security for or in total or partial satisfaction of a  
14 money debt.

15 (b) "Cancellation" occurs when either party puts an end  
16 to the lease contract for default by the other party.

17 (c) "Commercial unit" means such a unit of goods as by  
18 commercial usage is a single whole for purposes of lease and  
19 division of which materially impairs its character or value on the  
20 market or in use. A commercial unit may be a single article, as a  
21 machine, or a set of articles, as a suite of furniture or a line of  
22 machinery, or a quantity, as a gross or carload, or any other unit  
23 treated in use or in the relevant market as a single whole.

24 (d) "Conforming" goods or performance under a lease  
25 contract means goods or performance that are in accordance with the  
26 obligations under the lease contract.

27 (e) "Consumer lease" means a lease that a lessor

1 regularly engaged in the business of leasing or selling makes to a  
2 lessee who is an individual and who takes under the lease primarily  
3 for a personal, family, or household purpose, if the total payments  
4 to be made under the lease contract, excluding payments for options  
5 to renew or buy, do not exceed twenty-five thousand dollars.

6 (f) "Fault" means wrongful act, omission, breach, or  
7 default.

8 (g) "Finance lease" means a lease with respect to which:

9 (i) the lessor does not select, manufacture, or supply  
10 the goods;

11 (ii) the lessor acquires the goods or the right to  
12 possession and use of the goods in connection with the lease; and

13 (iii) one of the following occurs:

14 (A) the lessee receives a copy of the contract by which  
15 the lessor acquired the goods or the right to possession and use of  
16 the goods before signing the lease contract;

17 (B) the lessee's approval of the contract by which the  
18 lessor acquired the goods or the right to possession and use of the  
19 goods is a condition to effectiveness of the lease contract;

20 (C) the lessee, before signing the lease contract,  
21 receives an accurate and complete statement designating the  
22 promises and warranties, and any disclaimers of warranties,  
23 limitations or modifications of remedies, or liquidated damages,  
24 including those of a third party, such as the manufacturer of the  
25 goods, provided to the lessor by the person supplying the goods in  
26 connection with or as part of the contract by which the lessor  
27 acquired the goods or the right to possession and use of the goods;

1 or

2 (D) if the lease is not a consumer lease, the lessor,  
3 before the lessee signs the lease contract, informs the lessee in  
4 writing (a) of the identity of the person supplying the goods to  
5 the lessor, unless the lessee has selected that person and directed  
6 the lessor to acquire the goods or the right to possession and use  
7 of the goods from that person, (b) that the lessee is entitled  
8 under this article to the promises and warranties, including those  
9 of any third party, provided to the lessor by the person supplying  
10 the goods in connection with or as part of the contract by which  
11 the lessor acquired the goods or the right to possession and use of  
12 the goods, and (c) that the lessee may communicate with the person  
13 supplying the goods to the lessor and receive an accurate and  
14 complete statement of those promises and warranties, including any  
15 disclaimers and limitations of them or of remedies.

16 (h) "Goods" means all things that are movable at the time  
17 of identification to the lease contract, or are fixtures (section  
18 2A-309), but the term does not include money, documents,  
19 instruments, accounts, chattel paper, general intangibles, or  
20 minerals or the like, including oil and gas, before extraction.  
21 The term also includes the unborn young of animals.

22 (i) "Installment lease contract" means a lease contract  
23 that authorizes or requires the delivery of goods in separate lots  
24 to be separately accepted, even though the lease contract contains  
25 a clause "each delivery is a separate lease" or its equivalent.

26 (j) "Lease" means a transfer of the right to possession  
27 and use of goods for a term in return for consideration, but a

1 sale, including a sale on approval or a sale or return, or  
2 retention or creation of a security interest is not a lease.  
3 Unless the context clearly indicates otherwise, the term includes a  
4 sublease.

5 (k) "Lease agreement" means the bargain, with respect to  
6 the lease, of the lessor and the lessee in fact as found in their  
7 language or by implication from other circumstances including  
8 course of dealing or usage of trade or course of performance as  
9 provided in this article. Unless the context clearly indicates  
10 otherwise, the term includes a sublease agreement.

11 (l) "Lease contract" means the total legal obligation  
12 that results from the lease agreement as affected by this article  
13 and any other applicable rules of law. Unless the context clearly  
14 indicates otherwise, the term includes a sublease contract.

15 (m) "Leasehold interest" means the interest of the lessor  
16 or the lessee under a lease contract.

17 (n) "Lessee" means a person who acquires the right to  
18 possession and use of goods under a lease. Unless the context  
19 clearly indicates otherwise, the term includes a sublessee.

20 (o) "Lessee in ordinary course of business" means a  
21 person who in good faith and without knowledge that the lease to  
22 him or her is in violation of the ownership rights or security  
23 interest or leasehold interest of a third party in the goods leases  
24 in ordinary course from a person in the business of selling or  
25 leasing goods of that kind but does not include a pawnbroker.  
26 "Leasing" may be for cash or by exchange of other property or on  
27 secured or unsecured credit and includes ~~receiving~~ acquiring goods

1 or documents of title under a preexisting lease contract but does  
2 not include a transfer in bulk or as security for or in total or  
3 partial satisfaction of a money debt.

4 (p) "Lessor" means a person who transfers the right to  
5 possession and use of goods under a lease. Unless the context  
6 clearly indicates otherwise, the term includes a sublessor.

7 (q) "Lessor's residual interest" means the lessor's  
8 interest in the goods after expiration, termination, or  
9 cancellation of the lease contract.

10 (r) "Lien" means a charge against or interest in goods to  
11 secure payment of a debt or performance of an obligation, but the  
12 term does not include a security interest.

13 (s) "Lot" means a parcel or a single article that is the  
14 subject matter of a separate lease or delivery, whether or not it  
15 is sufficient to perform the lease contract.

16 (t) "Merchant lessee" means a lessee that is a merchant  
17 with respect to goods of the kind subject to the lease.

18 (u) "Present value" means the amount as of a date certain  
19 of one or more sums payable in the future, discounted to the date  
20 certain. The discount is determined by the interest rate specified  
21 by the parties if the rate was not manifestly unreasonable at the  
22 time the transaction was entered into; otherwise, the discount is  
23 determined by a commercially reasonable rate that takes into  
24 account the facts and circumstances of each case at the time the  
25 transaction was entered into.

26 (v) "Purchase" includes taking by sale, lease, mortgage,  
27 security interest, pledge, gift, or any other voluntary transaction

1 creating an interest in goods.

2 (w) "Sublease" means a lease of goods the right to  
3 possession and use of which was acquired by the lessor as a lessee  
4 under an existing lease.

5 (x) "Supplier" means a person from whom a lessor buys or  
6 leases goods to be leased under a finance lease.

7 (y) "Supply contract" means a contract under which a  
8 lessor buys or leases goods to be leased.

9 (z) "Termination" occurs when either party pursuant to a  
10 power created by agreement or law puts an end to the lease contract  
11 otherwise than for default.

12 (2) Other definitions applying to this article and the  
13 sections in which they appear are:

14 "Accessions".	Section 2A-310(1).
15 "Construction mortgage".	Section 2A-309(1)(d).
16 "Encumbrance".	Section 2A-309(1)(e).
17 "Fixtures".	Section 2A-309(1)(a).
18 "Fixture filing".	Section 2A-309(1)(b).
19 "Purchase money lease".	Section 2A-309(1)(c).

20 (3) The following definitions in other articles apply to  
21 this article:

22 "Account".	Section 9-102(a)(2).
23 "Between merchants".	Section 2-104(3).
24 "Buyer".	Section 2-103(1)(a).
25 "Chattel paper".	Section 9-102(a)(11).
26 "Consumer goods".	Section 9-102(a)(23).
27 "Document".	Section 9-102(a)(30).

1	"Entrusting".	Section 2-403(3).
2	"General intangible".	Section 9-102(a)(42).
3	"Good faith".	Section 2-103(1)(b).
4	"Instrument".	Section 9-102(a)(47).
5	"Merchant".	Section 2-104(1).
6	"Mortgage".	Section 9-102(a)(55).
7	"Pursuant to commitment".	Section 9-102(a)(68).
8	"Receipt".	Section 2-103(1)(c).
9	"Sale".	Section 2-106(1).
10	"Sale on approval".	Section 2-326.
11	"Sale or return".	Section 2-326.
12	"Seller".	Section 2-103(1)(d).

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

16 Sec. 43. Section 2A-501, Uniform Commercial Code, is  
17 amended to read:

18 2A-501. Default: procedure.

19 (1) Whether the lessor or the lessee is in default under  
20 a lease contract is determined by the lease agreement and this  
21 article.

22 (2) If the lessor or the lessee is in default under the  
23 lease contract, the party seeking enforcement has rights and  
24 remedies as provided in this article and, except as limited by this  
25 article, as provided in the lease agreement.

26 (3) If the lessor or the lessee is in default under the  
27 lease contract, the party seeking enforcement may reduce the

1 party's claim to judgment, or otherwise enforce the lease contract  
2 by self-help or any available judicial procedure or nonjudicial  
3 procedure, including administrative proceeding, arbitration, or the  
4 like, in accordance with this article.

5 (4) Except as otherwise provided in section ~~1-106(1)~~  
6 1-305(a) or this article or the lease agreement, the rights and  
7 remedies referred to in subsections (2) and (3) are cumulative.

8 (5) If the lease agreement covers both real property and  
9 goods, the party seeking enforcement may proceed under this part as  
10 to the goods, or under other applicable law as to both the real  
11 property and the goods in accordance with that party's rights and  
12 remedies in respect of the real property, in which case this part  
13 does not apply.

14 Sec. 44. Section 2A-514, Uniform Commercial Code, is  
15 amended to read:

16 2A-514. Waiver of lessee's objections.

17 (1) In rejecting goods, a lessee's failure to state a  
18 particular defect that is ascertainable by reasonable inspection  
19 precludes the lessee from relying on the defect to justify  
20 rejection or to establish default:

21 (a) if, stated seasonably, the lessor or the supplier  
22 could have cured it (section 2A-513); or

23 (b) between merchants if the lessor or the supplier after  
24 rejection has made a request in writing for a full and final  
25 written statement of all defects on which the lessee proposes to  
26 rely.

27 (2) A lessee's failure to reserve rights when paying rent

1 or other consideration against documents precludes recovery of the  
2 payment for defects apparent ~~on the face of~~ in the documents.

3 Sec. 45. Section 2A-518, Uniform Commercial Code, is  
4 amended to read:

5 2A-518. Cover; substitute goods.

6 (1) After a default by a lessor under the lease contract  
7 of a type described in section 2A-508(1), or, if agreed, after  
8 other default by the lessor, the lessee may cover by making any  
9 purchase or lease of or contract to purchase or lease goods in  
10 substitution for those due from the lessor.

11 (2) Except as otherwise provided with respect to damages  
12 liquidated in the lease agreement (section 2A-504) or otherwise  
13 determined pursuant to agreement of the parties (sections ~~1-102(3)~~  
14 1-302 and 2A-503), if a lessee's cover is by a lease agreement  
15 substantially similar to the original lease agreement and the new  
16 lease agreement is made in good faith and in a commercially  
17 reasonable manner, the lessee may recover from the lessor as  
18 damages (i) the present value, as of the date of the commencement  
19 of the term of the new lease agreement, of the rent under the new  
20 lease agreement applicable to that period of the new lease term  
21 which is comparable to the then remaining term of the original  
22 lease agreement minus the present value as of the same date of the  
23 total rent for the then remaining lease term of the original lease  
24 agreement, and (ii) any incidental or consequential damages, less  
25 expenses saved in consequence of the lessor's default.

26 (3) If a lessee's cover is by lease agreement that for  
27 any reason does not qualify for treatment under subsection (2), or

1 is by purchase or otherwise, the lessee may recover from the lessor  
2 as if the lessee had elected not to cover and section 2A-519  
3 governs.

4           Sec. 46. Section 2A-519, Uniform Commercial Code, is  
5 amended to read:

6 2A-519. Lessee's damages for nondelivery, repudiation, default,  
7 and breach of warranty in regard to accepted goods.

8           (1) Except as otherwise provided with respect to damages  
9 liquidated in the lease agreement (section 2A-504) or otherwise  
10 determined pursuant to agreement of the parties (sections ~~1-102(3)~~  
11 1-302 and 2A-503), if a lessee elects not to cover or a lessee  
12 elects to cover and the cover is by lease agreement that for any  
13 reason does not qualify for treatment under section 2A-518(2), or  
14 is by purchase or otherwise, the measure of damages for nondelivery  
15 or repudiation by the lessor or for rejection or revocation of  
16 acceptance by the lessee is the present value, as of the date of  
17 the default, of the then market rent minus the present value as of  
18 the same date of the original rent, computed for the remaining  
19 lease term of the original lease agreement, together with  
20 incidental and consequential damages, less expenses saved in  
21 consequence of the lessor's default.

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

25           (3) Except as otherwise agreed, if the lessee has  
26 accepted goods and given notification (section 2A-516(3)), the  
27 measure of damages for nonconforming tender or delivery or other

1 default by a lessor is the loss resulting in the ordinary course of  
2 events from the lessor's default as determined in any manner that  
3 is reasonable together with incidental and consequential damages,  
4 less expenses saved in consequence of the lessor's default.

5 (4) Except as otherwise agreed, the measure of damages  
6 for breach of warranty is the present value at the time and place  
7 of acceptance of the difference between the value of the use of the  
8 goods accepted and the value if they had been as warranted for the  
9 lease term, unless special circumstances show proximate damages of  
10 a different amount, together with incidental and consequential  
11 damages, less expenses saved in consequence of the lessor's default  
12 or breach of warranty.

13 Sec. 47. Section 2A-526, Uniform Commercial Code, is  
14 amended to read:

15 2A-526. Lessor's stoppage of delivery in transit or otherwise.

16 (1) A lessor may stop delivery of goods in the possession  
17 of a carrier or other bailee if the lessor discovers the lessee to  
18 be insolvent and may stop delivery of carload, truckload,  
19 planeload, or larger shipments of express or freight if the lessee  
20 repudiates or fails to make a payment due before delivery, whether  
21 for rent, security, or otherwise under the lease contract, or for  
22 any other reason the lessor has a right to withhold or take  
23 possession of the goods.

24 (2) In pursuing its remedies under subsection (1), the  
25 lessor may stop delivery until

26 (a) receipt of the goods by the lessee;

27 (b) acknowledgment to the lessee by any bailee of the

1 goods, except a carrier, that the bailee holds the goods for the  
2 lessee; or

3 (c) such an acknowledgment to the lessee by a carrier via  
4 reshipment or as a warehouse. ~~keeper~~.

5 (3) (a) To stop delivery, a lessor shall so notify as to  
6 enable the bailee by reasonable diligence to prevent delivery of  
7 the goods.

8 (b) After notification, the bailee shall hold and deliver  
9 the goods according to the directions of the lessor, but the lessor  
10 is liable to the bailee for any ensuing charges or damages.

11 (c) A carrier who has issued a nonnegotiable bill of  
12 lading is not obliged to obey a notification to stop received from  
13 a person other than the consignor.

14 Sec. 48. Section 2A-527, Uniform Commercial Code, is  
15 amended to read:

16 2A-527. Lessor's rights to dispose of goods.

17 (1) After a default by a lessee under the lease contract  
18 of the type described in section 2A-523(1) or 2A-523(3) (a) or after  
19 the lessor refuses to deliver or takes possession of goods (section  
20 2A-525 or 2A-526), or, if agreed, after other default by a lessee,  
21 the lessor may dispose of the goods concerned or the undelivered  
22 balance thereof by lease, sale, or otherwise.

23 (2) Except as otherwise provided with respect to damages  
24 liquidated in the lease agreement (section 2A-504) or otherwise  
25 determined pursuant to agreement of the parties (sections ~~1-102(3)~~  
26 1-302 and 2A-503), if the disposition is by lease agreement  
27 substantially similar to the original lease agreement and the new

1 lease agreement is made in good faith and in a commercially  
2 reasonable manner, the lessor may recover from the lessee as  
3 damages (i) accrued and unpaid rent as of the date of the  
4 commencement of the term of the new lease agreement, (ii) the  
5 present value, as of the same date, of the total rent for the then  
6 remaining lease term of the original lease agreement minus the  
7 present value, as of the same date, of the rent under the new lease  
8 agreement applicable to that period of the new lease term which is  
9 comparable to the then remaining term of the original lease  
10 agreement, and (iii) any incidental damages allowed under section  
11 2A-530, less expenses saved in consequence of the lessee's default.

12 (3) If the lessor's disposition is by lease agreement  
13 that for any reason does not qualify for treatment under subsection  
14 (2), or is by sale or otherwise, the lessor may recover from the  
15 lessee as if the lessor had elected not to dispose of the goods and  
16 section 2A-528 governs.

17 (4) A subsequent buyer or lessee who buys or leases from  
18 the lessor in good faith for value as a result of a disposition  
19 under this section takes the goods free of the original lease  
20 contract and any rights of the original lessee even though the  
21 lessor fails to comply with one or more of the requirements of this  
22 article.

23 (5) The lessor is not accountable to the lessee for any  
24 profit made on any disposition. A lessee who has rightfully  
25 rejected or justifiably revoked acceptance shall account to the  
26 lessor for any excess over the amount of the lessee's security  
27 interest (section 2A-508(5)).

1                   Sec. 49.     Section 2A-528, Uniform Commercial Code, is  
2 amended to read:

3 2A-528.     Lessor's damages for nonacceptance, failure to pay,  
4 repudiation, or other default.

5                   (1) Except as otherwise provided with respect to damages  
6 liquidated in the lease agreement (section 2A-504) or otherwise  
7 determined pursuant to agreement of the parties (sections ~~1-102(3)~~  
8 1-302 and 2A-503), if a lessor elects to retain the goods or a  
9 lessor elects to dispose of the goods and the disposition is by  
10 lease agreement that for any reason does not qualify for treatment  
11 under section 2A-527(2), or is by sale or otherwise, the lessor may  
12 recover from the lessee as damages for a default of the type  
13 described in section 2A-523(1) or 2A-523(3)(a), or, if agreed, for  
14 other default of the lessee, (i) accrued and unpaid rent as of the  
15 date of default if the lessee has never taken possession of the  
16 goods, or, if the lessee has taken possession of the goods, as of  
17 the date the lessor repossesses the goods or an earlier date on  
18 which the lessee makes a tender of the goods to the lessor, (ii)  
19 the present value as of the date determined under clause (i) of the  
20 total rent for the then remaining lease term of the original lease  
21 agreement minus the present value as of the same date of the market  
22 rent at the place where the goods are located computed for the same  
23 lease term, and (iii) any incidental damages allowed under section  
24 2A-530, less expenses saved in consequence of the lessee's default.

25                   (2) If the measure of damages provided in subsection (1)  
26 is inadequate to put a lessor in as good a position as performance  
27 would have, the measure of damages is the present value of the

1 profit, including reasonable overhead, the lessor would have made  
2 from full performance by the lessee, together with any incidental  
3 damages allowed under section 2A-530, due allowance for costs  
4 reasonably incurred, and due credit for payments or proceeds of  
5 disposition.

6 Sec. 50. Section 3-103, Uniform Commercial Code, is  
7 amended to read:

8 3-103. Definitions.

9 (a) In this article:

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

11 (2) "Drawee" means a person ordered in a draft to make  
12 payment.

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

15 (4) "Good faith" means honesty in fact and the observance  
16 of reasonable commercial standards of fair dealing.

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

19 (6) "Order" means a written instruction to pay money  
20 signed by the person giving the instruction. The instruction may  
21 be addressed to any person, including the person giving the  
22 instruction, or to one or more persons jointly or in the  
23 alternative but not in succession. An authorization to pay is not  
24 an order unless the person authorized to pay is also instructed to  
25 pay.

26 (7) "Ordinary care" in the case of a person engaged in  
27 business means observance of reasonable commercial standards,

1 prevailing in the area in which the person is located, with respect  
2 to the business in which the person is engaged. In the case of a  
3 bank that takes an instrument for processing for collection or  
4 payment by automated means, reasonable commercial standards do not  
5 require the bank to examine the instrument if the failure to  
6 examine does not violate the bank's prescribed procedures and the  
7 bank's procedures do not vary unreasonably from general banking  
8 usage not disapproved by this article or article 4.

9 (8) "Party" means a party to an instrument.

10 (9) "Promise" means a written undertaking to pay money  
11 signed by the person undertaking to pay. An acknowledgment of an  
12 obligation by the obligor is not a promise unless the obligor also  
13 undertakes to pay the obligation.

14 (10) "Prove" with respect to a fact means to meet the  
15 burden of establishing the fact (section ~~1-201(8)~~ 1-201(b)(8)).

16 (11) "Remitter" means a person who purchases an  
17 instrument from its issuer if the instrument is payable to an  
18 identified person other than the purchaser.

19 (b) Other definitions applying to this article and the  
20 sections in which they appear are:

21	"Acceptance".	Section 3-409.
22	"Accommodated party".	Section 3-419.
23	"Accommodation party".	Section 3-419.
24	"Alteration".	Section 3-407.
25	"Anomalous indorsement".	Section 3-205.
26	"Blank indorsement".	Section 3-205.
27	"Cashier's check".	Section 3-104.

AM0229  
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NPN-02-03

AM0229  
LB 570  
NPN-02-03

1	"Certificate of deposit".	Section 3-104.
2	"Certified check".	Section 3-409.
3	"Check".	Section 3-104.
4	"Consideration".	Section 3-303.
5	"Demand draft".	Section 3-104.
6	"Draft".	Section 3-104.
7	"Holder in due course".	Section 3-302.
8	"Incomplete instrument".	Section 3-115.
9	"Indorsement".	Section 3-204.
10	"Indorser".	Section 3-204.
11	"Issue".	Section 3-105.
12	"Issuer".	Section 3-105.
13	"Negotiable instrument".	Section 3-104.
14	"Negotiation".	Section 3-201.
15	"Note".	Section 3-104.
16	"Payable at a definite time".	Section 3-108.
17	"Payable on demand".	Section 3-108.
18	"Payable to bearer".	Section 3-109.
19	"Payable to order".	Section 3-109.
20	"Payment".	Section 3-602.
21	"Person entitled to enforce".	Section 3-301.
22	"Presentment".	Section 3-501.
23	"Reacquisition".	Section 3-207.
24	"Special indorsement".	Section 3-205.
25	"Teller's check".	Section 3-104.
26	"Transfer of instrument".	Section 3-203.
27	"Traveler's check".	Section 3-104.



1           (3) "Banking day" means that part of any day on which a  
2 bank is open to the public for carrying on substantially all of its  
3 banking functions but, for purposes of a bank's midnight deadline,  
4 shall not include Saturday, Sunday, or any holiday when the federal  
5 reserve banks are not performing check clearing functions;

6           (4) "Clearinghouse" means an association of banks or  
7 other payors regularly clearing items;

8           (5) "Customer" means a person having an account with a  
9 bank or for whom a bank has agreed to collect items, including a  
10 bank that maintains an account at another bank;

11           (6) "Documentary draft" means a draft to be presented for  
12 acceptance or payment if specified documents, certificated  
13 securities (section 8-102) or instructions for uncertificated  
14 securities (section 8-102), or other certificates, statements, or  
15 the like are to be received by the drawee or other payor before  
16 acceptance or payment of the draft;

17           (7) "Draft" means a draft as defined in section 3-104 or  
18 an item, other than an instrument, that is an order;

19           (8) "Drawee" means a person ordered in a draft to make  
20 payment;

21           (9) "Item" means an instrument or a promise or order to  
22 pay money handled by a bank for collection or payment. The term  
23 does not include a payment order governed by article 4A or a credit  
24 or debit card slip;

25           (10) "Midnight deadline" with respect to a bank is  
26 midnight on its next banking day following the banking day on which  
27 it receives the relevant item or notice or from which the time for

1 taking action commences to run, whichever is later;

2 (11) "Settle" means to pay in cash, by clearinghouse  
3 settlement, in a charge or credit or by remittance, or otherwise as  
4 agreed. A settlement may be either provisional or final;

5 (12) "Suspends payments" with respect to a bank means  
6 that it has been closed by order of the supervisory authorities,  
7 that a public officer has been appointed to take it over, or that  
8 it ceases or refuses to make payments in the ordinary course of  
9 business.

10 (b) Other definitions applying to this article and the  
11 sections in which they appear are:

12 "Agreement for electronic 13 presentment".	Section 4-110.
14 "Bank".	Section 4-105.
15 "Collecting bank".	Section 4-105.
16 "Depository bank".	Section 4-105.
17 "Intermediary bank".	Section 4-105.
18 "Payor bank".	Section 4-105.
19 "Presenting bank".	Section 4-105.
20 "Presentment notice".	Section 4-110.

21 (c) ~~The~~ "Control" as provided in section 7-106 and the  
22 following definitions in other articles apply to this article:

23 "Acceptance".	Section 3-409.
24 "Alteration".	Section 3-407.
25 "Cashier's check".	Section 3-104.
26 "Certificate of deposit".	Section 3-104.
27 "Certified check".	Section 3-409.

1           "Check".                           Section 3-104.  
2           "Good faith".                    Section 3-103.  
3           "Holder in due course".           Section 3-302.  
4           "Instrument".                     Section 3-104.  
5           "Notice of dishonor".            Section 3-503.  
6           "Order".                          Section 3-103.  
7           "Ordinary care".                 Section 3-103.  
8           "Person entitled to enforce".    Section 3-301.  
9           "Presentment".                  Section 3-501.  
10          "Promise".                       Section 3-103.  
11          "Prove".                         Section 3-103.  
12          "Teller's check".                Section 3-104.  
13          "Unauthorized signature".        Section 3-403.  
14           (d) In addition article 1 contains general definitions  
15 and principles of construction and interpretation applicable  
16 throughout this article.  
17           Sec. 52. Section 4-210, Uniform Commercial Code, is  
18 amended to read:  
19 4-210. Security interest of collecting bank in items, accompanying  
20 documents and proceeds.  
21           (a) A collecting bank has a security interest in an item  
22 and any accompanying documents, or the proceeds of either:  
23           (1) in case of an item deposited in an account, to the  
24 extent to which credit given for the item has been withdrawn or  
25 applied;  
26           (2) in case of an item for which it has given credit  
27 available for withdrawal as of right, to the extent of the credit

1 given, whether or not the credit is drawn upon or there is a right  
2 of chargeback; or

3 (3) if it makes an advance on or against the item.

4 (b) If credit given for several items received at one  
5 time or pursuant to a single agreement is withdrawn or applied in  
6 part, the security interest remains upon all the items, any  
7 accompanying documents, or the proceeds of either. For the purpose  
8 of this section, credits first given are first withdrawn.

9 (c) Receipt by a collecting bank of a final settlement  
10 for an item is a realization on its security interest in the item,  
11 accompanying documents, and proceeds. So long as the bank does not  
12 receive final settlement for the item or give up possession of the  
13 item or possession or control of the accompanying documents for  
14 purposes other than collection, the security interest continues to  
15 that extent and is subject to article 9, but:

16 (1) no security agreement is necessary to make the  
17 security interest enforceable (section 9-203(b)(3)(A));

18 (2) no filing is required to perfect the security  
19 interest; and

20 (3) the security interest has priority over conflicting  
21 perfected security interests in the item, accompanying documents,  
22 or proceeds.

23 Sec. 53. Section 4A-105, Uniform Commercial Code, is  
24 amended to read:

25 4A-105. Other definitions.

26 (a) In this article:

27 (1) "Authorized account" means a deposit account of a

1 customer in a bank designated by the customer as a source of  
2 payment of payment orders issued by the customer to the bank. If a  
3 customer does not so designate an account, any account of the  
4 customer is an authorized account if payment of a payment order  
5 from that account is not inconsistent with a restriction on the use  
6 of that account.

7 (2) "Bank" means a person engaged in the business of  
8 banking and includes a savings bank, savings and loan association,  
9 credit union, and trust company. A branch or separate office of a  
10 bank is a separate bank for purposes of this article.

11 (3) "Customer" means a person, including a bank, having  
12 an account with a bank or from whom a bank has agreed to receive  
13 payment orders.

14 (4) "Funds-transfer business day" of a receiving bank  
15 means the part of a day during which the receiving bank is open for  
16 the receipt, processing, and transmittal of payment orders and  
17 cancellations and amendments of payment orders.

18 (5) "Funds-transfer system" means a wire transfer  
19 network, automated clearinghouse, or other communication system of  
20 a clearinghouse or other association of banks through which a  
21 payment order by a bank may be transmitted to the bank to which the  
22 order is addressed.

23 (6) "Good faith" means honesty in fact and the observance  
24 of reasonable commercial standards of fair dealing.

25 (7) "Prove" with respect to a fact means to meet the  
26 burden of establishing the fact (section ~~1-201(8)~~ 1-201(b)(8)).

27 (b) Other definitions applying to this article and the

1 sections in which they appear are:

2	"Acceptance".	Section 4A-209.
3	"Beneficiary".	Section 4A-103.
4	"Beneficiary's bank".	Section 4A-103.
5	"Executed".	Section 4A-301.
6	"Execution date".	Section 4A-301.
7	"Funds transfer".	Section 4A-104.
8	"Funds-transfer system rule".	Section 4A-501.
9	"Intermediary bank".	Section 4A-104.
10	"Originator".	Section 4A-104.
11	"Originator's bank".	Section 4A-104.
12	"Payment by beneficiary's bank	
13	to beneficiary".	Section 4A-405.
14	"Payment by originator to	
15	beneficiary".	Section 4A-406.
16	"Payment by sender to	
17	receiving bank".	Section 4A-403.
18	"Payment date".	Section 4A-401.
19	"Payment order".	Section 4A-103.
20	"Receiving bank".	Section 4A-103.
21	"Security procedure".	Section 4A-201.
22	"Sender".	Section 4A-103.
23	(c) The following definitions in article 4 apply to this	
24	article:	
25	"Clearinghouse".	Section 4-104.
26	"Item".	Section 4-104.
27	"Suspends payments".	Section 4-104.

1           (d) In addition article 1 contains general definitions  
2 and principles of construction and interpretation applicable  
3 throughout this article.

4           Sec. 54. Section 4A-106, Uniform Commercial Code, is  
5 amended to read:

6 4A-106. Time payment order is received.

7           (a) The time of receipt of a payment order or  
8 communication canceling or amending a payment order is determined  
9 by the rules applicable to receipt of a notice stated in section  
10 ~~1-201(27)~~ 1-202. A receiving bank may fix a cutoff time or times  
11 on a funds-transfer business day for the receipt and processing of  
12 payment orders and communications canceling or amending payment  
13 orders. Different cutoff times may apply to payment orders,  
14 cancellations, or amendments, or to different categories of payment  
15 orders, cancellations, or amendments. A cutoff time may apply to  
16 senders generally or different cutoff times may apply to different  
17 senders or categories of payment orders. If a payment order or  
18 communication canceling or amending a payment order is received  
19 after the close of a funds-transfer business day or after the  
20 appropriate cutoff time on a funds-transfer business day, the  
21 receiving bank may treat the payment order or communication as  
22 received at the opening of the next funds-transfer business day.

23           (b) If this article refers to an execution date or  
24 payment date or states a day on which a receiving bank is required  
25 to take action, and the date or day does not fall on a  
26 funds-transfer business day, the next day that is a funds-transfer  
27 business day is treated as the date or day stated, unless the

1 contrary is stated in this article.

2           Sec. 55.     Section 4A-204, Uniform Commercial Code, is  
3 amended to read:

4 4A-204. Refund of payment and duty of customer to report with  
5 respect to unauthorized payment order.

6           (a) If a receiving bank accepts a payment order issued in  
7 the name of its customer as sender which is (i) not authorized and  
8 not effective as the order of the customer under section 4A-202, or  
9 (ii) not enforceable, in whole or in part, against the customer  
10 under section 4A-203, the bank shall refund any payment of the  
11 payment order received from the customer to the extent the bank is  
12 not entitled to enforce payment and shall pay interest on the  
13 refundable amount calculated from the date the bank received  
14 payment to the date of the refund. However, the customer is not  
15 entitled to interest from the bank on the amount to be refunded if  
16 the customer fails to exercise ordinary care to determine that the  
17 order was not authorized by the customer and to notify the bank of  
18 the relevant facts within a reasonable time not exceeding ninety  
19 days after the date the customer received notification from the  
20 bank that the order was accepted or that the customer's account was  
21 debited with respect to the order. The bank is not entitled to any  
22 recovery from the customer on account of a failure by the customer  
23 to give notification as stated in this section.

24           (b) Reasonable time under subsection (a) may be fixed by  
25 agreement as stated in section ~~1-204(1)~~ 1-302(b), but the  
26 obligation of a receiving bank to refund payment as stated in  
27 subsection (a) may not otherwise be varied by agreement.

1                   Sec. 56.   Section 5-103, Uniform Commercial Code, is  
2 amended to read:

3 5-103. Scope.

4                   (a) This article applies to letters of credit and to  
5 certain rights and obligations arising out of transactions  
6 involving letters of credit.

7                   (b) The statement of a rule in this article does not by  
8 itself require, imply, or negate application of the same or a  
9 different rule to a situation not provided for, or to a person not  
10 specified, in this article.

11                   (c) With the exception of this subsection, subsections  
12 (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d),  
13 and except to the extent prohibited in sections ~~1-102(3)~~ 1-302 and  
14 5-117(d), the effect of this article may be varied by agreement or  
15 by a provision stated or incorporated by reference in an  
16 undertaking. A term in an agreement or undertaking generally  
17 excusing liability or generally limiting remedies for failure to  
18 perform obligations is not sufficient to vary obligations  
19 prescribed by this article.

20                   (d) Rights and obligations of an issuer to a beneficiary  
21 or a nominated person under a letter of credit are independent of  
22 the existence, performance, or nonperformance of a contract or  
23 arrangement out of which the letter of credit arises or which  
24 underlies it, including contracts or arrangements between the  
25 issuer and the applicant and between the applicant and the  
26 beneficiary.

27                   Sec. 57.   The Uniform Commercial Code is amended by

1 adding new section:

2 7-101. Short title.

3 This article may be cited as Uniform Commercial  
4 Code--Documents of Title.

5 Sec. 58. The Uniform Commercial Code is amended by  
6 adding new section:

7 7-102. Definitions and index of definitions.

8 (a) In this article, unless the context otherwise  
9 requires:

10 (1) "Bailee" means a person that by a warehouse receipt,  
11 bill of lading, or other document of title acknowledges possession  
12 of goods and contracts to deliver them.

13 (2) "Carrier" means a person that issues a bill of  
14 lading.

15 (3) "Consignee" means a person named in a bill of lading  
16 to which or to whose order the bill promises delivery.

17 (4) "Consignor" means a person named in a bill of lading  
18 as the person from which the goods have been received for shipment.

19 (5) "Delivery order" means a record that contains an  
20 order to deliver goods directed to a warehouse, carrier, or other  
21 person that in the ordinary course of business issues warehouse  
22 receipts or bills of lading.

23 (6) "Good faith" means honesty in fact and the observance  
24 of reasonable commercial standards of fair dealing.

25 (7) "Goods" means all things that are treated as movable  
26 for the purposes of a contract for storage or transportation.

27 (8) "Issuer" means a bailee that issues a document of

1 title or, in the case of an unaccepted delivery order, the person  
2 that orders the possessor of goods to deliver. The term includes a  
3 person for which an agent or employee purports to act in issuing a  
4 document if the agent or employee has real or apparent authority to  
5 issue documents, even if the issuer did not receive any goods, the  
6 goods were misdescribed, or in any other respect the agent or  
7 employee violated the issuer's instructions.

8 (9) "Person entitled under the document" means the  
9 holder, in the case of a negotiable document of title, or the  
10 person to which delivery of the goods is to be made by the terms  
11 of, or pursuant to instructions in a record under, a nonnegotiable  
12 document of title.

13 (10) "Record" means information that is inscribed on a  
14 tangible medium or that is stored in an electronic or other medium  
15 and is retrievable in perceivable form.

16 (11) "Sign" means, with present intent to authenticate or  
17 adopt a record:

18 (A) to execute or adopt a tangible symbol; or

19 (B) to attach to or logically associate with the record  
20 an electronic sound, symbol, or process.

21 (12) "Shipper" means a person that enters into a contract  
22 of transportation with a carrier.

23 (13) "Warehouse" means a person engaged in the business  
24 of storing goods for hire.

25 (b) Definitions in other articles applying to this  
26 article and the sections in which they appear are:

27 (1) "Contract for sale", section 2-106.

1                   (2) "Lessee in ordinary course of business", section  
2 2A-103.

3                   (3) "Receipt" of goods, section 2-103.

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

7                   Sec. 59. The Uniform Commercial Code is amended by adding  
8 new section:

9 7-103. Relation of article to treaty or statute.

10                   (a) This article is subject to any treaty or statute of  
11 the United States or regulatory statute of this state to the extent  
12 the treaty, statute, or regulatory statute is applicable.

13                   (b) This article does not modify or repeal any law  
14 prescribing the form or content of a document of title or the  
15 services or facilities to be afforded by a bailee, or otherwise  
16 regulating a bailee's business in respects not specifically treated  
17 in this article. However, violation of such a law does not affect  
18 the status of a document of title that otherwise is within the  
19 definition of a document of title.

20                   (c) This article modifies, limits, and supersedes the  
21 federal Electronic Signatures in Global and National Commerce Act  
22 (15 U.S.C. section 7001, et seq.) but does not modify, limit, or  
23 supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or  
24 authorize electronic delivery of any of the notices described in  
25 section 103(b) of that act (15 U.S.C. section 7003(b)).

26                   (d) To the extent there is a conflict between the Uniform  
27 Electronic Transactions Act and this article, this article governs.

1                   Sec. 60.     The Uniform Commercial Code is amended by  
2 adding new section:

3 7-104. Negotiable and nonnegotiable document of title.

4                   (a) Except as otherwise provided in subsection (c), a  
5 document of title is negotiable if by its terms the goods are to be  
6 delivered to bearer or to the order of a named person.

7                   (b) A document of title other than one described in  
8 subsection (a) is nonnegotiable. A bill of lading that states that  
9 the goods are consigned to a named person is not made negotiable by  
10 a provision that the goods are to be delivered only against an  
11 order in a record signed by the same or another named person.

12                   (c) A document of title is nonnegotiable if, at the time  
13 it is issued, the document has a conspicuous legend, however  
14 expressed, that it is nonnegotiable.

15                   Sec. 61.     The Uniform Commercial Code is amended by  
16 adding new section:

17 7-105. Reissuance in alternative medium.

18                   (a) Upon request of a person entitled under an electronic  
19 document of title, the issuer of the electronic document may issue  
20 a tangible document of title as a substitute for the electronic  
21 document if:

22                   (1) the person entitled under the electronic document  
23 surrenders control of the document to the issuer; and

24                   (2) the tangible document when issued contains a  
25 statement that it is issued in substitution for the electronic  
26 document.

27                   (b) Upon issuance of a tangible document of title in

1 substitution for an electronic document of title in accordance with  
2 subsection (a):

3 (1) the electronic document ceases to have any effect or  
4 validity; and

5 (2) the person that procured issuance of the tangible  
6 document warrants to all subsequent persons entitled under the  
7 tangible document that the warrantor was a person entitled under  
8 the electronic document when the warrantor surrendered control of  
9 the electronic document to the issuer.

10 (c) Upon request of a person entitled under a tangible  
11 document of title, the issuer of the tangible document may issue an  
12 electronic document of title as a substitute for the tangible  
13 document if:

14 (1) the person entitled under the tangible document  
15 surrenders possession of the document to the issuer; and

16 (2) the electronic document when issued contains a  
17 statement that it is issued in substitution for the tangible  
18 document.

19 (d) Upon issuance of an electronic document of title in  
20 substitution for a tangible document of title in accordance with  
21 subsection (c):

22 (1) the tangible document ceases to have any effect or  
23 validity; and

24 (2) the person that procured issuance of the electronic  
25 document warrants to all subsequent persons entitled under the  
26 electronic document that the warrantor was a person entitled under  
27 the tangible document when the warrantor surrendered possession of

1 the tangible document to the issuer.

2           Sec. 62.     The Uniform Commercial Code is amended by  
3 adding new section:

4 7-106. Control of electronic document of title.

5           (a) A person has control of an electronic document of  
6 title if a system employed for evidencing the transfer of interests  
7 in the electronic document reliably establishes that person as the  
8 person to which the electronic document was issued or transferred.

9           (b) A system satisfies subsection (a), and a person is  
10 deemed to have control of an electronic document of title, if the  
11 document is created, stored, and assigned in such a manner that:

12           (1) a single authoritative copy of the document exists  
13 which is unique, identifiable, and, except as otherwise provided in  
14 paragraphs (4), (5), and (6), unalterable;

15           (2) the authoritative copy identifies the person  
16 asserting control as:

17           (A) the person to which the document was issued; or

18           (B) if the authoritative copy indicates that the document  
19 has been transferred, the person to which the document was most  
20 recently transferred;

21           (3) the authoritative copy is communicated to and  
22 maintained by the person asserting control or its designated  
23 custodian;

24           (4) copies or amendments that add or change an identified  
25 assignee of the authoritative copy can be made only with the  
26 consent of the person asserting control;

27           (5) each copy of the authoritative copy and any copy of a

1 copy is readily identifiable as a copy that is not the  
2 authoritative copy; and

3 (6) any amendment of the authoritative copy is readily  
4 identifiable as authorized or unauthorized.

5 Sec. 63. The Uniform Commercial Code is amended by  
6 adding new section:

7 7-201. Person that may issue a warehouse receipt; storage under  
8 bond.

9 (a) A warehouse receipt may be issued by any warehouse.

10 (b) If goods, including distilled spirits and  
11 agricultural commodities, are stored under a statute requiring a  
12 bond against withdrawal or a license for the issuance of receipts  
13 in the nature of warehouse receipts, a receipt issued for the goods  
14 is deemed to be a warehouse receipt even if issued by a person that  
15 is the owner of the goods and is not a warehouse.

16 Sec. 64. The Uniform Commercial Code is amended by  
17 adding new section:

18 7-202. Form of warehouse receipt; effect of omission.

19 (a) A warehouse receipt need not be in any particular  
20 form.

21 (b) Unless a warehouse receipt provides for each of the  
22 following, the warehouse is liable for damages caused to a person  
23 injured by its omission:

24 (1) a statement of the location of the warehouse facility  
25 where the goods are stored;

26 (2) the date of issue of the receipt;

27 (3) the unique identification code of the receipt;

1           (4) a statement whether the goods received will be  
2 delivered to the bearer, to a named person, or to a named person or  
3 its order;

4           (5) the rate of storage and handling charges, unless  
5 goods are stored under a field warehousing arrangement, in which  
6 case a statement of that fact is sufficient on a nonnegotiable  
7 receipt;

8           (6) a description of the goods or the packages containing  
9 them;

10           (7) the signature of the warehouse or its agent;

11           (8) if the receipt is issued for goods that the warehouse  
12 owns, either solely, jointly, or in common with others, a statement  
13 of the fact of that ownership; and

14           (9) a statement of the amount of advances made and of  
15 liabilities incurred for which the warehouse claims a lien or  
16 security interest, unless the precise amount of advances made or  
17 liabilities incurred, at the time of the issue of the receipt, is  
18 unknown to the warehouse or to its agent that issued the receipt,  
19 in which case a statement of the fact that advances have been made  
20 or liabilities incurred and the purpose of the advances or  
21 liabilities is sufficient.

22           (c) A warehouse may insert in its receipt any terms that  
23 are not contrary to the Uniform Commercial Code and do not impair  
24 its obligation of delivery under section 7-403 or its duty of care  
25 under section 7-204. Any contrary provision is ineffective.

26           Sec. 65. The Uniform Commercial Code is amended by  
27 adding new section:

1 7-203. Liability for nonreceipt or misdescription.

2 A party to or purchaser for value in good faith of a  
3 document of title, other than a bill of lading, that relies upon  
4 the description of the goods in the document may recover from the  
5 issuer damages caused by the nonreceipt or misdescription of the  
6 goods, except to the extent that:

7 (1) the document conspicuously indicates that the issuer  
8 does not know whether all or part of the goods in fact were  
9 received or conform to the description, such as a case in which the  
10 description is in terms of marks or labels or kind, quantity, or  
11 condition, or the receipt or description is qualified by "contents,  
12 condition, and quality unknown", "said to contain", or words of  
13 similar import, if the indication is true; or

14 (2) the party or purchaser otherwise has notice of the  
15 nonreceipt or misdescription.

16 Sec. 66. The Uniform Commercial Code is amended by  
17 adding new section:

18 7-204. Duty of care; contractual limitation of warehouse's  
19 liability.

20 (a) A warehouse is liable for damages for loss of or  
21 injury to the goods caused by its failure to exercise care with  
22 regard to the goods that a reasonably careful person would exercise  
23 under similar circumstances. Unless otherwise agreed, the  
24 warehouse is not liable for damages that could not have been  
25 avoided by the exercise of that care.

26 (b) Damages may be limited by a term in the warehouse  
27 receipt or storage agreement limiting the amount of liability in

1 case of loss or damage beyond which the warehouse is not liable.  
2 Such a limitation is not effective with respect to the warehouse's  
3 liability for conversion to its own use. On request of the bailor  
4 in a record at the time of signing the storage agreement or within  
5 a reasonable time after receipt of the warehouse receipt, the  
6 warehouse's liability may be increased on part or all of the goods  
7 covered by the storage agreement or the warehouse receipt. In this  
8 event, increased rates may be charged based on an increased  
9 valuation of the goods.

10 (c) Reasonable provisions as to the time and manner of  
11 presenting claims and commencing actions based on the bailment may  
12 be included in the warehouse receipt or storage agreement.

13 (d) This section does not modify or repeal any law of  
14 this state that imposes a higher responsibility upon the warehouse  
15 or invalidates contractual limitations that would be permissible  
16 under this article.

17 Sec. 67. The Uniform Commercial Code is amended by  
18 adding new section:

19 7-205. Title under warehouse receipt defeated in certain cases.

20 A buyer in ordinary course of business of fungible goods  
21 sold and delivered by a warehouse that is also in the business of  
22 buying and selling such goods takes the goods free of any claim  
23 under a warehouse receipt even if the receipt is negotiable and has  
24 been duly negotiated.

25 Sec. 68. The Uniform Commercial Code is amended by  
26 adding new section:

27 7-206. Termination of storage at warehouse's option.

1           (a) A warehouse, by giving notice to the person on whose  
2 account the goods are held and any other person known to claim an  
3 interest in the goods, may require payment of any charges and  
4 removal of the goods from the warehouse at the termination of the  
5 period of storage fixed by the document of title or, if a period is  
6 not fixed, within a stated period not less than 30 days after the  
7 warehouse gives notice. If the goods are not removed before the  
8 date specified in the notice, the warehouse may sell them pursuant  
9 to section 7-210.

10           (b) If a warehouse in good faith believes that goods are  
11 about to deteriorate or decline in value to less than the amount of  
12 its lien within the time provided in subsection (a) and section  
13 7-210, the warehouse may specify in the notice given under  
14 subsection (a) any reasonable shorter time for removal of the goods  
15 and, if the goods are not removed, may sell them at public sale  
16 held not less than one week after a single advertisement or  
17 posting.

18           (c) If, as a result of a quality or condition of the  
19 goods of which the warehouse did not have notice at the time of  
20 deposit, the goods are a hazard to other property, the warehouse  
21 facilities, or other persons, the warehouse may sell the goods at  
22 public or private sale without advertisement or posting on  
23 reasonable notification to all persons known to claim an interest  
24 in the goods. If the warehouse, after a reasonable effort, is  
25 unable to sell the goods, it may dispose of them in any lawful  
26 manner and does not incur liability by reason of that disposition.

27           (d) A warehouse shall deliver the goods to any person

1 entitled to them under this article upon due demand made at any  
2 time before sale or other disposition under this section.

3 (e) A warehouse may satisfy its lien from the proceeds of  
4 any sale or disposition under this section but shall hold the  
5 balance for delivery on the demand of any person to which the  
6 warehouse would have been bound to deliver the goods.

7 Sec. 69. The Uniform Commercial Code is amended by  
8 adding new section:

9 7-207. Goods must be kept separate; fungible goods.

10 (a) Unless the warehouse receipt provides otherwise, a  
11 warehouse shall keep separate the goods covered by each receipt so  
12 as to permit at all times identification and delivery of those  
13 goods. However, different lots of fungible goods may be  
14 commingled.

15 (b) If different lots of fungible goods are commingled,  
16 the goods are owned in common by the persons entitled thereto and  
17 the warehouse is severally liable to each owner for that owner's  
18 share. If, because of overissue, a mass of fungible goods is  
19 insufficient to meet all the receipts the warehouse has issued  
20 against it, the persons entitled include all holders to which  
21 overissued receipts have been duly negotiated.

22 Sec. 70. The Uniform Commercial Code is amended by  
23 adding new section:

24 7-208. Altered warehouse receipts.

25 If a blank in a negotiable tangible warehouse receipt has  
26 been filled in without authority, a good faith purchaser for value  
27 and without notice of the lack of authority may treat the insertion

1 as authorized. Any other unauthorized alteration leaves any  
2 tangible or electronic warehouse receipt enforceable against the  
3 issuer according to its original tenor.

4           Sec. 71. The Uniform Commercial Code is amended by  
5 adding new section:

6 7-209. Lien of warehouse.

7           (a) A warehouse has a lien against the bailor on the  
8 goods covered by a warehouse receipt or storage agreement or on the  
9 proceeds thereof in its possession for charges for storage or  
10 transportation, including demurrage and terminal charges,  
11 insurance, labor, or other charges, present or future, in relation  
12 to the goods, and for expenses necessary for preservation of the  
13 goods or reasonably incurred in their sale pursuant to law. If the  
14 person on whose account the goods are held is liable for similar  
15 charges or expenses in relation to other goods whenever deposited  
16 and it is stated in the warehouse receipt or storage agreement that  
17 a lien is claimed for charges and expenses in relation to other  
18 goods, the warehouse also has a lien against the goods covered by  
19 the warehouse receipt or storage agreement or on the proceeds  
20 thereof in its possession for those charges and expenses, whether  
21 or not the other goods have been delivered by the warehouse.  
22 However, as against a person to which a negotiable warehouse  
23 receipt is duly negotiated, a warehouse's lien is limited to  
24 charges in an amount or at a rate specified in the warehouse  
25 receipt or, if no charges are so specified, to a reasonable charge  
26 for storage of the specific goods covered by the receipt subsequent  
27 to the date of the receipt.

1           (b) A warehouse may also reserve a security interest  
2 against the bailor for the maximum amount specified on the receipt  
3 for charges other than those specified in subsection (a), such as  
4 for money advanced and interest. The security interest is governed  
5 by article 9.

6           (c) A warehouse's lien for charges and expenses under  
7 subsection (a) or a security interest under subsection (b) is also  
8 effective against any person that so entrusted the bailor with  
9 possession of the goods that a pledge of them by the bailor to a  
10 good faith purchaser for value would have been valid. However, the  
11 lien or security interest is not effective against a person that  
12 before issuance of a document of title had a legal interest or a  
13 perfected security interest in the goods and that did not:

14           (1) deliver or entrust the goods or any document of title  
15 covering the goods to the bailor or the bailor's nominee with:

16           (A) actual or apparent authority to ship, store, or sell;

17           (B) power to obtain delivery under section 7-403; or

18           (C) power of disposition under section 2-403, 2A-304(2),  
19 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

20           (2) acquiesce in the procurement by the bailor or its  
21 nominee of any document.

22           (d) A warehouse's lien on household goods for charges and  
23 expenses in relation to the goods under subsection (a) is also  
24 effective against all persons if the depositor was the legal  
25 possessor of the goods at the time of deposit. In this subsection,  
26 "household goods" means furniture, furnishings, or personal effects  
27 used by the depositor in a dwelling.

1           (e) A warehouse loses its lien on any goods that it  
2 voluntarily delivers or unjustifiably refuses to deliver.

3           Sec. 72. The Uniform Commercial Code is amended by  
4 adding new section:

5 7-210. Enforcement of warehouse's lien.

6           (a) Except as otherwise provided in subsection (b), a  
7 warehouse's lien may be enforced by public or private sale of the  
8 goods, in bulk or in packages, at any time or place and on any  
9 terms that are commercially reasonable, after notifying all persons  
10 known to claim an interest in the goods. The notification must  
11 include a statement of the amount due, the nature of the proposed  
12 sale, and the time and place of any public sale. The fact that a  
13 better price could have been obtained by a sale at a different time  
14 or in a method different from that selected by the warehouse is not  
15 of itself sufficient to establish that the sale was not made in a  
16 commercially reasonable manner. The warehouse sells in a  
17 commercially reasonable manner if the warehouse sells the goods in  
18 the usual manner in any recognized market therefor, sells at the  
19 price current in that market at the time of the sale, or otherwise  
20 sells in conformity with commercially reasonable practices among  
21 dealers in the type of goods sold. A sale of more goods than  
22 apparently necessary to be offered to ensure satisfaction of the  
23 obligation is not commercially reasonable, except in cases covered  
24 by the preceding sentence.

25           (b) A warehouse may enforce its lien on goods, other than  
26 goods stored by a merchant in the course of its business, only if  
27 the following requirements are satisfied:

1           (1) All persons known to claim an interest in the goods  
2 must be notified.

3           (2) The notification must include an itemized statement  
4 of the claim, a description of the goods subject to the lien, a  
5 demand for payment within a specified time not less than 10 days  
6 after receipt of the notification, and a conspicuous statement that  
7 unless the claim is paid within that time the goods will be  
8 advertised for sale and sold by auction at a specified time and  
9 place.

10           (3) The sale must conform to the terms of the  
11 notification.

12           (4) The sale must be held at the nearest suitable place  
13 to where the goods are held or stored.

14           (5) After the expiration of the time given in the  
15 notification, an advertisement of the sale must be published once a  
16 week for two weeks consecutively in a newspaper of general  
17 circulation where the sale is to be held. The advertisement must  
18 include a description of the goods, the name of the person on whose  
19 account the goods are being held, and the time and place of the  
20 sale. The sale must take place at least 15 days after the first  
21 publication. If there is no newspaper of general circulation where  
22 the sale is to be held, the advertisement must be posted at least  
23 10 days before the sale in not fewer than six conspicuous places in  
24 the neighborhood of the proposed sale.

25           (c) Before any sale pursuant to this section, any person  
26 claiming a right in the goods may pay the amount necessary to  
27 satisfy the lien and the reasonable expenses incurred in complying

1 with this section. In that event, the goods may not be sold but  
2 must be retained by the warehouse subject to the terms of the  
3 receipt and this article.

4 (d) A warehouse may buy at any public sale held pursuant  
5 to this section.

6 (e) A purchaser in good faith of goods sold to enforce a  
7 warehouse's lien takes the goods free of any rights of persons  
8 against which the lien was valid, despite the warehouse's  
9 noncompliance with this section.

10 (f) A warehouse may satisfy its lien from the proceeds of  
11 any sale pursuant to this section but shall hold the balance, if  
12 any, for delivery on demand to any person to which the warehouse  
13 would have been bound to deliver the goods.

14 (g) The rights provided by this section are in addition  
15 to all other rights allowed by law to a creditor against a debtor.

16 (h) If a lien is on goods stored by a merchant in the  
17 course of its business, the lien may be enforced in accordance with  
18 subsection (a) or (b).

19 (i) A warehouse is liable for damages caused by failure  
20 to comply with the requirements for sale under this section and, in  
21 case of willful violation, is liable for conversion.

22 Sec. 73. The Uniform Commercial Code is amended by  
23 adding new section:

24 7-301. Liability for nonreceipt or misdescription; "said to  
25 contain"; "shipper's weight, load, and count"; improper handling.

26 (a) A consignee of a nonnegotiable bill of lading which  
27 has given value in good faith, or a holder to which a negotiable

1 bill has been duly negotiated, relying upon the description of the  
2 goods in the bill or upon the date shown in the bill, may recover  
3 from the issuer damages caused by the misdating of the bill or the  
4 nonreceipt or misdescription of the goods, except to the extent  
5 that the bill indicates that the issuer does not know whether any  
6 part or all of the goods in fact were received or conform to the  
7 description, such as in a case in which the description is in terms  
8 of marks or labels or kind, quantity, or condition or the receipt  
9 or description is qualified by "contents or condition of contents  
10 of packages unknown", "said to contain", "shipper's weight, load,  
11 and count", or words of similar import, if that indication is true.

12 (b) If goods are loaded by the issuer of a bill of  
13 lading:

14 (1) the issuer shall count the packages of goods if  
15 shipped in packages and ascertain the kind and quantity if shipped  
16 in bulk; and

17 (2) words such as "shipper's weight, load, and count", or  
18 words of similar import indicating that the description was made by  
19 the shipper are ineffective except as to goods concealed in  
20 packages.

21 (c) If bulk goods are loaded by a shipper that makes  
22 available to the issuer of a bill of lading adequate facilities for  
23 weighing those goods, the issuer shall ascertain the kind and  
24 quantity within a reasonable time after receiving the shipper's  
25 request in a record to do so. In that case, "shipper's weight" or  
26 words of similar import are ineffective.

27 (d) The issuer of a bill of lading, by including in the

1 bill the words "shipper's weight, load, and count", or words of  
2 similar import, may indicate that the goods were loaded by the  
3 shipper, and, if that statement is true, the issuer is not liable  
4 for damages caused by the improper loading. However, omission of  
5 such words does not imply liability for damages caused by improper  
6 loading.

7 (e) A shipper guarantees to an issuer the accuracy at the  
8 time of shipment of the description, marks, labels, number, kind,  
9 quantity, condition, and weight, as furnished by the shipper, and  
10 the shipper shall indemnify the issuer against damage caused by  
11 inaccuracies in those particulars. This right of indemnity does not  
12 limit the issuer's responsibility or liability under the contract  
13 of carriage to any person other than the shipper.

14 Sec. 74. The Uniform Commercial Code is amended by  
15 adding new section:

16 7-302. Through bills of lading and similar documents of title.

17 (a) The issuer of a through bill of lading, or other  
18 document of title embodying an undertaking to be performed in part  
19 by a person acting as its agent or by a performing carrier, is  
20 liable to any person entitled to recover on the bill or other  
21 document for any breach by the other person or the performing  
22 carrier of its obligation under the bill or other document.  
23 However, to the extent that the bill or other document covers an  
24 undertaking to be performed overseas or in territory not contiguous  
25 to the continental United States or an undertaking including  
26 matters other than transportation, this liability for breach by the  
27 other person or the performing carrier may be varied by agreement

1 of the parties.

2 (b) If goods covered by a through bill of lading or other  
3 document of title embodying an undertaking to be performed in part  
4 by a person other than the issuer are received by that person, the  
5 person is subject, with respect to its own performance while the  
6 goods are in its possession, to the obligation of the issuer. The  
7 person's obligation is discharged by delivery of the goods to  
8 another person pursuant to the bill or other document and does not  
9 include liability for breach by any other person or by the issuer.

10 (c) The issuer of a through bill of lading or other  
11 document of title described in subsection (a) is entitled to  
12 recover from the performing carrier, or other person in possession  
13 of the goods when the breach of the obligation under the bill or  
14 other document occurred:

15 (1) the amount it may be required to pay to any person  
16 entitled to recover on the bill or other document for the breach,  
17 as may be evidenced by any receipt, judgment, or transcript of  
18 judgment; and

19 (2) the amount of any expense reasonably incurred by the  
20 issuer in defending any action commenced by any person entitled to  
21 recover on the bill or other document for the breach.

22 Sec. 75. The Uniform Commercial Code is amended by  
23 adding new section:

24 7-303. Diversion; reconsignment; change of instructions.

25 (a) Unless the bill of lading otherwise provides, a  
26 carrier may deliver the goods to a person or destination other than  
27 that stated in the bill or may otherwise dispose of the goods,

1 without liability for misdelivery, on instructions from:

2 (1) the holder of a negotiable bill;

3 (2) the consignor on a nonnegotiable bill, even if the  
4 consignee has given contrary instructions;

5 (3) the consignee on a nonnegotiable bill in the absence  
6 of contrary instructions from the consignor, if the goods have  
7 arrived at the billed destination or if the consignee is in  
8 possession of the tangible bill or in control of the electronic  
9 bill; or

10 (4) the consignee on a nonnegotiable bill, if the  
11 consignee is entitled as against the consignor to dispose of the  
12 goods.

13 (b) Unless instructions described in subsection (a) are  
14 included in a negotiable bill of lading, a person to which the bill  
15 is duly negotiated may hold the bailee according to the original  
16 terms.

17 Sec. 76. The Uniform Commercial Code is amended by  
18 adding new section:

19 7-304. Tangible bills of lading in a set.

20 (a) Except as customary in international transportation,  
21 a tangible bill of lading may not be issued in a set of parts. The  
22 issuer is liable for damages caused by violation of this  
23 subsection.

24 (b) If a tangible bill of lading is lawfully issued in a  
25 set of parts, each of which contains an identification code and is  
26 expressed to be valid only if the goods have not been delivered  
27 against any other part, the whole of the parts constitutes one

1 bill.

2 (c) If a tangible negotiable bill of lading is lawfully  
3 issued in a set of parts and different parts are negotiated to  
4 different persons, the title of the holder to which the first due  
5 negotiation is made prevails as to both the document of title and  
6 the goods even if any later holder may have received the goods from  
7 the carrier in good faith and discharged the carrier's obligation  
8 by surrendering its part.

9 (d) A person that negotiates or transfers a single part  
10 of a tangible bill of lading issued in a set is liable to holders  
11 of that part as if it were the whole set.

12 (e) The bailee shall deliver in accordance with part 4  
13 against the first presented part of a tangible bill of lading  
14 lawfully issued in a set. Delivery in this manner discharges the  
15 bailee's obligation on the whole bill.

16 Sec. 77. The Uniform Commercial Code is amended by  
17 adding new section:

18 7-305. Destination bills.

19 (a) Instead of issuing a bill of lading to the consignor  
20 at the place of shipment, a carrier, at the request of the  
21 consignor, may procure the bill to be issued at destination or at  
22 any other place designated in the request.

23 (b) Upon request of any person entitled as against a  
24 carrier to control the goods while in transit and on surrender of  
25 possession or control of any outstanding bill of lading or other  
26 receipt covering the goods, the issuer, subject to section 7-105,  
27 may procure a substitute bill to be issued at any place designated

1 in the request.

2           Sec. 78.     The Uniform Commercial Code is amended by  
3 adding new section:

4 7-306. Altered bills of lading.

5           An unauthorized alteration or filling in of a blank in a  
6 bill of lading leaves the bill enforceable according to its  
7 original tenor.

8           Sec. 79.     The Uniform Commercial Code is amended by  
9 adding new section:

10 7-307. Lien of carrier.

11           (a) A carrier has a lien on the goods covered by a bill  
12 of lading or on the proceeds thereof in its possession for charges  
13 after the date of the carrier's receipt of the goods for storage or  
14 transportation, including demurrage and terminal charges, and for  
15 expenses necessary for preservation of the goods incident to their  
16 transportation or reasonably incurred in their sale pursuant to  
17 law. However, against a purchaser for value of a negotiable bill of  
18 lading, a carrier's lien is limited to charges stated in the bill  
19 or the applicable tariffs or, if no charges are stated, a  
20 reasonable charge.

21           (b) A lien for charges and expenses under subsection (a)  
22 on goods that the carrier was required by law to receive for  
23 transportation is effective against the consignor or any person  
24 entitled to the goods unless the carrier had notice that the  
25 consignor lacked authority to subject the goods to those charges  
26 and expenses. Any other lien under subsection (a) is effective  
27 against the consignor and any person that permitted the bailor to

1 have control or possession of the goods unless the carrier had  
2 notice that the bailor lacked authority.

3 (c) A carrier loses its lien on any goods that it  
4 voluntarily delivers or unjustifiably refuses to deliver.

5 Sec. 80. The Uniform Commercial Code is amended by  
6 adding new section:

7 7-308. Enforcement of carrier's lien.

8 (a) A carrier's lien on goods may be enforced by public  
9 or private sale of the goods, in bulk or in packages, at any time  
10 or place and on any terms that are commercially reasonable, after  
11 notifying all persons known to claim an interest in the goods. The  
12 notification must include a statement of the amount due, the nature  
13 of the proposed sale, and the time and place of any public sale.  
14 The fact that a better price could have been obtained by a sale at  
15 a different time or in a method different from that selected by the  
16 carrier is not of itself sufficient to establish that the sale was  
17 not made in a commercially reasonable manner. The carrier sells  
18 goods in a commercially reasonable manner if the carrier sells the  
19 goods in the usual manner in any recognized market therefor, sells  
20 at the price current in that market at the time of the sale, or  
21 otherwise sells in conformity with commercially reasonable  
22 practices among dealers in the type of goods sold. A sale of more  
23 goods than apparently necessary to be offered to ensure  
24 satisfaction of the obligation is not commercially reasonable,  
25 except in cases covered by the preceding sentence.

26 (b) Before any sale pursuant to this section, any person  
27 claiming a right in the goods may pay the amount necessary to

1 satisfy the lien and the reasonable expenses incurred in complying  
2 with this section. In that event, the goods may not be sold but  
3 must be retained by the carrier, subject to the terms of the bill  
4 of lading and this article.

5 (c) A carrier may buy at any public sale pursuant to this  
6 section.

7 (d) A purchaser in good faith of goods sold to enforce a  
8 carrier's lien takes the goods free of any rights of persons  
9 against which the lien was valid, despite the carrier's  
10 noncompliance with this section.

11 (e) A carrier may satisfy its lien from the proceeds of  
12 any sale pursuant to this section but shall hold the balance, if  
13 any, for delivery on demand to any person to which the carrier  
14 would have been bound to deliver the goods.

15 (f) The rights provided by this section are in addition  
16 to all other rights allowed by law to a creditor against a debtor.

17 (g) A carrier's lien may be enforced pursuant to either  
18 subsection (a) or the procedure set forth in section 7-210(b).

19 (h) A carrier is liable for damages caused by failure to  
20 comply with the requirements for sale under this section and, in  
21 case of willful violation, is liable for conversion.

22 Sec. 81. The Uniform Commercial Code is amended by  
23 adding new section:

24 7-309. Duty of care; contractual limitation of carrier's liability.

25 (a) A carrier that issues a bill of lading, whether  
26 negotiable or nonnegotiable, shall exercise the degree of care in  
27 relation to the goods which a reasonably careful person would

1 exercise under similar circumstances. This subsection does not  
2 affect any statute, regulation, or rule of law that imposes  
3 liability upon a common carrier for damages not caused by its  
4 negligence.

5 (b) Damages may be limited by a term in the bill of  
6 lading or in a transportation agreement that the carrier's  
7 liability may not exceed a value stated in the bill or  
8 transportation agreement if the carrier's rates are dependent upon  
9 value and the consignor is afforded an opportunity to declare a  
10 higher value and the consignor is advised of the opportunity.  
11 However, such a limitation is not effective with respect to the  
12 carrier's liability for conversion to its own use.

13 (c) Reasonable provisions as to the time and manner of  
14 presenting claims and commencing actions based on the shipment may  
15 be included in a bill of lading or a transportation agreement.

16 Sec. 82. The Uniform Commercial Code is amended by  
17 adding new section:

18 7-401. Irregularities in issue of receipt or bill or conduct of  
19 issuer.

20 The obligations imposed by this article on an issuer  
21 apply to a document of title even if:

22 (1) the document does not comply with the requirements of  
23 this article or of any other statute, rule, or regulation regarding  
24 its issuance, form, or content;

25 (2) the issuer violated laws regulating the conduct of  
26 its business;

27 (3) the goods covered by the document were owned by the

1 bailee when the document was issued; or

2 (4) the person issuing the document is not a warehouse  
3 but the document purports to be a warehouse receipt.

4 Sec. 83. The Uniform Commercial Code is amended by  
5 adding new section:

6 7-402. Duplicate document of title; overissue.

7 A duplicate or any other document of title purporting to  
8 cover goods already represented by an outstanding document of the  
9 same issuer does not confer any right in the goods, except as  
10 provided in the case of tangible bills of lading in a set of parts,  
11 overissue of documents for fungible goods, substitutes for lost,  
12 stolen, or destroyed documents, or substitute documents issued  
13 pursuant to section 7-105. The issuer is liable for damages caused  
14 by its overissue or failure to identify a duplicate document by a  
15 conspicuous notation.

16 Sec. 84. The Uniform Commercial Code is amended by  
17 adding new section:

18 7-403. Obligation of bailee to deliver; excuse.

19 (a) A bailee shall deliver the goods to a person entitled  
20 under a document of title if the person complies with subsections  
21 (b) and (c), unless and to the extent that the bailee establishes  
22 any of the following:

23 (1) delivery of the goods to a person whose receipt was  
24 rightful as against the claimant;

25 (2) damage to or delay, loss, or destruction of the goods  
26 for which the bailee is not liable;

27 (3) previous sale or other disposition of the goods in

1 lawful enforcement of a lien or on a warehouse's lawful termination  
2 of storage;

3 (4) the exercise by a seller of its right to stop  
4 delivery pursuant to section 2-705 or by a lessor of its right to  
5 stop delivery pursuant to section 2A-526;

6 (5) a diversion, reconsignment, or other disposition  
7 pursuant to section 7-303;

8 (6) release, satisfaction, or any other personal defense  
9 against the claimant; or

10 (7) any other lawful excuse.

11 (b) A person claiming goods covered by a document of  
12 title shall satisfy the bailee's lien if the bailee so requests or  
13 if the bailee is prohibited by law from delivering the goods until  
14 the charges are paid.

15 (c) Unless a person claiming the goods is a person  
16 against which the document of title does not confer a right under  
17 section 7-503(a):

18 (1) the person claiming under a document shall surrender  
19 possession or control of any outstanding negotiable document  
20 covering the goods for cancellation or indication of partial  
21 deliveries; and

22 (2) the bailee shall cancel the document or conspicuously  
23 indicate in the document the partial delivery or the bailee is  
24 liable to any person to which the document is duly negotiated.

25 Sec. 85. The Uniform Commercial Code is amended by  
26 adding new section:

27 7-404. No liability for good faith delivery pursuant to document of

1 title.

2 A bailee that in good faith has received goods and  
3 delivered or otherwise disposed of the goods according to the terms  
4 of a document of title or pursuant to this article is not liable  
5 for the goods even if:

6 (1) the person from which the bailee received the goods  
7 did not have authority to procure the document or to dispose of the  
8 goods; or

9 (2) the person to which the bailee delivered the goods  
10 did not have authority to receive the goods.

11 Sec. 86. The Uniform Commercial Code is amended by  
12 adding new section:  
13 7-501. Form of negotiation and requirements of due negotiation.

14 (a) The following rules apply to a negotiable tangible  
15 document of title:

16 (1) If the document's original terms run to the order of  
17 a named person, the document is negotiated by the named person's  
18 indorsement and delivery. After the named person's indorsement in  
19 blank or to bearer, any person may negotiate the document by  
20 delivery alone.

21 (2) If the document's original terms run to bearer, it is  
22 negotiated by delivery alone.

23 (3) If the document's original terms run to the order of  
24 a named person and it is delivered to the named person, the effect  
25 is the same as if the document had been negotiated.

26 (4) Negotiation of the document after it has been  
27 indorsed to a named person requires indorsement by the named person

1 and delivery.

2 (5) A document is duly negotiated if it is negotiated in  
3 the manner stated in this subsection to a holder that purchases it  
4 in good faith, without notice of any defense against or claim to it  
5 on the part of any person, and for value, unless it is established  
6 that the negotiation is not in the regular course of business or  
7 financing or involves receiving the document in settlement or  
8 payment of a monetary obligation.

9 (b) The following rules apply to a negotiable electronic  
10 document of title:

11 (1) If the document's original terms run to the order of  
12 a named person or to bearer, the document is negotiated by delivery  
13 of the document to another person. Indorsement by the named person  
14 is not required to negotiate the document.

15 (2) If the document's original terms run to the order of  
16 a named person and the named person has control of the document,  
17 the effect is the same as if the document had been negotiated.

18 (3) A document is duly negotiated if it is negotiated in  
19 the manner stated in this subsection to a holder that purchases it  
20 in good faith, without notice of any defense against or claim to it  
21 on the part of any person, and for value, unless it is established  
22 that the negotiation is not in the regular course of business or  
23 financing or involves taking delivery of the document in settlement  
24 or payment of a monetary obligation.

25 (c) Indorsement of a nonnegotiable document of title  
26 neither makes it negotiable nor adds to the transferee's rights.

27 (d) The naming in a negotiable bill of lading of a person

1 to be notified of the arrival of the goods does not limit the  
2 negotiability of the bill or constitute notice to a purchaser of  
3 the bill of any interest of that person in the goods.

4           Sec. 87. The Uniform Commercial Code is amended by  
5 adding new section:

6 7-502. Rights acquired by due negotiation.

7           (a) Subject to sections 7-205 and 7-503, a holder to  
8 which a negotiable document of title has been duly negotiated  
9 acquires thereby:

10                   (1) title to the document;

11                   (2) title to the goods;

12                   (3) all rights accruing under the law of agency or  
13 estoppel, including rights to goods delivered to the bailee after  
14 the document was issued; and

15                   (4) the direct obligation of the issuer to hold or  
16 deliver the goods according to the terms of the document free of  
17 any defense or claim by the issuer except those arising under the  
18 terms of the document or under this article, but in the case of a  
19 delivery order, the bailee's obligation accrues only upon the  
20 bailee's acceptance of the delivery order and the obligation  
21 acquired by the holder is that the issuer and any indorser will  
22 procure the acceptance of the bailee.

23           (b) Subject to section 7-503, title and rights acquired  
24 by due negotiation are not defeated by any stoppage of the goods  
25 represented by the document of title or by surrender of the goods  
26 by the bailee and are not impaired even if:

27                   (1) the due negotiation or any prior due negotiation

1 constituted a breach of duty;

2 (2) any person has been deprived of possession of a  
3 negotiable tangible document or control of a negotiable electronic  
4 document by misrepresentation, fraud, accident, mistake, duress,  
5 loss, theft, or conversion; or

6 (3) a previous sale or other transfer of the goods or  
7 document has been made to a third person.

8 Sec. 88. The Uniform Commercial Code is amended by  
9 adding new section:

10 7-503. Document of title to goods defeated in certain cases.

11 (a) A document of title confers no right in goods against  
12 a person that before issuance of the document had a legal interest  
13 or a perfected security interest in the goods and that did not:

14 (1) deliver or entrust the goods or any document of title  
15 covering the goods to the bailor or the bailor's nominee with:

16 (A) actual or apparent authority to ship, store, or sell;

17 (B) power to obtain delivery under section 7-403; or

18 (C) power of disposition under section 2-403, 2A-304(2),  
19 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

20 (2) acquiesce in the procurement by the bailor or its  
21 nominee of any document.

22 (b) Title to goods based upon an unaccepted delivery  
23 order is subject to the rights of any person to which a negotiable  
24 warehouse receipt or bill of lading covering the goods has been  
25 duly negotiated. That title may be defeated under section 7-504 to  
26 the same extent as the rights of the issuer or a transferee from  
27 the issuer.

1           (c) Title to goods based upon a bill of lading issued to  
2 a freight forwarder is subject to the rights of any person to which  
3 a bill issued by the freight forwarder is duly negotiated. However,  
4 delivery by the carrier in accordance with part 4 pursuant to its  
5 own bill of lading discharges the carrier's obligation to deliver.

6           Sec. 89. The Uniform Commercial Code is amended by  
7 adding new section:

8 7-504. Rights acquired in absence of due negotiation; effect of  
9 diversion; stoppage of delivery.

10           (a) A transferee of a document of title, whether  
11 negotiable or nonnegotiable, to which the document has been  
12 delivered but not duly negotiated, acquires the title and rights  
13 that its transferor had or had actual authority to convey.

14           (b) In the case of a transfer of a nonnegotiable document  
15 of title, until but not after the bailee receives notice of the  
16 transfer, the rights of the transferee may be defeated:

17           (1) by those creditors of the transferor which could  
18 treat the transfer as void under section 2-402 or 2A-308;

19           (2) by a buyer from the transferor in ordinary course of  
20 business if the bailee has delivered the goods to the buyer or  
21 received notification of the buyer's rights;

22           (3) by a lessee from the transferor in ordinary course of  
23 business if the bailee has delivered the goods to the lessee or  
24 received notification of the lessee's rights; or

25           (4) as against the bailee, by good faith dealings of the  
26 bailee with the transferor.

27           (c) A diversion or other change of shipping instructions

1 by the consignor in a nonnegotiable bill of lading which causes the  
2 bailee not to deliver the goods to the consignee defeats the  
3 consignee's title to the goods if the goods have been delivered to  
4 a buyer in ordinary course of business or a lessee in ordinary  
5 course of business and, in any event, defeats the consignee's  
6 rights against the bailee.

7 (d) Delivery of the goods pursuant to a nonnegotiable  
8 document of title may be stopped by a seller under section 2-705 or  
9 a lessor under section 2A-526, subject to the requirements of due  
10 notification in those sections. A bailee that honors the seller's  
11 or lessor's instructions is entitled to be indemnified by the  
12 seller or lessor against any resulting loss or expense.

13 Sec. 90. The Uniform Commercial Code is amended by  
14 adding new section:

15 7-505. Indorser not guarantor for other parties.

16 The indorsement of a tangible document of title issued by  
17 a bailee does not make the indorser liable for any default by the  
18 bailee or previous indorsers.

19 Sec. 91. The Uniform Commercial Code is amended by  
20 adding new section:

21 7-506. Delivery without indorsement: right to compel indorsement.

22 The transferee of a negotiable tangible document of title  
23 has a specifically enforceable right to have its transferor supply  
24 any necessary indorsement, but the transfer becomes a negotiation  
25 only as of the time the indorsement is supplied.

26 Sec. 92. The Uniform Commercial Code is amended by  
27 adding new section:

1 7-507. Warranties on negotiation or delivery of document of title.

2 If a person negotiates or delivers a document of title  
3 for value, otherwise than as a mere intermediary under section  
4 7-508, unless otherwise agreed, the transferor, in addition to any  
5 warranty made in selling or leasing the goods, warrants to its  
6 immediate purchaser only that:

7 (1) the document is genuine;

8 (2) the transferor does not have knowledge of any fact  
9 that would impair the document's validity or worth; and

10 (3) the negotiation or delivery is rightful and fully  
11 effective with respect to the title to the document and the goods  
12 it represents.

13 Sec. 93. The Uniform Commercial Code is amended by  
14 adding new section:

15 7-508. Warranties of collecting bank as to documents of title.

16 A collecting bank or other intermediary known to be  
17 entrusted with documents of title on behalf of another or with  
18 collection of a draft or other claim against delivery of documents  
19 warrants by the delivery of the documents only its own good faith  
20 and authority even if the collecting bank or other intermediary has  
21 purchased or made advances against the claim or draft to be  
22 collected.

23 Sec. 94. The Uniform Commercial Code is amended by  
24 adding new section:

25 7-509. Adequate compliance with commercial contract.

26 Whether a document of title is adequate to fulfill the  
27 obligations of a contract for sale, a contract for lease, or the

1 conditions of a letter of credit is determined by article 2, 2A, or  
2 5.

3           Sec. 95.     The Uniform Commercial Code is amended by  
4 adding new section:

5 7-601. Lost, stolen, or destroyed documents of title.

6           (a) If a document of title is lost, stolen, or destroyed,  
7 a court may order delivery of the goods or issuance of a substitute  
8 document and the bailee may without liability to any person comply  
9 with the order. If the document was negotiable, a court may not  
10 order delivery of the goods or issuance of a substitute document  
11 without the claimant's posting security unless it finds that any  
12 person that may suffer loss as a result of nonsurrender of  
13 possession or control of the document is adequately protected  
14 against the loss. If the document was nonnegotiable, the court may  
15 require security. The court may also order payment of the bailee's  
16 reasonable costs and attorney's fees in any action under this  
17 subsection.

18           (b) A bailee that, without a court order, delivers goods  
19 to a person claiming under a missing negotiable document of title  
20 is liable to any person injured thereby. If the delivery is not in  
21 good faith, the bailee is liable for conversion. Delivery in good  
22 faith is not conversion if the claimant posts security with the  
23 bailee in an amount at least double the value of the goods at the  
24 time of posting to indemnify any person injured by the delivery  
25 which files a notice of claim within one year after the delivery.

26           Sec. 96.     The Uniform Commercial Code is amended by  
27 adding new section:

1 7-602. Judicial process against goods covered by negotiable  
2 document of title.

3 Unless a document of title was originally issued upon  
4 delivery of the goods by a person that did not have power to  
5 dispose of them, a lien does not attach by virtue of any judicial  
6 process to goods in the possession of a bailee for which a  
7 negotiable document of title is outstanding unless possession or  
8 control of the document is first surrendered to the bailee or the  
9 document's negotiation is enjoined. The bailee may not be compelled  
10 to deliver the goods pursuant to process until possession or  
11 control of the document is surrendered to the bailee or to the  
12 court. A purchaser of the document for value without notice of the  
13 process or injunction takes free of the lien imposed by judicial  
14 process.

15 Sec. 97. The Uniform Commercial Code is amended by  
16 adding new section:

17 7-603. Conflicting claims; interpleader.

18 If more than one person claims title to or possession of  
19 the goods, the bailee is excused from delivery until the bailee has  
20 a reasonable time to ascertain the validity of the adverse claims  
21 or to commence an action for interpleader. The bailee may assert an  
22 interpleader either in defending an action for nondelivery of the  
23 goods or by original action.

24 Sec. 98. The Uniform Commercial Code is amended by  
25 adding new section:

26 7-703. Applicability.

27 This article applies to a document of title that is

1 issued or a bailment that arises on or after the operative date of  
2 this act. This article does not apply to a document of title that  
3 is issued or a bailment that arises before the operative date of  
4 this act even if the document of title or bailment would be subject  
5 to this article if the document of title had been issued or  
6 bailment had arisen on or after the operative date of this act.  
7 This article does not apply to a right of action that has accrued  
8 before the operative date of this act.

9           Sec. 99. The Uniform Commercial Code is amended by  
10 adding new section:

11 7-704. Savings clause.

12           A document of title issued or a bailment that arises  
13 before the operative date of this act and the rights, obligations,  
14 and interests flowing from that document or bailment are governed  
15 by any statute or other rule amended or repealed by this  
16 legislative bill as if amendment or repeal had not occurred and may  
17 be terminated, completed, consummated, or enforced under that  
18 statute or other rule.

19           Sec. 100. Section 8-103, Uniform Commercial Code, is  
20 amended to read:

21 8-103. Rules for determining whether certain obligations and  
22 interests are securities or financial assets.

23           (a) A share or similar equity interest issued by a  
24 corporation, business trust, joint stock company, or similar entity  
25 is a security.

26           (b) An "investment company security" is a security.  
27 "Investment company security" means a share or similar equity

1 interest issued by an entity that is registered as an investment  
2 company under the federal investment company laws, an interest in a  
3 unit investment trust that is so registered, or a face-amount  
4 certificate issued by a face-amount certificate company that is so  
5 registered. Investment company security does not include an  
6 insurance policy or endowment policy or annuity contract issued by  
7 an insurance company.

8 (c) An interest in a partnership or limited liability  
9 company is not a security unless it is dealt in or traded on  
10 securities exchanges or in securities markets, its terms expressly  
11 provide that it is a security governed by this article, or it is an  
12 investment company security. However, an interest in a partnership  
13 or limited liability company is a financial asset if it is held in  
14 a securities account.

15 (d) A writing that is a security certificate is governed  
16 by this article and not by article 3, even though it also meets the  
17 requirements of that article. However, a negotiable instrument  
18 governed by article 3 is a financial asset if it is held in a  
19 securities account.

20 (e) An option or similar obligation issued by a clearing  
21 corporation to its participants is not a security, but is a  
22 financial asset.

23 (f) A commodity contract, as defined in section  
24 9-102(a)(15), is not a security or a financial asset.

25 (g) A document of title is not a financial asset unless  
26 section 8-102(a)(9)(iii) applies.

27 Sec. 101. Section 9-102, Uniform Commercial Code, is

1 amended to read:

2 9-102. Definitions and index of definitions.

3 (a) In this article:

4 (1) "Accession" means goods that are physically united  
5 with other goods in such a manner that the identity of the original  
6 goods is not lost.

7 (2) "Account", except as used in "account for", means a  
8 right to payment of a monetary obligation, whether or not earned by  
9 performance, (i) for property that has been or is to be sold,  
10 leased, licensed, assigned, or otherwise disposed of, (ii) for  
11 services rendered or to be rendered, (iii) for a policy of  
12 insurance issued or to be issued, (iv) for a secondary obligation  
13 incurred or to be incurred, (v) for energy provided or to be  
14 provided, (vi) for the use or hire of a vessel under a charter or  
15 other contract, (vii) arising out of the use of a credit or charge  
16 card or information contained on or for use with the card, or  
17 (viii) as winnings in a lottery or other game of chance operated or  
18 sponsored by a state, governmental unit of a state, or person  
19 licensed or authorized to operate the game by a state or  
20 governmental unit of a state. The term includes  
21 health-care-insurance receivables. The term does not include (i)  
22 rights to payment evidenced by chattel paper or an instrument, (ii)  
23 commercial tort claims, (iii) deposit accounts, (iv) investment  
24 property, (v) letter-of-credit rights or letters of credit, or (vi)  
25 rights to payment for money or funds advanced or sold, other than  
26 rights arising out of the use of a credit or charge card or  
27 information contained on or for use with the card.

1                   (3) "Account debtor" means a person obligated on an  
2 account, chattel paper, or general intangible. The term does not  
3 include persons obligated to pay a negotiable instrument, even if  
4 the instrument constitutes part of chattel paper.

5                   (4) "Accounting", except as used in "accounting for",  
6 means a record:

7                   (A) authenticated by a secured party;

8                   (B) indicating the aggregate unpaid secured obligations  
9 as of a date not more than thirty-five days earlier or thirty-five  
10 days later than the date of the record; and

11                   (C) identifying the components of the obligations in  
12 reasonable detail.

13                   (5) "Agricultural lien" means an interest, other than a  
14 security interest, in farm products:

15                   (A) which secures payment or performance of an obligation  
16 for:

17                   (i) goods or services furnished in connection with a  
18 debtor's farming operation; or

19                   (ii) rent on real property leased by a debtor in  
20 connection with its farming operation;

21                   (B) which is created by statute in favor of a person  
22 that:

23                   (i) in the ordinary course of its business furnished  
24 goods or services to a debtor in connection with a debtor's farming  
25 operation; or

26                   (ii) leased real property to a debtor in connection with  
27 the debtor's farming operation; and

1 (C) whose effectiveness does not depend on the person's  
2 possession of the personal property.

3 The term also includes every lien created under sections  
4 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 54-201, and  
5 54-208, Reissue Revised Statutes of Nebraska, and Chapter 52,  
6 article 14, Reissue Revised Statutes of Nebraska.

7 (6) "As-extracted collateral" means:

8 (A) oil, gas, or other minerals that are subject to a  
9 security interest that:

10 (i) is created by a debtor having an interest in the  
11 minerals before extraction; and

12 (ii) attaches to the minerals as extracted; or

13 (B) accounts arising out of the sale at the wellhead or  
14 minehead of oil, gas, or other minerals in which the debtor had an  
15 interest before extraction.

16 (7) "Authenticate" means:

17 (A) to sign; or

18 (B) to execute or otherwise adopt a symbol, or encrypt or  
19 similarly process a record in whole or in part, with the present  
20 intent of the authenticating person to identify the person and  
21 adopt or accept a record.

22 (8) "Bank" means an organization that is engaged in the  
23 business of banking. The term includes savings banks, savings and  
24 loan associations, credit unions, and trust companies.

25 (9) "Cash proceeds" means proceeds that are money,  
26 checks, deposit accounts, or the like.

27 (10) "Certificate of title" means a certificate of title

1 with respect to which a statute provides for the security interest  
2 in question to be indicated on the certificate as a condition or  
3 result of the security interest's obtaining priority over the  
4 rights of a lien creditor with respect to the collateral.

5 (11) "Chattel paper" means a record or records that  
6 evidence both a monetary obligation and a security interest in  
7 specific goods, a security interest in specific goods and software  
8 used in the goods, a security interest in specific goods and  
9 license of software used in the goods, a lease of specific goods,  
10 or a lease of specific goods and license of software used in the  
11 goods. In this subdivision, "monetary obligation" means a monetary  
12 obligation secured by the goods or owed under a lease of the goods  
13 and includes a monetary obligation with respect to software used in  
14 the goods. The term does not include (i) charters or other  
15 contracts involving the use or hire of a vessel or (ii) records  
16 that evidence a right to payment arising out of the use of a credit  
17 or charge card or information contained on or for use with the  
18 card. If a transaction is evidenced by records that include an  
19 instrument or series of instruments, the group of records taken  
20 together constitutes chattel paper.

21 (12) "Collateral" means the property subject to a  
22 security interest or agricultural lien. The term includes:

23 (A) proceeds to which a security interest attaches;

24 (B) accounts, chattel paper, payment intangibles, and  
25 promissory notes that have been sold; and

26 (C) goods that are the subject of a consignment.

27 (13) "Commercial tort claim" means a claim arising in

1 tort with respect to which:

2 (A) the claimant is an organization; or

3 (B) the claimant is an individual and the claim:

4 (i) arose in the course of the claimant's business or  
5 profession; and

6 (ii) does not include damages arising out of personal  
7 injury to or the death of an individual.

8 (14) "Commodity account" means an account maintained by a  
9 commodity intermediary in which a commodity contract is carried for  
10 a commodity customer.

11 (15) "Commodity contract" means a commodity futures  
12 contract, an option on a commodity futures contract, a commodity  
13 option, or another contract if the contract or option is:

14 (A) traded on or subject to the rules of a board of trade  
15 that has been designated as a contract market for such a contract  
16 pursuant to federal commodities laws; or

17 (B) traded on a foreign commodity board of trade,  
18 exchange, or market, and is carried on the books of a commodity  
19 intermediary for a commodity customer.

20 (16) "Commodity customer" means a person for which a  
21 commodity intermediary carries a commodity contract on its books.

22 (17) "Commodity intermediary" means a person that:

23 (A) is registered as a futures commission merchant under  
24 federal commodities law; or

25 (B) in the ordinary course of its business provides  
26 clearance or settlement services for a board of trade that has been  
27 designated as a contract market pursuant to federal commodities

1 law.

2 (18) "Communicate" means:

3 (A) to send a written or other tangible record;

4 (B) to transmit a record by any means agreed upon by the  
5 persons sending and receiving the record; or

6 (C) in the case of transmission of a record to or by a  
7 filing office, to transmit a record by any means prescribed by  
8 filing-office rule.

9 (19) "Consignee" means a merchant to which goods are  
10 delivered in a consignment.

11 (20) "Consignment" means a transaction, regardless of its  
12 form, in which a person delivers goods to a merchant for the  
13 purpose of sale and:

14 (A) the merchant:

15 (i) deals in goods of that kind under a name other than  
16 the name of the person making delivery;

17 (ii) is not an auctioneer; and

18 (iii) is not generally known by its creditors to be  
19 substantially engaged in selling the goods of others;

20 (B) with respect to each delivery, the aggregate value of  
21 the goods is one thousand dollars or more at the time of delivery;

22 (C) the goods are not consumer goods immediately before  
23 delivery; and

24 (D) the transaction does not create a security interest  
25 that secures an obligation.

26 (21) "Consignor" means a person that delivers goods to a  
27 consignee in a consignment.

1                   (22) "Consumer debtor" means a debtor in a consumer  
2 transaction.

3                   (23) "Consumer goods" means goods that are used or bought  
4 for use primarily for personal, family, or household purposes.

5                   (24) "Consumer-goods transaction" means a consumer  
6 transaction in which:

7                   (A) an individual incurs an obligation primarily for  
8 personal, family, or household purposes; and

9                   (B) a security interest in consumer goods secures the  
10 obligation.

11                   (25) "Consumer obligor" means an obligor who is an  
12 individual and who incurred the obligation as part of a transaction  
13 entered into primarily for personal, family, or household purposes.

14                   (26) "Consumer transaction" means a transaction in which  
15 (i) an individual incurs an obligation primarily for personal,  
16 family, or household purposes, (ii) a security interest secures the  
17 obligation, and (iii) the collateral is held or acquired primarily  
18 for personal, family, or household purposes. The term includes  
19 consumer-goods transactions.

20                   (27) "Continuation statement" means an amendment of a  
21 financing statement which:

22                   (A) identifies, by its file number, the initial financing  
23 statement to which it relates; and

24                   (B) indicates that it is a continuation statement for, or  
25 that it is filed to continue the effectiveness of, the identified  
26 financing statement.

27                   (28) "Debtor" means:

1 (A) a person having an interest, other than a security  
2 interest or other lien, in the collateral, whether or not the  
3 person is an obligor;

4 (B) a seller of accounts, chattel paper, payment  
5 intangibles, or promissory notes; or

6 (C) a consignee.

7 (29) "Deposit account" means a demand, time, savings,  
8 passbook, or similar account maintained with a bank. The term does  
9 not include investment property or accounts evidenced by an  
10 instrument.

11 (30) "Document" means a document of title or a receipt of  
12 the type described in section ~~7-201(2)~~ 7-201(b).

13 (31) "Electronic chattel paper" means chattel paper  
14 evidenced by a record or records consisting of information stored  
15 in an electronic medium.

16 (32) "Encumbrance" means a right, other than an ownership  
17 interest, in real property. The term includes mortgages and other  
18 liens on real property.

19 (33) "Equipment" means goods other than inventory, farm  
20 products, or consumer goods.

21 (34) "Farm products" means goods, other than standing  
22 timber, with respect to which the debtor is engaged in a farming  
23 operation and which are:

24 (A) crops grown, growing, or to be grown, including:

25 (i) crops produced on trees, vines, and bushes; and

26 (ii) aquatic goods produced in aquacultural operations;

27 (B) livestock, born or unborn, including aquatic goods

1 produced in aquacultural operations;

2 (C) supplies used or produced in a farming operation; or

3 (D) products of crops or livestock in their  
4 unmanufactured states.

5 (35) "Farming operation" means raising, cultivating,  
6 propagating, fattening, grazing, or any other farming, livestock,  
7 or aquacultural operation.

8 (36) "File number" means the number assigned to an  
9 initial financing statement pursuant to section 9-519(a).

10 (37) "Filing office" means an office designated in  
11 section 9-501 as the place to file a financing statement.

12 (38) "Filing-office rule" means a rule adopted pursuant  
13 to section 9-526.

14 (39) "Financing statement" means a record or records  
15 composed of an initial financing statement and any filed record  
16 relating to the initial financing statement.

17 (40) "Fixture filing" means the filing of a financing  
18 statement covering goods that are or are to become fixtures and  
19 satisfying section 9-502(a) and (b). The term includes the filing  
20 of a financing statement covering goods of a transmitting utility  
21 which are or are to become fixtures.

22 (41) "Fixtures" means goods that have become so related  
23 to particular real property that an interest in them arises under  
24 real property law.

25 (42) "General intangible" means any personal property,  
26 including things in action, other than accounts, chattel paper,  
27 commercial tort claims, deposit accounts, documents, goods,

1 instruments, investment property, letter-of-credit rights, letters  
2 of credit, money, and oil, gas, or other minerals before  
3 extraction. The term includes payment intangibles and software.

4 (43) "Good faith" means honesty in fact and the  
5 observance of reasonable commercial standards of fair dealing.

6 (44) "Goods" means all things that are movable when a  
7 security interest attaches. The term includes (i) fixtures, (ii)  
8 standing timber that is to be cut and removed under a conveyance or  
9 contract for sale, (iii) the unborn young of animals, (iv) crops  
10 grown, growing, or to be grown, even if the crops are produced on  
11 trees, vines, or bushes, and (v) manufactured homes. The term also  
12 includes a computer program embedded in goods and any supporting  
13 information provided in connection with a transaction relating to  
14 the program if (i) the program is associated with the goods in such  
15 a manner that it customarily is considered part of the goods, or  
16 (ii) by becoming the owner of the goods, a person acquires a right  
17 to use the program in connection with the goods. The term does not  
18 include a computer program embedded in goods that consist solely of  
19 the medium in which the program is embedded. The term also does  
20 not include accounts, chattel paper, commercial tort claims,  
21 deposit accounts, documents, general intangibles, instruments,  
22 investment property, letter-of-credit rights, letters of credit,  
23 money, or oil, gas, or other minerals before extraction.

24 (45) "Governmental unit" means a subdivision, agency,  
25 department, county, parish, municipality, or other unit of the  
26 government of the United States, a state, or a foreign country.  
27 The term includes an organization having a separate corporate

1 existence if the organization is eligible to issue debt on which  
2 interest is exempt from income taxation under the laws of the  
3 United States.

4 (46) "Health-care-insurance receivable" means an interest  
5 in or claim under a policy of insurance which is a right to payment  
6 of a monetary obligation for health-care goods or services  
7 provided.

8 (47) "Instrument" means a negotiable instrument or any  
9 other writing that evidences a right to the payment of a monetary  
10 obligation, is not itself a security agreement or lease, and is of  
11 a type that in ordinary course of business is transferred by  
12 delivery with any necessary indorsement or assignment including,  
13 but not limited to, a writing that would otherwise qualify as a  
14 certificate of deposit (defined in section 3-104(j)) but for the  
15 fact that the writing contains a limitation on transfer. The term  
16 does not include (i) investment property, (ii) letters of credit,  
17 or (iii) writings that evidence a right to payment arising out of  
18 the use of a credit or charge card or information contained on or  
19 for use with the card.

20 (48) "Inventory" means goods, other than farm products,  
21 which:

22 (A) are leased by a person as lessor;

23 (B) are held by a person for sale or lease or to be  
24 furnished under a contract of service;

25 (C) are furnished by a person under a contract of  
26 service; or

27 (D) consist of raw materials, work in process, or

1 materials used or consumed in a business.

2 (49) "Investment property" means a security, whether  
3 certificated or uncertificated, security entitlement, securities  
4 account, commodity contract, or commodity account.

5 (50) "Jurisdiction of organization", with respect to a  
6 registered organization, means the jurisdiction under whose law the  
7 organization is organized.

8 (51) "Letter-of-credit right" means a right to payment or  
9 performance under a letter of credit, whether or not the  
10 beneficiary has demanded or is at the time entitled to demand  
11 payment or performance. The term does not include the right of a  
12 beneficiary to demand payment or performance under a letter of  
13 credit.

14 (52) "Lien creditor" means:

15 (A) a creditor that has acquired a lien on the property  
16 involved by attachment, levy, or the like;

17 (B) an assignee for benefit of creditors from the time of  
18 assignment;

19 (C) a trustee in bankruptcy from the date of the filing  
20 of the petition; or

21 (D) a receiver in equity from the time of appointment.

22 (53) "Manufactured home" means a structure, transportable  
23 in one or more sections, which, in the traveling mode, is eight  
24 body feet or more in width or forty body feet or more in length,  
25 or, when erected on site, is three hundred twenty or more square  
26 feet, and which is built on a permanent chassis and designed to be  
27 used as a dwelling with or without a permanent foundation when

1 connected to the required utilities, and includes the plumbing,  
2 heating, air-conditioning, and electrical systems contained  
3 therein. The term includes any structure that meets all of the  
4 requirements of this subdivision except the size requirements and  
5 with respect to which the manufacturer voluntarily files a  
6 certification required by the United States Secretary of Housing  
7 and Urban Development and complies with the standards established  
8 under Title 42 of the United States Code.

9 (54) "Manufactured-home transaction" means a secured  
10 transaction:

11 (A) that creates a purchase-money security interest in a  
12 manufactured home, other than a manufactured home held as  
13 inventory; or

14 (B) in which a manufactured home, other than a  
15 manufactured home held as inventory, is the primary collateral.

16 (55) "Mortgage" means a consensual interest in real  
17 property, including fixtures, which secures payment or performance  
18 of an obligation.

19 (56) "New debtor" means a person that becomes bound as  
20 debtor under section 9-203(d) by a security agreement previously  
21 entered into by another person.

22 (57) "New value" means (i) money, (ii) money's worth in  
23 property, services, or new credit, or (iii) release by a transferee  
24 of an interest in property previously transferred to the  
25 transferee. The term does not include an obligation substituted  
26 for another obligation.

27 (58) "Noncash proceeds" means proceeds other than cash

1 proceeds.

2 (59) "Obligor" means a person that, with respect to an  
3 obligation secured by a security interest in or an agricultural  
4 lien on the collateral, (i) owes payment or other performance of  
5 the obligation, (ii) has provided property other than the  
6 collateral to secure payment or other performance of the  
7 obligation, or (iii) is otherwise accountable in whole or in part  
8 for payment or other performance of the obligation. The term does  
9 not include issuers or nominated persons under a letter of credit.

10 (60) "Original debtor", except as used in section  
11 9-310(c), means a person that, as debtor, entered into a security  
12 agreement to which a new debtor has become bound under section  
13 9-203(d).

14 (61) "Payment intangible" means a general intangible  
15 under which the account debtor's principal obligation is a monetary  
16 obligation.

17 (62) "Person related to", with respect to an individual,  
18 means:

19 (A) the spouse of the individual;

20 (B) a brother, brother-in-law, sister, or sister-in-law  
21 of the individual;

22 (C) an ancestor or lineal descendant of the individual or  
23 the individual's spouse; or

24 (D) any other relative, by blood or marriage, of the  
25 individual or the individual's spouse who shares the same home with  
26 the individual.

27 (63) "Person related to", with respect to an

1 organization, means:

2 (A) a person directly or indirectly controlling,  
3 controlled by, or under common control with the organization;

4 (B) an officer or director of, or a person performing  
5 similar functions with respect to, the organization;

6 (C) an officer or director of, or a person performing  
7 similar functions with respect to, a person described in  
8 subdivision (A);

9 (D) the spouse of an individual described in subdivision  
10 (A), (B), or (C); or

11 (E) an individual who is related by blood or marriage to  
12 an individual described in subdivision (A), (B), (C), or (D) and  
13 shares the same home with the individual.

14 (64) "Proceeds", except as used in section 9-609(b),  
15 means the following property:

16 (A) whatever is acquired upon the sale, lease, license,  
17 exchange, or other disposition of collateral;

18 (B) whatever is collected on, or distributed on account  
19 of, collateral;

20 (C) rights arising out of collateral;

21 (D) to the extent of the value of collateral, claims  
22 arising out of the loss, nonconformity, or interference with the  
23 use of, defects or infringement of rights in, or damage to, the  
24 collateral; or

25 (E) to the extent of the value of collateral and to the  
26 extent payable to the debtor or the secured party, insurance  
27 payable by reason of the loss or nonconformity of, defects or

1 infringement of rights in, or damage to, the collateral.

2 (65) "Promissory note" means an instrument that evidences  
3 a promise to pay a monetary obligation, does not evidence an order  
4 to pay, and does not contain an acknowledgment by a bank that the  
5 bank has received for deposit a sum of money or funds.

6 (66) "Proposal" means a record authenticated by a secured  
7 party which includes the terms on which the secured party is  
8 willing to accept collateral in full or partial satisfaction of the  
9 obligation it secures pursuant to sections 9-620, 9-621, and 9-622.

10 (67) "Public-finance transaction" means a secured  
11 transaction in connection with which:

12 (A) debt securities are issued;

13 (B) all or a portion of the securities issued have an  
14 initial stated maturity of at least twenty years; and

15 (C) the debtor, obligor, secured party, account debtor or  
16 other person obligated on collateral, assignor or assignee of a  
17 secured obligation, or assignor or assignee of a security interest  
18 is a state or a governmental unit of a state.

19 (68) "Pursuant to commitment", with respect to an advance  
20 made or other value given by a secured party, means pursuant to the  
21 secured party's obligation, whether or not a subsequent event of  
22 default or other event not within the secured party's control has  
23 relieved or may relieve the secured party from its obligation.

24 (69) "Record", except as used in "for record", "of  
25 record", "record or legal title", and "record owner", means  
26 information that is inscribed on a tangible medium or which is  
27 stored in an electronic or other medium and is retrievable in

1 perceivable form.

2 (70) "Registered organization" means an organization  
3 organized solely under the law of a single state or the United  
4 States and as to which the state or the United States must maintain  
5 a public record showing the organization to have been organized.

6 (71) "Secondary obligor" means an obligor to the extent  
7 that:

8 (A) the obligor's obligation is secondary; or

9 (B) the obligor has a right of recourse with respect to  
10 an obligation secured by collateral against the debtor, another  
11 obligor, or property of either.

12 (72) "Secured party" means:

13 (A) a person in whose favor a security interest is  
14 created or provided for under a security agreement, whether or not  
15 any obligation to be secured is outstanding;

16 (B) a person that holds an agricultural lien;

17 (C) a consignor;

18 (D) a person to which accounts, chattel paper, payment  
19 intangibles, or promissory notes have been sold;

20 (E) a trustee, indenture trustee, agent, collateral  
21 agent, or other representative in whose favor a security interest  
22 or agricultural lien is created or provided for; or

23 (F) a person that holds a security interest arising under  
24 section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

25 (73) "Security agreement" means an agreement that creates  
26 or provides for a security interest.

27 (74) "Send", in connection with a record or notification,

1 means:

2 (A) to deposit in the mail, deliver for transmission, or  
3 transmit by any other usual means of communication, with postage or  
4 cost of transmission provided for, addressed to any address  
5 reasonable under the circumstances; or

6 (B) to cause the record or notification to be received  
7 within the time that it would have been received if properly sent  
8 under subdivision (A).

9 (75) "Software" means a computer program and any  
10 supporting information provided in connection with a transaction  
11 relating to the program. The term does not include a computer  
12 program that is included in the definition of goods.

13 (76) "State" means a state of the United States, the  
14 District of Columbia, Puerto Rico, the United States Virgin  
15 Islands, or any territory or insular possession subject to the  
16 jurisdiction of the United States.

17 (77) "Supporting obligation" means a letter-of-credit  
18 right or secondary obligation that supports the payment or  
19 performance of an account, chattel paper, a document, a general  
20 intangible, an instrument, or investment property.

21 (78) "Tangible chattel paper" means chattel paper  
22 evidenced by a record or records consisting of information that is  
23 inscribed on a tangible medium.

24 (79) "Termination statement" means an amendment of a  
25 financing statement which:

26 (A) identifies, by its file number, the initial financing  
27 statement to which it relates; and

1 (B) indicates either that it is a termination statement  
2 or that the identified financing statement is no longer effective.

3 (80) "Transmitting utility" means a person primarily  
4 engaged in the business of:

5 (A) operating a railroad, subway, street railway, or  
6 trolley bus;

7 (B) transmitting communications electrically,  
8 electromagnetically, or by light;

9 (C) transmitting goods by pipeline or sewer; or

10 (D) transmitting or producing and transmitting  
11 electricity, steam, gas, or water.

12 (b) ~~The~~ "Control" as provided in section 7-106 and the  
13 following definitions in other articles apply to this article:

14 "Applicant". Section 5-102.

15 "Beneficiary". Section 5-102.

16 "Broker". Section 8-102.

17 "Certificated security". Section 8-102.

18 "Check". Section 3-104.

19 "Clearing corporation". Section 8-102.

20 "Contract for sale". Section 2-106.

21 "Customer". Section 4-104.

22 "Entitlement holder". Section 8-102.

23 "Financial asset". Section 8-102.

24 "Holder in due course". Section 3-302.

25 "Issuer" (with respect to  
26 a letter of credit or  
27 letter-of-credit right). Section 5-102.

1	"Issuer" (with respect to	
2	a security).	Section 8-201.
3	<u>"Issuer" (with respect to</u>	
4	<u>documents of title).</u>	<u>Section 7-102.</u>
5	"Lease".	Section 2A-103.
6	"Lease agreement".	Section 2A-103.
7	"Lease contract".	Section 2A-103.
8	"Leasehold interest".	Section 2A-103.
9	"Lessee".	Section 2A-103.
10	"Lessee in ordinary course	
11	of business".	Section 2A-103.
12	"Lessor".	Section 2A-103.
13	"Lessor's residual interest".	Section 2A-103.
14	"Letter of credit".	Section 5-102.
15	"Merchant".	Section 2-104.
16	"Negotiable instrument".	Section 3-104.
17	"Nominated person".	Section 5-102.
18	"Note".	Section 3-104.
19	"Proceeds of a letter of credit".	Section 5-114.
20	"Prove".	Section 3-103.
21	"Sale".	Section 2-106.
22	"Securities account".	Section 8-501.
23	"Securities intermediary".	Section 8-102.
24	"Security".	Section 8-102.
25	"Security certificate".	Section 8-102.
26	"Security entitlement".	Section 8-102.
27	"Uncertificated security".	Section 8-102.

1           (c) Article 1 contains general definitions and principles  
2 of construction and interpretation applicable throughout this  
3 article.

4           Sec. 102. Section 9-203, Uniform Commercial Code, is  
5 amended to read:

6 9-203. Attachment and enforceability of security interest;  
7 proceeds; supporting obligations; formal requisites.

8           (a) A security interest attaches to collateral when it  
9 becomes enforceable against the debtor with respect to the  
10 collateral, unless an agreement expressly postpones the time of  
11 attachment.

12           (b) Except as otherwise provided in subsections (c)  
13 through (i), a security interest is enforceable against the debtor  
14 and third parties with respect to the collateral only if:

15               (1) value has been given;

16               (2) the debtor has rights in the collateral or the power  
17 to transfer rights in the collateral to a secured party; and

18               (3) one of the following conditions is met:

19                   (A) the debtor has authenticated a security agreement  
20 that provides a description of the collateral and, if the security  
21 interest covers timber to be cut, a description of the land  
22 concerned;

23                   (B) the collateral is not a certificated security and is  
24 in the possession of the secured party under section 9-313 pursuant  
25 to the debtor's security agreement;

26                   (C) the collateral is a certificated security in  
27 registered form and the security certificate has been delivered to

1 the secured party under section 8-301 pursuant to the debtor's  
2 security agreement; or

3 (D) the collateral is deposit accounts, electronic  
4 chattel paper, investment property, ~~ex~~ letter-of-credit rights, or  
5 electronic documents, and the secured party has control under  
6 section 7-106, 9-104, 9-105, 9-106, or 9-107 pursuant to the  
7 debtor's security agreement.

8 (c) Subsection (b) is subject to section 4-210 on the  
9 security interest of a collecting bank, section 5-118 on the  
10 security interest of a letter-of-credit issuer or nominated person,  
11 section 9-110 on a security interest arising under article 2 or 2A,  
12 and section 9-206 on security interests in investment property.

13 (d) A person becomes bound as debtor by a security  
14 agreement entered into by another person if, by operation of law  
15 other than this article or by contract:

16 (1) the security agreement becomes effective to create a  
17 security interest in the person's property; or

18 (2) the person becomes generally obligated for the  
19 obligations of the other person, including the obligation secured  
20 under the security agreement, and acquires or succeeds to all or  
21 substantially all of the assets of the other person.

22 (e) If a new debtor becomes bound as debtor by a security  
23 agreement entered into by another person:

24 (1) the agreement satisfies subdivision (b)(3) with  
25 respect to existing or after-acquired property of the new debtor to  
26 the extent the property is described in the agreement; and

27 (2) another agreement is not necessary to make a security

1 interest in the property enforceable.

2 (f) The attachment of a security interest in collateral  
3 gives the secured party the rights to proceeds provided by section  
4 9-315 and is also attachment of a security interest in a supporting  
5 obligation for the collateral.

6 (g) The attachment of a security interest in a right to  
7 payment or performance secured by a security interest or other lien  
8 on personal or real property is also attachment of a security  
9 interest in the security interest, mortgage, or other lien.

10 (h) The attachment of a security interest in a securities  
11 account is also attachment of a security interest in the security  
12 entitlements carried in the securities account.

13 (i) The attachment of a security interest in a commodity  
14 account is also attachment of a security interest in the commodity  
15 contracts carried in the commodity account.

16 Sec. 103. Section 9-207, Uniform Commercial Code, is  
17 amended to read:

18 9-207. Rights and duties of secured party having possession or  
19 control of collateral.

20 (a) Except as otherwise provided in subsection (d), a  
21 secured party shall use reasonable care in the custody and  
22 preservation of collateral in the secured party's possession. In  
23 the case of chattel paper or an instrument, reasonable care  
24 includes taking necessary steps to preserve rights against prior  
25 parties unless otherwise agreed.

26 (b) Except as otherwise provided in subsection (d), if a  
27 secured party has possession of collateral:

1                   (1) reasonable expenses, including the cost of insurance  
2 and payment of taxes or other charges, incurred in the custody,  
3 preservation, use, or operation of the collateral are chargeable to  
4 the debtor and are secured by the collateral;

5                   (2) the risk of accidental loss or damage is on the  
6 debtor to the extent of a deficiency in any effective insurance  
7 coverage;

8                   (3) the secured party shall keep the collateral  
9 identifiable, but fungible collateral may be commingled; and

10                   (4) the secured party may use or operate the collateral:

11                   (A) for the purpose of preserving the collateral or its  
12 value;

13                   (B) as permitted by an order of a court having competent  
14 jurisdiction; or

15                   (C) except in the case of consumer goods, in the manner  
16 and to the extent agreed by the debtor.

17                   (c) Except as otherwise provided in subsection (d), a  
18 secured party having possession of collateral or control of  
19 collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107:

20                   (1) may hold as additional security any proceeds, except  
21 money or funds, received from the collateral;

22                   (2) shall apply money or funds received from the  
23 collateral to reduce the secured obligation, unless remitted to the  
24 debtor; and

25                   (3) may create a security interest in the collateral.

26                   (d) If the secured party is a buyer of accounts, chattel  
27 paper, payment intangibles, or promissory notes or a consignor:

1                   (1) subsection (a) does not apply unless the secured  
2 party is entitled under an agreement:

3                   (A) to charge back uncollected collateral; or

4                   (B) otherwise to full or limited recourse against the  
5 debtor or a secondary obligor based on the nonpayment or other  
6 default of an account debtor or other obligor on the collateral;  
7 and

8                   (2) subsections (b) and (c) do not apply.

9                   Sec. 104. Section 9-208, Uniform Commercial Code, is  
10 amended to read:

11 9-208. Additional duties of secured party having control of  
12 collateral.

13                   (a) This section applies to cases in which there is no  
14 outstanding secured obligation and the secured party is not  
15 committed to make advances, incur obligations, or otherwise give  
16 value.

17                   (b) Within ten days after receiving an authenticated  
18 demand by the debtor:

19                   (1) a secured party having control of a deposit account  
20 under section 9-104(a)(2) shall send to the bank with which the  
21 deposit account is maintained an authenticated statement that  
22 releases the bank from any further obligation to comply with  
23 instructions originated by the secured party;

24                   (2) a secured party having control of a deposit account  
25 under section 9-104(a)(3) shall:

26                   (A) pay the debtor the balance on deposit in the deposit  
27 account; or

1                   (B) transfer the balance on deposit into a deposit  
2 account in the debtor's name;

3                   (3) a secured party, other than a buyer, having control  
4 of electronic chattel paper under section 9-105 shall:

5                   (A) communicate the authoritative copy of the electronic  
6 chattel paper to the debtor or its designated custodian;

7                   (B) if the debtor designates a custodian that is the  
8 designated custodian with which the authoritative copy of the  
9 electronic chattel paper is maintained for the secured party,  
10 communicate to the custodian an authenticated record releasing the  
11 designated custodian from any further obligation to comply with  
12 instructions originated by the secured party and instructing the  
13 custodian to comply with instructions originated by the debtor; and

14                   (C) take appropriate action to enable the debtor or its  
15 designated custodian to make copies of or revisions to the  
16 authoritative copy which add or change an identified assignee of  
17 the authoritative copy without the consent of the secured party;

18                   (4) a secured party having control of investment property  
19 under section 8-106(d)(2) or 9-106(b) shall send to the securities  
20 intermediary or commodity intermediary with which the security  
21 entitlement or commodity contract is maintained an authenticated  
22 record that releases the securities intermediary or commodity  
23 intermediary from any further obligation to comply with entitlement  
24 orders or directions originated by the secured party; ~~and~~

25                   (5) a secured party having control of a letter-of-credit  
26 right under section 9-107 shall send to each person having an  
27 unfulfilled obligation to pay or deliver proceeds of the letter of

1 credit to the secured party an authenticated release from any  
2 further obligation to pay or deliver proceeds of the letter of  
3 credit to the secured party; and

4 (6) a secured party having control of an electronic  
5 document shall:

6 (A) give control of the electronic document to the debtor  
7 or its designated custodian;

8 (B) if the debtor designates a custodian that is the  
9 designated custodian with which the authoritative copy of the  
10 electronic document is maintained for the secured party,  
11 communicate to the custodian an authenticated record releasing the  
12 designated custodian from any further obligation to comply with  
13 instructions originated by the secured party and instructing the  
14 custodian to comply with instructions originated by the debtor; and

15 (C) take appropriate action to enable the debtor or its  
16 designated custodian to make copies of or revisions to the  
17 authoritative copy which add or change an identified assignee of  
18 the authoritative copy without the consent of the secured party.

19 Sec. 105. Section 9-301, Uniform Commercial Code, is  
20 amended to read:

21 9-301. Law governing perfection and priority of security  
22 interests.

23 Except as otherwise provided in sections 9-303 to 9-306,  
24 the following rules determine the law governing perfection, the  
25 effect of perfection or nonperfection, and the priority of a  
26 security interest in collateral:

27 (1) Except as otherwise provided in this section, while a

1 debtor is located in a jurisdiction, the local law of that  
2 jurisdiction governs perfection, the effect of perfection or  
3 nonperfection, and the priority of a security interest in  
4 collateral.

5 (2) While collateral is located in a jurisdiction, the  
6 local law of that jurisdiction governs perfection, the effect of  
7 perfection or nonperfection, and the priority of a possessory  
8 security interest in that collateral.

9 (3) Except as otherwise provided in subdivision (4),  
10 while tangible negotiable documents, goods, instruments, money, or  
11 tangible chattel paper is located in a jurisdiction, the local law  
12 of that jurisdiction governs:

13 (A) perfection of a security interest in the goods by  
14 filing a fixture filing;

15 (B) perfection of a security interest in timber to be  
16 cut; and

17 (C) the effect of perfection or nonperfection and the  
18 priority of a nonpossessory security interest in the collateral.

19 (4) The local law of the jurisdiction in which the  
20 wellhead or minehead is located governs perfection, the effect of  
21 perfection or nonperfection, and the priority of a security  
22 interest in as-extracted collateral.

23 Sec. 106. Section 9-310, Uniform Commercial Code, is  
24 amended to read:

25 9-310. When filing required to perfect security interest or  
26 agricultural lien; security interests and agricultural liens to  
27 which filing provisions do not apply.

1 (a) Except as otherwise provided in subsection (b) and  
2 section 9-312(b), a financing statement must be filed to perfect  
3 all security interests and agricultural liens.

4 (b) The filing of a financing statement is not necessary  
5 to perfect a security interest:

6 (1) that is perfected under section 9-308(d), (e), (f),  
7 or (g);

8 (2) that is perfected under section 9-309 when it  
9 attaches;

10 (3) in property subject to a statute, regulation, or  
11 treaty described in section 9-311(a);

12 (4) in goods in possession of a bailee which is perfected  
13 under section 9-312(d)(1) or (2);

14 (5) in certificated securities, documents, goods, or  
15 instruments which is perfected without filing, control, or  
16 possession under section 9-312(e), (f), or (g);

17 (6) in collateral in the secured party's possession under  
18 section 9-313;

19 (7) in a certificated security which is perfected by  
20 delivery of the security certificate to the secured party under  
21 section 9-313;

22 (8) in deposit accounts, electronic chattel paper,  
23 electronic documents, investment property, or letter-of-credit  
24 rights which is perfected by control under section 9-314;

25 (9) in proceeds which is perfected under section 9-315;  
26 or

27 (10) that is perfected under section 9-316.

1           (c) If a secured party assigns a perfected security  
2 interest or agricultural lien, a filing under this article is not  
3 required to continue the perfected status of the security interest  
4 against creditors of and transferees from the original debtor.

5           Sec. 107. Section 9-312, Uniform Commercial Code, is  
6 amended to read:

7 9-312. Perfection of security interests in chattel paper, deposit  
8 accounts, documents, goods covered by documents, instruments,  
9 investment property, letter-of-credit rights, and money; perfection  
10 by permissive filing; temporary perfection without filing or  
11 transfer of possession.

12           (a) A security interest in chattel paper, negotiable  
13 documents, instruments, or investment property may be perfected by  
14 filing.

15           (b) Except as otherwise provided in section 9-315(c) and  
16 (d) for proceeds:

17           (1) a security interest in a deposit account may be  
18 perfected only by control under section 9-314;

19           (2) and except as otherwise provided in section 9-308(d),  
20 a security interest in a letter-of-credit right may be perfected  
21 only by control under section 9-314; and

22           (3) a security interest in money may be perfected only by  
23 the secured party's taking possession under section 9-313.

24           (c) While goods are in the possession of a bailee that  
25 has issued a negotiable document covering the goods:

26           (1) a security interest in the goods may be perfected by  
27 perfecting a security interest in the document; and

1                   (2) a security interest perfected in the document has  
2 priority over any security interest that becomes perfected in the  
3 goods by another method during that time.

4                   (d) While goods are in the possession of a bailee that  
5 has issued a nonnegotiable document covering the goods, a security  
6 interest in the goods may be perfected by:

7                   (1) issuance of a document in the name of the secured  
8 party;

9                   (2) the bailee's receipt of notification of the secured  
10 party's interest; or

11                   (3) filing as to the goods.

12                   (e) A security interest in certificated securities,  
13 negotiable documents, or instruments is perfected without filing or  
14 the taking of possession or control for a period of twenty days  
15 from the time it attaches to the extent that it arises for new  
16 value given under an authenticated security agreement.

17                   (f) A perfected security interest in a negotiable  
18 document or goods in possession of a bailee, other than one that  
19 has issued a negotiable document for the goods, remains perfected  
20 for twenty days without filing if the secured party makes available  
21 to the debtor the goods or documents representing the goods for the  
22 purpose of:

23                   (1) ultimate sale or exchange; or

24                   (2) loading, unloading, storing, shipping, transshipping,  
25 manufacturing, processing, or otherwise dealing with them in a  
26 manner preliminary to their sale or exchange.

27                   (g) A perfected security interest in a certificated

1 security or instrument remains perfected for twenty days without  
2 filing if the secured party delivers the security certificate or  
3 instrument to the debtor for the purpose of:

4 (1) ultimate sale or exchange; or  
5 (2) presentation, collection, enforcement, renewal, or  
6 registration of transfer.

7 (h) After the twenty-day period specified in subsection  
8 (e), (f), or (g) expires, perfection depends upon compliance with  
9 this article.

10 Sec. 108. Section 9-313, Uniform Commercial Code, is  
11 amended to read:

12 9-313. When possession by or delivery to secured party perfects  
13 security interest without filing.

14 (a) Except as otherwise provided in subsection (b), a  
15 secured party may perfect a security interest in tangible  
16 negotiable documents, goods, instruments, money, or tangible  
17 chattel paper by taking possession of the collateral. A secured  
18 party may perfect a security interest in certificated securities by  
19 taking delivery of the certificated securities under section 8-301.

20 (b) With respect to goods covered by a certificate of  
21 title issued by this state, a secured party may perfect a security  
22 interest in the goods by taking possession of the goods only in the  
23 circumstances described in section 9-316(d).

24 (c) With respect to collateral other than certificated  
25 securities and goods covered by a document, a secured party takes  
26 possession of collateral in the possession of a person other than  
27 the debtor, the secured party, or a lessee of the collateral from

1 the debtor in the ordinary course of the debtor's business, when:

2 (1) the person in possession authenticates a record  
3 acknowledging that it holds possession of the collateral for the  
4 secured party's benefit; or

5 (2) the person takes possession of the collateral after  
6 having authenticated a record acknowledging that it will hold  
7 possession of collateral for the secured party's benefit.

8 (d) If perfection of a security interest depends upon  
9 possession of the collateral by a secured party, perfection occurs  
10 no earlier than the time the secured party takes possession and  
11 continues only while the secured party retains possession.

12 (e) A security interest in a certificated security in  
13 registered form is perfected by delivery when delivery of the  
14 certificated security occurs under section 8-301 and remains  
15 perfected by delivery until the debtor obtains possession of the  
16 security certificate.

17 (f) A person in possession of collateral is not required  
18 to acknowledge that it holds possession for a secured party's  
19 benefit.

20 (g) If a person acknowledges that it holds possession for  
21 the secured party's benefit:

22 (1) the acknowledgment is effective under subsection (c)  
23 or section 8-301(a), even if the acknowledgment violates the rights  
24 of a debtor; and

25 (2) unless the person otherwise agrees or law other than  
26 this article otherwise provides, the person does not owe any duty  
27 to the secured party and is not required to confirm the

1 acknowledgment to another person.

2 (h) A secured party having possession of collateral does  
3 not relinquish possession by delivering the collateral to a person  
4 other than the debtor or a lessee of the collateral from the debtor  
5 in the ordinary course of the debtor's business if the person was  
6 instructed before the delivery or is instructed contemporaneously  
7 with the delivery:

8 (1) to hold possession of the collateral for the secured  
9 party's benefit; or

10 (2) to redeliver the collateral to the secured party.

11 (i) A secured party does not relinquish possession, even  
12 if a delivery under subsection (h) violates the rights of a debtor.  
13 A person to which collateral is delivered under subsection (h) does  
14 not owe any duty to the secured party and is not required to  
15 confirm the delivery to another person unless the person otherwise  
16 agrees or law other than this article otherwise provides.

17 Sec. 109. Section 9-314, Uniform Commercial Code, is  
18 amended to read:

19 9-314. Perfection by control.

20 (a) A security interest in investment property, deposit  
21 accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or  
22 electronic documents may be perfected by control of the collateral  
23 under section 7-106, 9-104, 9-105, 9-106, or 9-107.

24 (b) A security interest in deposit accounts, electronic  
25 chattel paper, ~~or~~ letter-of-credit rights, or electronic documents  
26 is perfected by control under section 7-106, 9-104, 9-105, or 9-107  
27 when the secured party obtains control and remains perfected by

1 control only while the secured party retains control.

2 (c) A security interest in investment property is  
3 perfected by control under section 9-106 from the time the secured  
4 party obtains control and remains perfected by control until:

5 (1) the secured party does not have control; and

6 (2) one of the following occurs:

7 (A) if the collateral is a certificated security, the  
8 debtor has or acquires possession of the security certificate;

9 (B) if the collateral is an uncertificated security, the  
10 issuer has registered or registers the debtor as the registered  
11 owner; or

12 (C) if the collateral is a security entitlement, the  
13 debtor is or becomes the entitlement holder.

14 Sec. 110. Section 9-317, Uniform Commercial Code, is  
15 amended to read:

16 9-317. Interests that take priority over or take free of security  
17 interest or agricultural lien.

18 (a) A security interest or agricultural lien is  
19 subordinate to the rights of:

20 (1) a person entitled to priority under section 9-322;  
21 and

22 (2) except as otherwise provided in subsection (e), a  
23 person that becomes a lien creditor before the earlier of the time:

24 (A) the security interest or agricultural lien is  
25 perfected; or

26 (B) one of the conditions specified in section  
27 9-203(b)(3) is met and a financing statement covering the

1 collateral is filed.

2 (b) Except as otherwise provided in subsection (e), a  
3 buyer, other than a secured party, of tangible chattel paper,  
4 tangible documents, goods, instruments, or a security certificate  
5 takes free of a security interest or agricultural lien if the buyer  
6 gives value and receives delivery of the collateral without  
7 knowledge of the security interest or agricultural lien and before  
8 it is perfected.

9 (c) Except as otherwise provided in subsection (e), a  
10 lessee of goods takes free of a security interest or agricultural  
11 lien if the lessee gives value and receives delivery of the  
12 collateral without knowledge of the security interest or  
13 agricultural lien and before it is perfected.

14 (d) A licensee of a general intangible or a buyer, other  
15 than a secured party, of accounts, electronic chattel paper,  
16 electronic documents, general intangibles, or investment property  
17 other than a certificated security takes free of a security  
18 interest if the licensee or buyer gives value without knowledge of  
19 the security interest and before it is perfected.

20 (e) Except as otherwise provided in sections 9-320 and  
21 9-321, if a person files a financing statement with respect to a  
22 purchase-money security interest before or within twenty days after  
23 the debtor receives delivery of the collateral, the security  
24 interest takes priority over the rights of a buyer, lessee, or lien  
25 creditor which arise between the time the security interest  
26 attaches and the time of filing.

27 Sec. 111. Section 9-338, Uniform Commercial Code, is

1 amended to read:

2 9-338. Priority of security interest or agricultural lien  
3 perfected by filed financing statement providing certain incorrect  
4 information.

5 If a security interest or agricultural lien is perfected  
6 by a filed financing statement providing information described in  
7 section 9-516(b)(5) which is incorrect at the time the financing  
8 statement is filed:

9 (1) the security interest or agricultural lien is  
10 subordinate to a conflicting perfected security interest in the  
11 collateral to the extent that the holder of the conflicting  
12 security interest gives value in reasonable reliance upon the  
13 incorrect information; and

14 (2) a purchaser, other than a secured party, of the  
15 collateral takes free of the security interest or agricultural lien  
16 to the extent that, in reasonable reliance upon the incorrect  
17 information, the purchaser gives value and, in the case of tangible  
18 chattel paper, tangible documents, goods, instruments, or a  
19 security certificate, receives delivery of the collateral.

20 Sec. 112. Section 9-601, Uniform Commercial Code, is  
21 amended to read:

22 9-601. Rights after default; judicial enforcement; consignor or  
23 buyer of accounts, chattel paper, payment intangibles, or  
24 promissory notes.

25 (a) After default, a secured party has the rights  
26 provided in this part and, except as otherwise provided in section  
27 9-602, those provided by agreement of the parties. A secured

1 party:

2 (1) may reduce a claim to judgment, foreclose, or  
3 otherwise enforce the claim, security interest, or agricultural  
4 lien by any available judicial procedure; and

5 (2) if the collateral is documents, may proceed either as  
6 to the documents or as to the goods they cover.

7 (b) A secured party in possession of collateral or  
8 control of collateral under section 7-106, 9-104, 9-105, 9-106, or  
9 9-107 has the rights and duties provided in section 9-207.

10 (c) The rights under subsections (a) and (b) are  
11 cumulative and may be exercised simultaneously.

12 (d) Except as otherwise provided in subsection (g) and  
13 section 9-605, after default, a debtor and an obligor have the  
14 rights provided in this part and by agreement of the parties.

15 (e) If a secured party has reduced its claim to judgment,  
16 the lien of any levy that may be made upon the collateral by virtue  
17 of an execution based upon the judgment relates back to the  
18 earliest of:

19 (1) the date of perfection of the security interest or  
20 agricultural lien in the collateral;

21 (2) the date of filing a financing statement covering the  
22 collateral; or

23 (3) any date specified in a statute under which the  
24 agricultural lien was created.

25 (f) A sale pursuant to an execution is a foreclosure of  
26 the security interest or agricultural lien by judicial procedure  
27 within the meaning of this section. A secured party may purchase

1 at the sale and thereafter hold the collateral free of any other  
2 requirements of this article.

3 (g) Except as otherwise provided in section 9-607(c),  
4 this part imposes no duties upon a secured party that is a  
5 consignor or is a buyer of accounts, chattel paper, payment  
6 intangibles, or promissory notes.

7 Sec. 113. When preparing supplements and reissued  
8 volumes, the Revisor of Statutes shall include the official  
9 comments to the new and amendatory sections in this legislative  
10 bill and the article and part headings which have been prepared by  
11 the American Law Institute and the National Conference of  
12 Commissioners on Uniform State Laws.

13 Sec. 114. This act becomes operative on January 1, 2006.

14 Sec. 115. Original sections 45-1,109, 53-208, and  
15 69-2103, Reissue Revised Statutes of Nebraska, sections 86-630 and  
16 86-643, Revised Statutes Supplement, 2004, and sections 2-103,  
17 2-104, 2-202, 2-310, 2-323, 2-401, 2-503, 2-505, 2-506, 2-509,  
18 2-605, 2-705, 2A-103, 2A-501, 2A-514, 2A-518, 2A-519, 2A-526,  
19 2A-527, 2A-528, 3-103, 4-104, 4-210, 4A-105, 4A-106, 4A-204, 5-103,  
20 8-103, 9-102, 9-203, 9-207, 9-208, 9-301, 9-310, 9-312, 9-313,  
21 9-314, 9-317, 9-338, and 9-601, Uniform Commercial Code, are  
22 repealed.

23 Sec. 116. The following sections are outright repealed:  
24 Sections 1-101 to 1-110, 1-201 to 1-208, 2-208, 2A-207, 7-101 to  
25 7-105, 7-201 to 7-210, 7-301 to 7-309, 7-401 to 7-404, 7-501 to  
26 7-509, 7-601 to 7-603, and 10-104, Uniform Commercial Code."