

SECOND REGULAR SESSION

SENATE BILL NO. 1097

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time February 29, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6466S.011

AN ACT

To repeal sections 400.1-101, 400.1-102, 400.1-103, 400.1-105, 400.1-106, 400.1-107, 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 400.1-207, 400.1-208, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-201, 400.7-202, 400.7-203, 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 400.7-301, 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309, 400.7-401, 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 400.7-504, 400.7-505, 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, and 400.7-604, RSMo, and to enact in lieu thereof sixty-four new sections relating to the uniform commercial code.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 400.1-101, 400.1-102, 400.1-103, 400.1-105, 400.1-106, 2 400.1-107, 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 3 400.1-207, 400.1-208, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-201, 400.7-202, 4 400.7-203, 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 5 400.7-301, 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309, 6 400.7-401, 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 400.7-504, 7 400.7-505, 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, 8 and 400.7-604, RSMo, are repealed and sixty-four new sections enacted in lieu thereof, 9 to be known as sections 400.1-101, 400.1-102, 400.1-103, 400.1-105, 400.1-106, 10 400.1-107, 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 11 400.1-301, 400.1-302, 400.1-303, 400.1-304, 400.1-305, 400.1-306, 400.1-307, 400.1-308, 12 400.1-309, 400.1-310, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-106, 400.7-201, 13 400.7-202, 400.7-203, 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 14 400.7-210, 400.7-301, 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 15 400.7-309, 400.7-401, 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 16 400.7-504, 400.7-505, 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 17 400.7-603, 400.7-703, and 400.7-704, to read as follows:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

400.1-101. (a) This chapter shall be known and may be cited as "Uniform
2 Commercial Code".

3 (b) **This article may be cited as Uniform Commercial Code -**
4 **General Provisions.**

400.1-102. [(1) This chapter shall be liberally construed and applied to
2 promote its underlying purposes and policies.

3 (2) Underlying purposes and policies of this chapter are

4 (a) to simplify, clarify and modernize the law governing commercial
5 transactions;

6 (b) to permit the continued expansion of commercial practices through
7 custom, usage and agreement of the parties;

8 (c) to make uniform the law among the various jurisdictions.

9 (3) The effect of provisions of this chapter may be varied by agreement,
10 except as otherwise provided in this chapter and except that the obligations of
11 good faith, diligence, reasonableness and care prescribed by this chapter may not
12 be disclaimed by agreement but the parties may by agreement determine the
13 standards by which the performance of such obligations is to be measured if such
14 standards are not manifestly unreasonable.

15 (4) The presence in certain provisions of this chapter of the words "unless
16 otherwise agreed" or words of similar import does not imply that the effect of
17 other provisions may not be varied by agreement under subsection (3).

18 (5) In this chapter unless the context otherwise requires

19 (a) words in the singular number include the plural, and in the plural
20 include the singular;

21 (b) words of the masculine gender include the feminine and the neuter,
22 and when the sense so indicates words of the neuter gender may refer to any
23 gender.] **This article applies to a transaction to the extent that it is**
24 **governed by another article of this chapter.**

400.1-103. (a) **This chapter must be liberally construed and**
2 **applied to promote its underlying purposes and policies, which are:**

3 (1) **To simplify, clarify, and modernize the law governing**
4 **commercial transactions;**

5 (2) **To permit the continued expansion of commercial practices**
6 **through custom, usage, and agreement of the parties; and**

7 (3) **To make uniform the law among the various jurisdictions.**

8 (b) Unless displaced by the particular provisions of this chapter, the
9 principles of law and equity, including the law merchant and the law relative to
10 capacity to contract, principal and agent, estoppel, fraud, misrepresentation,
11 duress, coercion, mistake, bankruptcy, [or] **and** other validating or invalidating
12 cause [shall] supplement its provisions.

400.1-105. [(1) Except as provided hereafter in this section, when a
2 transaction bears a reasonable relation to this state and also to another state or

3 nation the parties may agree that the law either of this state or of such other
4 state or nation shall govern their rights and duties. Failing such agreement this
5 chapter applies to transactions bearing an appropriate relation to this state.

6 (2) Where one of the following provisions of this chapter specifies the
7 applicable law, that provision governs and a contrary agreement is effective only
8 to the extent permitted by the law (including the conflict of laws rules) so
9 specified:

10 Rights of creditors against sold goods. Section 400.2-402.

11 Applicability of the Article on Leases. Sections 400.2A-105 and
12 400.2A-106.

13 Applicability of the Article on Bank Deposits and Collections. Section
14 400.4-102.

15 Letter of credit. Section 400.5-116.

16 Applicability of the Article on Investment Securities. Section 400.8-110.

17 Law governing perfection, the effect of perfection or nonperfection, and the
18 priority of security interests. Sections 400.9-301 through 400.9-307.] **If any
19 provision or clause of this chapter or its application to any person or
20 circumstance is held invalid, the invalidity does not affect other
21 provisions or applications of this chapter which can be given effect
22 without the invalid provision or application, and to this end the
23 provisions of this chapter are severable.**

400.1-106. [(1) The remedies provided by this chapter shall be liberally
2 administered to the end that the aggrieved party may be put in as good a position
3 as if the other party had fully performed but neither consequential or special nor
4 penal damages may be had except as specifically provided in this chapter or by
5 other rule of law.

6 (2) Any right or obligation declared by this chapter is enforceable by
7 action unless the provision declaring it specifies a different and limited effect.]
8 **In this chapter, unless the statutory context otherwise requires:**

9 **(1) Words in the singular number include the plural, and those
10 in the plural include the singular; and**

11 **(2) Words of any gender also refer to any other gender.**

400.1-107. [Any claim or right arising out of an alleged breach can be
2 discharged in whole or in part without consideration by a written waiver or
3 renunciation signed and delivered by the aggrieved party.] **Section captions
4 are part of this chapter.**

400.1-108. [If any provision or clause of this chapter or application thereof
2 to any person or circumstances is held invalid, such invalidity shall not affect
3 other provisions or applications of this chapter which can be given effect without
4 the invalid provision or application, and to this end the provisions of this chapter
5 are declared to be severable.] **This article modifies, limits, and supersedes
6 the federal Electronic Signatures in Global and National Commerce Act,**

7 **15 U.S.C. Section 7001 et seq., except that nothing in this article**
8 **modifies, limits, or supersedes Section 7001(c) of that Act or authorizes**
9 **electronic delivery of any of the notices described in Section 7003(b) of**
10 **that Act.**

400.1-201. [Subject to additional definitions contained in the subsequent
2 articles of this chapter which are applicable to specific articles or parts thereof,
3 and]

4 (a) Unless the context otherwise requires, [in this chapter:] **words or**
5 **phrases defined in this section, or in the additional definitions**
6 **contained in other articles of this chapter that apply to particular**
7 **articles or parts thereof, have the meanings stated.**

8 (b) **Subject to definitions contained in other articles of this**
9 **chapter that apply to particular articles or parts thereof:**

10 (1) "Action", in the sense of a judicial proceeding, includes recoupment,
11 counterclaim, set-off, suit in equity, and any other proceedings in which rights are
12 determined.

13 (2) "Aggrieved party" [means], a party entitled to [resort to] **pursue** a
14 remedy.

15 (3) "Agreement", **as distinguished from "contract"**, means the bargain
16 of the parties in fact, as found in their language or [by implication] **inferred**
17 from other circumstances, including **course of performance**, course of dealing,
18 or usage of trade [or course of performance] as provided in [this chapter (sections
19 400.1-205 and 400.2-208). Whether an agreement has legal consequences is
20 determined by the provisions of this chapter, if applicable; otherwise by the law
21 of contracts (section 400.1-103). (Compare "Contract".)] **section 400.1-303.**

22 (4) "Bank" [means], any person engaged in the business of banking **and**
23 **includes a savings bank, savings and loan association, credit union, and**
24 **trust company.**

25 (5) "Bearer" [means], the person in possession of [an] **a negotiable**
26 instrument, document of title, or certificated security **that is payable to bearer**
27 or [endorsed] **indorsed** in blank.

28 (6) "Bill of lading" [means], a document evidencing the receipt of goods for
29 shipment issued by a person engaged in the business of transporting or
30 forwarding goods[, and includes an airbill. "Airbill" means a document serving
31 for air transportation as a bill of lading does for marine or rail transportation,
32 and includes an air consignment note or air waybill].

33 (7) "Branch", includes a separately incorporated foreign branch of a bank.

34 (8) "Burden of establishing", a fact means the burden of persuading the
35 [triers] **trier** of fact that the existence of the fact is more probable than its
36 nonexistence.

37 (9) "Buyer in ordinary course of business" [means], a person that buys
38 goods in good faith, [and] without knowledge that the sale violates the rights of

39 another person in the goods, and in the ordinary course from a person, other than
40 a pawnbroker, in the business of selling goods of that kind. A person buys goods
41 in the ordinary course if the sale to the person comports with the usual or
42 customary practices in the kind of business in which the seller is engaged or with
43 the seller's own usual or customary practices. A person that sells oil, gas, or
44 other minerals at the wellhead or minehead is a person in the business of selling
45 goods of that kind. A buyer in ordinary course of business may buy for cash, by
46 exchange of other property, or on secured or unsecured credit, and may acquire
47 goods or documents of title under a preexisting contract for sale. Only a buyer
48 that takes possession of the goods or has a right to recover the goods from the
49 seller under article 2 may be a buyer in ordinary course of business. **"Buyer in
50 ordinary course of business" does not include** a person that acquires goods
51 in a transfer in bulk or as security for[,] or in total or partial satisfaction of[,] a
52 money debt [is not a buyer in ordinary course of business].

53 (10) "Conspicuous"[:], **with reference to** a term [or clause is conspicuous
54 when it is], so written, **displayed, or presented** that a reasonable person
55 against [whom] **which** it is to operate ought to have noticed it. [A printed
56 heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is
57 conspicuous. Language in the body of a form is "conspicuous" if it is in larger or
58 other contrasting type or color. But in a telegram any stated term is
59 "conspicuous".] Whether a term [or clause] is "conspicuous" or not is [for] a
60 decision [by] **for** the court. **Conspicuous terms include the following:**

61 (A) **A heading in capitals equal to or greater in size than the
62 surrounding text, or in contrasting type, font, or color to the
63 surrounding text of the same or lesser size; and**

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

69 (11) **"Consumer", an individual who enters into a transaction
70 primarily for personal, family, or household purposes.**

71 (12) **"Contract", as distinguished from "agreement", means the total
72 legal obligation [which] that results from the parties' agreement as [affected]
73 determined by this chapter [and] as supplemented by any other applicable
74 [rules of law] laws. [(Compare "Agreement".)]**

75 [(12)] (13) **"Creditor", includes a general creditor, a secured creditor, a
76 lien creditor, and any representative of creditors, including an assignee for the
77 benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor
78 or administrator of an insolvent debtor's or assignor's estate.**

79 [(13)] (14) **"Defendant", includes a person in the position of defendant in
80 a [cross-action or] counterclaim, cross-claim, or third-party claim.**

81 [(14)] **(15)** "Delivery", with respect to [instruments] **an instrument**,
82 [documents] **document** of title, **or** chattel paper, [or certificated securities]
83 means voluntary transfer of possession.

84 [(15)] **(16)** "Document of title", includes bill of lading, dock warrant, dock
85 receipt, warehouse receipt or order for the delivery of goods, and also any other
86 document which in the regular course of business or financing is treated as
87 adequately evidencing that the person in possession of it is entitled to receive,
88 hold, and dispose of the document and the goods it covers. To be a document of
89 title, a document must purport to be issued by or addressed to a bailee and
90 purport to cover goods in the bailee's possession which are either identified or are
91 fungible portions of an identified mass.

92 [(16)] **(17)** "Fault" [means], **a default, breach, or wrongful act[,] or**
93 omission [or breach].

94 [(17)] **(18)** "Fungible **goods**" [with respect to goods or securities means]:

95 **(A)** Goods [or securities] of which any unit [is], by nature or usage of
96 trade, **is** the equivalent of any other like unit[.]; **or**

97 **(B)** Goods [which are not fungible shall be deemed fungible for the
98 purposes of this chapter to the extent] that **by** [under a particular] agreement [or
99 document unlike units] are treated as [equivalents] **equivalent**.

100 [(18)] **(19)** "Genuine" [means], free of forgery or counterfeiting.

101 [(19)] **(20)** "Good faith", **except as otherwise provided in article 5**,
102 means honesty in fact [in the conduct or transaction concerned] **and the**
103 **observance of reasonable commercial standards of fair dealing**.

104 [(20)] **(21)** "Holder" [with respect to a negotiable instrument, means]:

105 **(A)** The person in possession [if the] **of a negotiable instrument that**
106 is payable **either** to bearer or[, in the case of an instrument payable] to an
107 identified person [if the identified] **that is the person [is]** in
108 possession[. Holder" with respect to a document of title means]; **or**

109 **(B)** The person in possession **of a document of title** if the goods are
110 deliverable **either** to bearer or to the order of the person in possession.

111 [(21) To "honor" is to pay or to accept and pay, or where a credit so
112 engages to purchase or discount a draft complying with the terms of the credit.]

113 (22) "Insolvency [proceedings]" **proceeding**", includes [any] **an**
114 assignment for the benefit of creditors or other [proceedings] **proceeding**
115 intended to liquidate or rehabilitate the estate of the person involved.

116 (23) [A person is] "Insolvent" [who either has]:

117 **(A) Having generally** ceased to pay [his or her] debts in the ordinary
118 course of business [or cannot pay his or her] **other than as a result of bona**
119 **fide dispute;**

120 **(B) Being unable to pay** debts as they become due; or [is]

121 **(C) Being** insolvent within the meaning of [the] federal bankruptcy law.

122 (24) "Money" [means], a medium of exchange **currently** authorized or

123 adopted by a domestic or foreign government. [and] **The term** includes a
124 monetary unit of account established by an intergovernmental organization or by
125 agreement between two or more [nations] **countries**.

126 (25) [A person has "notice" of a fact when

127 (a) a person has actual knowledge of it; or

128 (b) a person has received a notice or notification of it; or

129 (c) from all the facts and circumstances known to him or her at the time
130 in question he or she has reason to know that it exists.

131 A person "knows" or has "knowledge" of a fact when a person has actual
132 knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers
133 to knowledge rather than to reason to know. The time and circumstances under
134 which a notice or notification may cease to be effective are not determined by this
135 chapter.

136 (26) A person "notifies" or "gives" a notice or notification to another by
137 taking such steps as may be reasonably required to inform the other in ordinary
138 course whether or not such other actually comes to know of it. A person
139 "receives" a notice or notification when

140 (a) it comes to a person's attention, or

141 (b) it is duly delivered at the place of business through which the contract
142 was made or at any other place held out by a person as the place for receipt of
143 such communications.

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

156 (28) "Organization" [includes a corporation, government or governmental
157 subdivision or agency, business trust, estate, trust, partnership or association,
158 two or more persons having a joint or common interest, or any other legal or
159 commercial entity], **a person other than an individual**.

160 [(29)] **(26)** "Party", as [distinct] **distinguished** from "third party",
161 [means] a person [who] **that** has engaged in a transaction or made an agreement
162 [within] **subject to** this chapter.

163 [(30)] **(27)** "Person" [includes] an individual [or an organization (see
164 section 400.1-102)], **corporation, business trust, estate, trust, partnership,**

165 **limited liability company, association, joint venture, government,**
166 **governmental subdivision, agency, or instrumentality, public**
167 **corporation, or any other legal or commercial entity.**

168 [(31) "Presumption" or "presumed" means that the trier of fact must find
169 the existence of the fact presumed unless and until evidence is introduced which
170 would support a finding of its nonexistence.]

171 **(28) "Present value", the amount as of a date certain of one or**
172 **more sums payable in the future, discounted to the date certain by use**
173 **of either an interest rate specified by the parties if that rate is not**
174 **manifestly unreasonable at the time the transaction is entered into or,**
175 **if an interest rate is not so specified, a commercially reasonable rate**
176 **that takes into account the facts and circumstances at the time the**
177 **transaction is entered into.**

178 [(32)] **(29) "Purchase" [includes], taking by sale, lease, discount,**
179 **negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any**
180 **other voluntary transaction creating an interest in property.**

181 [(33)] **(30) "Purchaser" [means], a person [who] that takes by purchase.**

182 **(31) "Record", information that is inscribed on a tangible medium**
183 **or that is stored in an electronic or other medium and is retrievable in**
184 **perceivable form.**

185 [(34)] **(32) "Remedy" [means], any remedial right to which an aggrieved**
186 **party is entitled with or without resort to a tribunal.**

187 [(35)] **(33) "Representative" [includes an agent, an officer of a corporation**
188 **or association, and a trustee, executor or administrator of an estate, or any**
189 **other], a person empowered to act for another, including an agent, an officer**
190 **of a corporation or association, and a trustee, executor, or**
191 **administrator of an estate.**

192 [(36)] **(34) "Rights" includes [remedies] remedy.**

193 [(37)] **(35) "Security interest" [means], an interest in personal property**
194 **or fixtures which secures payment or performance of an obligation. [The term**
195 **also] "Security interest" includes any interest of a consignor and a buyer of**
196 **accounts, chattel paper, a payment intangible, or a promissory note in a**
197 **transaction that is subject to article 9. "Security interest" does not include**
198 **the special property interest of a buyer of goods on identification of those goods**
199 **to a contract for sale under section 400.2-401 [is not a "security interest"], but a**
200 **buyer may also acquire a "security interest" by complying with article 9. Except**
201 **as otherwise provided in section 400.2-505, the right of a seller or lessor of goods**
202 **under article 2 or 2A to retain or acquire possession of the goods is not a "security**
203 **interest", but a seller or lessor may also acquire a "security interest" by complying**
204 **with article 9. The retention or reservation of title by a seller of goods**
205 **notwithstanding shipment or delivery to the buyer [(] under section 400.2-401**
206 **] is limited in effect to a reservation of a "security interest." [.] Whether a**

207 transaction [creates] **in the form of** a lease [or security interest] **creates a**
208 **"security interest"** is determined [by the facts of each case; however, a
209 transaction creates a security interest if the consideration the lessee is to pay the
210 lessor for the right to possession and use of the goods is an obligation for the term
211 of the lease not subject to termination by the lessee, and

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

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

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

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

222 A transaction does not create a security interest merely because it provides that

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

227 (b) The lessee assumes risk of loss of the goods, or agrees to pay taxes,
228 insurance, filing, recording, or registration fees, or service or maintenance costs
229 with respect to the goods,

230 (c) The lessee has an option to renew the lease or to become the owner of
231 the goods,

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

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

239 For purposes of subsection (37):

240 (a) Additional consideration is not nominal if (i) when the option to renew
241 the lease is granted to the lessee the rent is stated to be the fair market rent for
242 the use of the goods for the term of the renewal determined at the time the option
243 is to be performed, or (ii) when the option to become the owner of the goods is
244 granted to the lessee the price is stated to be the fair market value of the goods
245 determined at the time the option is to be performed. Additional consideration
246 is nominal if it is less than the lessee's reasonably predictable cost of performing
247 under the lease agreement if the option is not exercised;

248 (b) "Reasonably predictable" and "remaining economic life of the goods"

249 are to be determined with reference to the facts and circumstances at the time the
250 transaction is entered into; and

251 (c) "Present value" means the amount as of a date certain of one or more
252 sums payable in the future, discounted to the date certain. The discount is
253 determined by the interest rate specified by the parties if the rate is not
254 manifestly unreasonable at the time the transaction is entered into; otherwise,
255 the discount is determined by a commercially reasonable rate that takes into
256 account the facts and circumstances of each case at the time the transaction was
257 entered into.

258 (38) **pursuant to section 400.1-203.**

259 (36) "Send" in connection with [any] a writing, **record**, or notice
260 [means]:

261 (A) To deposit in the mail or deliver for transmission by any other usual
262 means of communication with postage or cost of transmission provided for and
263 properly addressed and, in the case of an instrument, to an address specified
264 thereon or otherwise agreed, or if there be none to any address reasonable under
265 the circumstances[. The receipt of any writing]; **or**

266 (B) **In any other way to cause to be received any record** or notice
267 within the time [at which] it would have arrived if properly sent [has the effect
268 of a proper sending].

269 [(39)] (37) "Signed", includes **using** any symbol executed or adopted [by
270 a party] with present intention to [authenticate] **adopt or accept** a writing.

271 [(40) "Special property" means identifiable property in which the holder
272 has only a qualified, temporary, or limited interest.]

273 (38) "State", a **State of the United States, the District of Columbia,**
274 **Puerto Rico, the United States Virgin Islands, or any territory or**
275 **insular possession subject to the jurisdiction of the United States.**

276 [(41)] (39) "Surety", includes a guarantor **or other secondary obligor.**

277 [(42) "Telegram" includes a message transmitted by radio, teletype, cable,
278 any mechanical method of transmission, or the like.

279 (43) (40) "Term" [means that], a portion of an agreement [which] **that**
280 relates to a particular matter.

281 [(44)] (41) "Unauthorized[" signature means one] **signature", a**
282 **signature** made without actual, implied, or apparent authority [and]. **The term**
283 includes a forgery.

284 [(45) "Value". Except as otherwise provided with respect to negotiable
285 instruments and bank collections (sections 400.3-303, 400.4-208 and 400.4-209)
286 a person gives "value" for rights if he or she acquires them

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

290 (b) as security for or in total or partial satisfaction of a preexisting claim;

291 or

292 (c) by accepting delivery pursuant to a preexisting contract for purchase;

293 or

294 (d) generally, in return for any consideration sufficient to support a simple
295 contract.

296 (46)] **(42)** "Warehouse receipt" means a receipt issued by a person
297 engaged in the business of storing goods for hire.

298 [(47) "Written" or] **(43)** "Writing" includes printing, typewriting, or any
299 other intentional reduction to tangible form. **"Written" has a corresponding**
300 **meaning.**

400.1-202. [A document in due form purporting to be a bill of lading,
2 policy or certificate of insurance, official weigher's or inspector's certificate,
3 consular invoice, or any other document authorized or required by the contract
4 to be issued by a third party shall be prima facie evidence of its own authenticity
5 and genuineness and of the facts stated in the document by the third party.]

6 **(a) Subject to subsection (f), a person has "notice" of a fact if the**
7 **person:**

8 **(1) Has actual knowledge of it;**

9 **(2) Has received a notice or notification of it; or**

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

12 **(b) "Knowledge", means actual knowledge. "Knows" has a**
13 **corresponding meaning.**

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

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

20 **(e) Subject to subsection (f), a person "receives" a notice or**
21 **notification when:**

22 **(1) It comes to that person's attention; or**

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

27 **(f) Notice, knowledge, or a notice or notification received by an**
28 **organization is effective for a particular transaction from the time it is**
29 **brought to the attention of the individual conducting that transaction**
30 **and, in any event, from the time it would have been brought to the**
31 **individual's attention if the organization had exercised due diligence.**
32 **An organization exercises due diligence if it maintains reasonable**

33 routines for communicating significant information to the person
34 conducting the transaction and there is reasonable compliance with the
35 routines. Due diligence does not require an individual acting for the
36 organization to communicate information unless the communication is
37 part of the individual's regular duties or the individual has reason to
38 know of the transaction and that the transaction would be materially
39 affected by the information.

400.1-203. [Every contract or duty within this chapter imposes an
2 obligation of good faith in its performance or enforcement.] (a) Whether a
3 transaction in the form of a lease creates a lease or security interest is
4 determined by the facts of each case.

5 (b) A transaction in the form of a lease creates a security interest
6 if the consideration that the lessee is to pay the lessor for the right to
7 possession and use of the goods is an obligation for the term of the
8 lease and is not subject to termination by the lessee, and:

9 (1) The original term of the lease is equal to or greater than the
10 remaining economic life of the goods;

11 (2) The lessee is bound to renew the lease for the remaining
12 economic life of the goods or is bound to become the owner of the
13 goods;

14 (3) The lessee has an option to renew the lease for the remaining
15 economic life of the goods for no additional consideration or for
16 nominal additional consideration upon compliance with the lease
17 agreement; or

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

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

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

27 (2) The lessee assumes risk of loss of the goods;

28 (3) The lessee agrees to pay, with respect to the goods, taxes,
29 insurance, filing, recording, or registration fees, or service or
30 maintenance costs;

31 (4) The lessee has an option to renew the lease or to become the
32 owner of the goods;

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

36 option is to be performed; or

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

40 **(d) Additional consideration is nominal if it is less than the**
41 **lessee's reasonably predictable cost of performing under the lease**
42 **agreement if the option is not exercised. Additional consideration is**
43 **not nominal if:**

44 **(1) When the option to renew the lease is granted to the lessee,**
45 **the rent is stated to be the fair market rent for the use of the goods for**
46 **the term of the renewal determined at the time the option is to be**
47 **performed; or**

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

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

400.1-204. [(1) Whenever this chapter requires any action to be taken
2 within a reasonable time, any time which is not manifestly unreasonable may be
3 fixed by agreement.

4 **(2) What is a reasonable time for taking any action depends on the nature,**
5 **purpose and circumstances of such action.**

6 **(3) An action is taken "seasonably" when it is taken at or within the time**
7 **agreed or if no time is agreed at or within a reasonable time.] **Except as****
8 **otherwise provided in articles 3, 4, and 5, a person gives value for**
9 **rights if the person acquires them:**

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

14 **(2) As security for, or in total or partial satisfaction of, a**
15 **preexisting claim;**

16 **(3) By accepting delivery under a preexisting contract for**
17 **purchase; or**

18 **(4) In return for any consideration sufficient to support a simple**
19 **contract.**

400.1-205. [(1) A course of dealing is a sequence of previous conduct
2 between the parties to a particular transaction which is fairly to be regarded as
3 establishing a common basis of understanding for interpreting their expressions
4 and other conduct.

5 (2) A usage of trade is any practice or method of dealing having such
6 regularity of observance in a place, vocation or trade as to justify an expectation
7 that it will be observed with respect to the transaction in question. The existence
8 and scope of such a usage are to be proved as facts.

9 If it is established that such a usage is embodied in a written trade code or
10 similar writing the interpretation of the writing is for the court.

11 (3) A course of dealing between parties and any usage of trade in the
12 vocation or trade in which they are engaged or of which they are or should be
13 aware give particular meaning to and supplement or qualify terms of an
14 agreement.

15 (4) The express terms of an agreement and an applicable course of dealing
16 or usage of trade shall be construed wherever reasonable as consistent with each
17 other; but when such construction is unreasonable express terms control both
18 course of dealing and usage of trade and course of dealing controls usage of trade.

19 (5) An applicable usage of trade in the place where any part of
20 performance is to occur shall be used in interpreting the agreement as to that
21 part of the performance.

22 (6) Evidence of a relevant usage of trade offered by one party is not
23 admissible unless and until he has given the other party such notice as the court
24 finds sufficient to prevent unfair surprise to the latter.] **(a) Whether a time for**
25 **taking an action required by this chapter is reasonable depends on the**
26 **nature, purpose, and circumstances of the action.**

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

400.1-206. [(1) Except in the cases described in subsection (2) of this
2 section a contract for the sale of personal property is not enforceable by way of
3 action or defense beyond five thousand dollars in amount or value of remedy
4 unless there is some writing which indicates that a contract for sale has been
5 made between the parties at a defined or stated price, reasonably identifies the
6 subject matter, and is signed by the party against whom enforcement is sought
7 or by his authorized agent.

8 (2) Subsection (1) of this section does not apply to contracts for the sale
9 of goods (section 400.2-201) nor of securities (section 400.8-113) nor to security
10 agreements (section 400.9-203).] **Whenever this chapter creates a**
11 **"presumption" with respect to a fact, or provides that a fact is**
12 **"presumed," the trier of fact must find the existence of the fact unless**
13 **and until evidence is introduced that supports a finding of its**
14 **nonexistence.**

400.1-301. **(a) Except as otherwise provided in this section, when**
2 **a transaction bears a reasonable relation to this state and also to**
3 **another state or nation the parties may agree that the law either of this**
4 **state or of such other state or nation shall govern their rights and**

5 **duties.**

6 **(b) In the absence of an agreement effective under subsection (a),**
7 **and except as provided in subsection (c), this chapter applies to**
8 **transactions bearing an appropriate relation to this state.**

9 **(c) If one of the following provisions of this chapter specifies the**
10 **applicable law, that provision governs and a contrary agreement is**
11 **effective only to the extent permitted by the law so specified:**

12 **(1) Section 2-402;**

13 **(2) Sections 2A-105 and 2A-106;**

14 **(3) Section 4-102;**

15 **(4) Section 4A-507;**

16 **(5) Section 5-116;**

17 **(6) Section 8-110;**

18 **(7) Sections 9-301 through 9-307.**

400.1-302. (a) Except as otherwise provided in subsection (b) or
2 **elsewhere in this chapter, the effect of provisions of this chapter may**
3 **be varied by agreement.**

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

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

400.1-303. (a) A "course of performance" is a sequence of conduct
2 **between the parties to a particular transaction that exists if:**

3 **(1) The agreement of the parties with respect to the transaction**
4 **involves repeated occasions for performance by a party; and**

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

8 **(b) A "course of dealing" is a sequence of conduct concerning**
9 **previous transactions between the parties to a particular transaction**
10 **that is fairly to be regarded as establishing a common basis of**
11 **understanding for interpreting their expressions and other conduct.**

12 **(c) A "usage of trade" is any practice or method of dealing having**
13 **such regularity of observance in a place, vocation, or trade as to justify**
14 **an expectation that it will be observed with respect to the transaction**

15 in question. The existence and scope of such a usage must be proved
16 as facts. If it is established that such a usage is embodied in a trade
17 code or similar record, the interpretation of the record is a question of
18 law.

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

27 (e) Except as otherwise provided in subsection (f), the express
28 terms of an agreement and any applicable course of performance,
29 course of dealing, or usage of trade must be construed whenever
30 reasonable as consistent with each other. If such a construction is
31 unreasonable:

32 (1) Express terms prevail over (1) course of performance, course of
33 dealing, and usage of trade;

34 (2) Course of performance prevails over course of dealing and
35 usage of trade; and

36 (3) Course of dealing prevails over usage of trade.

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

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

2 400.1-304. Every contract or duty within this chapter imposes an
obligation of good faith in its performance and enforcement.

2 400.1-305. (a) The remedies provided by this chapter must be
liberally administered to the end that the aggrieved party may be put
3 in as good a position as if the other party had fully performed but
4 neither consequential or special damages nor penal damages may be
5 had except as specifically provided in this chapter or by other rule of
6 law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by action unless the provision declaring it specifies a
9 different and limited effect.

2 400.1-306. A claim or right arising out of an alleged breach may
be discharged in whole or in part without consideration by agreement
3 of the aggrieved party in an authenticated record.

400.1-307. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

400.1-308. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

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

400.1-309. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

400.1-310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

400.7-102. [(1)] (a) In this article, unless the context otherwise requires: [(a)] (1) "Bailee" means the person [who] that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

[(b)] (2) "Carrier" means a person that issues a bill of lading.

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

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

[(d)] (5) "Delivery order" means a [written] record that contains an order to deliver goods directed to a [warehouseman] warehouse, carrier, or other person [who] that in the ordinary course of business issues warehouse receipts or bills of lading.

[(e)] "Document" means document of title as defined in the general definitions in article 1 (section 400.1-201).

[(f)] (6) "Good faith" has the same meaning as in subdivision (6) of

17 **subsection (a) of section 400.1-201.**

18 (7) "Goods" means all things [which] **that** are treated as movable for the
19 purposes of a contract [of] **for** storage or transportation.

20 [(g)] (8) "Issuer" means a bailee [who] **that** issues a document [except
21 that] **of title or**, in [relation to] **the case of** an unaccepted delivery order, [it
22 means] the person [who] **that** orders the possessor of goods to deliver. [Issuer]
23 **The term** includes [any] **a** person for [whom] **which** an agent or employee
24 purports to act in issuing a document if the agent or employee has real or
25 apparent authority to issue documents, [notwithstanding that] **even if** the issuer
26 [received no] **did not receive any** goods, [or that] the goods were misdescribed,
27 or [that] in any other respect the agent or employee violated [his] **the issuer's**
28 instructions.

29 (9) "Person entitled under the document" means the holder, in
30 **the case of a negotiable document of title, or the person to which**
31 **delivery of the goods is to be made by the terms of, or pursuant to**
32 **instructions in a record under, a nonnegotiable document of title.**

33 (10) "Record" has the same meaning as in subdivision (10) of
34 **subsection (a) of section 400.1-201.**

35 (11) "Sign" means, with present intent to authenticate or adopt
36 **a record:**

37 (A) **to execute or adopt a tangible symbol; or**

38 (B) **to attach to or logically associate with the record an**
39 **electronic sound, symbol, or process.**

40 (12) "Shipper" means a person that enters into a contract of
41 **transportation with a carrier.**

42 [(h) "Warehouseman" is] (13) "Warehouse" means a person engaged in
43 the business of storing goods for hire.

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

46 "Duly negotiate". Section 400.7-501.

47 "Person entitled under the document". Section 400.7-403(4).

48 (3) (b) Definitions in other articles applying to this article and the
49 sections in which they appear are:

50 (1) "Contract for sale"[.], section 400.2-106.

51 ["Overseas". Section 400.2-323.]

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

53 (3) "Receipt" of goods[.], section 400.2-103.

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

400.7-103. [To the extent that] (a) **This article is subject to** any treaty
2 or statute of the United States[,] **or** regulatory statute of this state [or tariff,
3 classification or regulation filed or issued pursuant thereto] **to the extent the**

4 **treaty, statute, or regulatory statute** is applicable[, the provisions of this
5 article are subject thereto].

6 **(b) This article does not modify or repeal any law prescribing the**
7 **form or content of a document of title or the services or facilities to be**
8 **afforded by a bailee, or otherwise regulating a bailee's business in**
9 **respects not specifically treated in this article. However, violation of**
10 **such a law does not affect the status of a document of title that**
11 **otherwise is within the definition of a document of title.**

12 **(c) This chapter modifies, limits, and supersedes the federal**
13 **Electronic Signatures in Global and National Commerce Act, 15 U.S.C.**
14 **Section 7001, et. seq., but does not modify, limit, or supersede Section**
15 **101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic**
16 **delivery of any of the notices described in Section 103(b) of that act, 15**
17 **U.S.C. Section 7003(b).**

18 **(d) To the extent there is a conflict between the uniform**
19 **electronic transactions act under sections 432.200 to 432.295 and this**
20 **article, this article governs.**

400.7-104. [(1) A warehouse receipt, bill of lading or other] **(a) Except**
2 **as otherwise provided in subsection (c), a document of title is negotiable**
3 **[(a)] if by its terms the goods are to be delivered to bearer or to the order of a**
4 **named person[; or].**

5 **(b) [where recognized in overseas trade, if it runs to a named person or**
6 **assigns.**

7 **(2) Any other] A document of title other than one described in**
8 **subsection (a) is nonnegotiable. A bill of lading [in which it is stated] that**
9 **states that 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 [a written] an order**
11 **in a record signed by the same or another named person.**

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

400.7-105. [The omission from either part 2 or part 3 of this article of a
2 provision corresponding to a provision made in the other part does not imply that
3 a corresponding rule of law is not applicable.] **(a) Upon request of a person**
4 **entitled under an electronic document of title, the issuer of the**
5 **electronic document may issue a tangible document of title as a**
6 **substitute for the electronic document if:**

7 **(1) The person entitled under the electronic document**
8 **surrenders control of the document to the issuer; and**

9 **(2) The tangible document when issued contains a statement that**
10 **it is issued in substitution for the electronic document.**

11 **(b) Upon issuance of a tangible document of title in substitution**

12 for an electronic document of title in accordance with subsection (a):

13 (1) The electronic document ceases to have any effect or validity;
14 and

15 (2) The person that procured issuance of the tangible document
16 warrants to all subsequent persons entitled under the tangible
17 document that the warrantor was a person entitled under the
18 electronic document when the warrantor surrendered control of the
19 electronic document to the issuer.

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

23 (1) The person entitled under the tangible document surrenders
24 possession of the document to the issuer; and

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

27 (d) Upon issuance of an electronic document of title in
28 substitution for a tangible document of title in accordance with
29 subsection (c):

30 (1) The tangible document ceases to have any effect or validity;
31 and

32 (2) The person that procured issuance of the electronic document
33 warrants to all subsequent persons entitled under the electronic
34 document that the warrantor was a person entitled under the tangible
35 document when the warrantor surrendered possession of the tangible
36 document to the issuer.

400.7-106. (a) A person has control of an electronic document of
2 title if a system employed for evidencing the transfer of interests in the
3 electronic document reliably establishes that person as the person to
4 which the electronic document was issued or transferred.

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

8 (1) A single authoritative copy of the document exists which is
9 unique, identifiable, and, except as otherwise provided in paragraphs
10 (4), (5), and (6), unalterable;

11 (2) The authoritative copy identifies the person asserting control
12 as:

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

14 (B) If the authoritative copy indicates that the document has
15 been transferred, the person to which the document was most recently
16 transferred;

17 (3) The authoritative copy is communicated to and maintained

18 **by the person asserting control or its designated custodian;**

19 **(4) Copies or amendments that add or change an identified**
20 **assignee of the authoritative copy can be made only with the consent**
21 **of the person asserting control;**

22 **(5) Each copy of the authoritative copy and any copy of a copy**
23 **is readily identifiable as a copy that is not the authoritative copy; and**

24 **(6) Any amendment of the authoritative copy is readily**
25 **identifiable as authorized or unauthorized.**

400.7-201. [(1)] **(a)** A warehouse receipt may be issued by any
2 [warehouseman] **warehouse.**

3 [(2) Where] **(b) If** goods, including distilled spirits and agricultural
4 commodities, are stored under a statute requiring a bond against withdrawal or
5 a license for the issuance of receipts in the nature of warehouse receipts, a receipt
6 issued for the goods [has like effect as] **is deemed to be** a warehouse receipt
7 even [though] **if** issued by a person [who] **that** is the owner of the goods and is
8 not a [warehouseman] **warehouse.**

400.7-202. [(1)] **(a)** A warehouse receipt need not be in any particular
2 form.

3 [(2)] **(b)** Unless a warehouse receipt [embodies within its written or
4 printed terms] **provides for** each of the following, the [warehouseman]
5 **warehouse** is liable for damages caused [by the omission] to a person injured
6 [thereby] **by its omission:**

7 [(a)] **(1)** A **statement of** the location of the warehouse **facility** where
8 the goods are stored;

9 [(b)] **(2)** The date of issue of the receipt;

10 [(c)] **(3)** The [consecutive number] **unique identification code** of the
11 receipt;

12 [(d)] **(4)** A statement whether the goods received will be delivered to the
13 bearer, to a [specified] **named** person, or to a [specified] **named** person or [his]
14 **its** order;

15 [(e)] **(5)** The rate of storage and handling charges, [except that where]
16 **unless** goods are stored under a field warehousing arrangement, **in which case**
17 a statement of that fact is sufficient on a nonnegotiable receipt;

18 [(f)] **(6)** A description of the goods or [of] the packages containing them;

19 [(g)] **(7)** The signature of the [warehouseman, which may be made by his
20 authorized] **warehouse or its** agent;

21 [(h)] **(8)** If the receipt is issued for goods [of which the warehouseman is
22 owner] **that the warehouse owns**, either solely, [or] jointly, or in common with
23 others, **a statement of** the fact of [such] **that** ownership; and

24 [(i)] **(9)** A statement of the amount of advances made and of liabilities
25 incurred for which the [warehouseman] **warehouse** claims a lien or security
26 interest [(section 400.7-209). If] , **unless** the precise amount of [such] advances

27 made or [of such] liabilities incurred [is], at the time of the issue of the receipt,
28 is unknown to the [warehouseman] **warehouse** or to [his] **its** agent [who issues
29 it] **that issued the receipt, in which case** a statement of the fact that
30 advances have been made or liabilities incurred and the purpose [thereof] **of the**
31 **advances or liabilities** is sufficient.

32 [(3)] (c) A [warehouseman] **warehouse** may insert in [his] **its** receipt
33 any [other] terms [which] **that** are not contrary to the provisions of this chapter
34 and do not impair [his] **its** obligation of delivery [(**under** section 400.7-403D)]
35 or [his] **its** duty of care [(**under** section 400.7-204D)]. Any contrary [provisions
36 shall be] **provision is** ineffective.

400.7-203. A party to or purchaser for value in good faith of a document
2 of title, other than a bill of lading [relying in either case], **that relies** upon the
3 description [therein] of the goods **in the document** may recover from the issuer
4 damages caused by the nonreceipt or misdescription of the goods, except to the
5 extent that:

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

12 (2) the party or purchaser otherwise has notice **of the nonreceipt or**
13 **misdescription.**

400.7-204. [(1)] (a) A [warehouseman] **warehouse** is liable for damages
2 for loss of or injury to the goods caused by [his] **its** failure to exercise [such] care
3 [in] **with** regard to [them as] **the goods that** a reasonably careful [man]
4 **person** would exercise under [like] **similar** circumstances. [but] Unless
5 otherwise agreed [he], **the warehouse** is not liable for damages [which] **that**
6 could not have been avoided by the exercise of [such] **that** care.

7 [(2)] (b) Damages may be limited by a term in the warehouse receipt or
8 storage agreement limiting the amount of liability in case of loss or damage[, and
9 setting forth a specific liability per article or item, or value per unit of weight,]
10 beyond which the [warehouseman shall] **warehouse is** not [be] liable[; provided,
11 however, that such liability may]. **Such a limitation is not effective with**
12 **respect to the warehouse's liability for conversion to its own use.** On
13 [written] request of the bailor **in a record** at the time of signing [such] **the**
14 storage agreement or within a reasonable time after receipt of the warehouse
15 receipt, **the warehouse's liability may** be increased on part or all of the goods
16 [thereunder,] **covered by the storage agreement or the warehouse**
17 **receipt.** In [which] **this** event, increased rates may be charged based on [such]
18 **an** increased valuation [but that no such increase shall be permitted contrary to
19 a lawful limitation of liability contained in the warehouseman's tariff, if any. No

20 such limitation is effective with respect to the warehouseman's liability for
21 conversion to his own use] **of the goods**.

22 [(3)] **(c)** Reasonable provisions as to the time and manner of presenting
23 claims and [instituting] **commencing** actions based on the bailment may be
24 included in the warehouse receipt or [tariff] **storage agreement**.

25 [(4)] **(d)** This section does not [impair] **modify** or repeal any existing
26 statute of this state [which] **that** imposes a higher responsibility upon the
27 [warehouseman] **warehouse** or invalidates a contractual [limitations which]
28 **limitation that** would be permissible under this article.

400.7-205. A buyer in [the] ordinary course of business of fungible goods
2 sold and delivered by a [warehouseman who] **warehouse that** is also in the
3 business of buying and selling such goods takes **the goods** free of any claim
4 under a warehouse receipt even [though it] **if the receipt is negotiable and**
5 has been duly negotiated.

400.7-206. [(1)] **(a)** A [warehouseman may on notifying] **warehouse, by**
2 **giving notice to** the person on whose account the goods are held and any other
3 person known to claim an interest in the goods, **may** require payment of any
4 charges and removal of the goods from the warehouse at the termination of the
5 period of storage fixed by the document[,] **of title** or, if [no] a period is **not** fixed,
6 within a stated period not less than thirty days after the [notification]
7 **warehouse gives notice**. If the goods are not removed before the date specified
8 in the [notification] **notice**, the [warehouseman] **warehouse** may sell them [in
9 accordance with the provisions of the section on enforcement of a warehouseman's
10 lien (] **pursuant to** section 400.7-210[)].

11 [(2)] **(b)** If a [warehouseman] **warehouse** in good faith believes that
12 [the] goods are about to deteriorate or decline in value to less than the amount
13 of [his] **its** lien within the time [prescribed] **provided** in subsection [(1) for
14 notification, advertisement and sale] **(a) and section 400.7-210**, the
15 [warehouseman] **warehouse** may specify in the [notification] **notice given**
16 **under subsection (a)** any reasonable shorter time for removal of the goods and
17 [in case], **if** the goods are not removed, may sell them at public sale held not less
18 than one week after a single advertisement or posting.

19 [(3)] **(c)** If, as a result of a quality or condition of the goods of which the
20 [warehouseman had no] **warehouse did not have** notice at the time of deposit,
21 the goods are a hazard to other property, [or to] the warehouse **facilities**, or [to]
22 **other** persons, the [warehouseman] **warehouse** may sell the goods at public or
23 private sale without advertisement **or posting** on reasonable notification to all
24 persons known to claim an interest in the goods. If [the warehouseman] **a**
25 **warehouse**, after a reasonable effort, is unable to sell the goods [he], **it** may
26 dispose of them in any lawful manner and [shall] **does not** incur [no] liability
27 by reason of such disposition.

28 [(4) The warehouseman must] **(d) A warehouse shall** deliver the goods

29 to any person entitled to them under this article upon due demand made at any
30 time [prior to] **before** sale or other disposition under this section.

31 [(5) The warehouseman] **(e) A warehouse** may satisfy [his] **its** lien
32 from the proceeds of any sale or disposition under this section but [must] **shall**
33 hold the balance for delivery on the demand of any person to [whom he] **which**
34 **the warehouse** would have been bound to deliver the goods.

400.7-207. [(1)] **(a)** Unless the warehouse receipt [otherwise] provides
2 **otherwise**, a [warehouseman must] **warehouse shall** keep separate the goods
3 covered by each receipt so as to permit at all times identification and delivery of
4 those goods.[except that] **However**, different lots of fungible goods may be
5 commingled.

6 [(2)] **(b) If different lots of fungible goods [so] are** commingled, **the**
7 **goods** are owned in common by the persons entitled thereto and the
8 [warehouseman] **warehouse** is severally liable to each owner for that owner's
9 share. [Where] **If**, because of overissue, a mass of fungible goods is insufficient
10 to meet all the receipts [which] the [warehouseman] **warehouse** has issued
11 against it, the persons entitled include all holders to [whom] **which** overissued
12 receipts have been duly negotiated.

400.7-208. [Where] **If** a blank in a negotiable **tangible** warehouse receipt
2 has been filled in without authority, a **good-faith** purchaser for value and
3 without notice of the [want] **lack** of authority may treat the insertion as
4 authorized. Any other unauthorized alteration leaves any **tangible or**
5 **electronic warehouse** receipt enforceable against the issuer according to its
6 original tenor.

400.7-209. [(1)] **(a)** A [warehouseman] **warehouse** has a lien against
2 the bailor on the goods covered by a warehouse receipt or **storage agreement**
3 **or** on the proceeds thereof in [his] **its** possession for charges for storage or
4 transportation, [(including demurrage and terminal charges)], insurance, labor,
5 or **other** charges, present or future, in relation to the goods, and for expenses
6 necessary for preservation of the goods or reasonably incurred in their sale
7 pursuant to law. If the person on whose account the goods are held is liable for
8 [like] **similar** charges or expenses in relation to other goods whenever deposited
9 and it is stated in the **warehouse receipt or storage agreement** that a lien is
10 claimed for charges and expenses in relation to other goods, the [warehouseman]
11 **warehouse** also has a lien against [him] **the goods covered by the**
12 **warehouse receipt or storage agreement or on the proceeds thereof in**
13 **its possession** for [such] **those** charges and expenses, whether or not the other
14 goods have been delivered by the [warehouseman] **warehouse**. [But] **However**,
15 **as** against a person to [whom] **which** a negotiable warehouse receipt is duly
16 negotiated, a [warehouseman's] **warehouse's** lien is limited to charges in an
17 amount or at a rate specified [on] **in** the **warehouse** receipt or, if no charges are
18 so specified, [then] to a reasonable charge for storage of the **specific** goods

19 covered by the receipt subsequent to the date of the receipt.

20 [(2) The warehouseman] **(b) A warehouse** may also reserve a security
21 interest against the bailor for [a] **the** maximum amount specified on the receipt
22 for charges other than those specified in subsection [(1)] **(a)**, such as for money
23 advanced and interest. [Such a] **The** security interest is governed by [the article
24 on secured transactions (]article 9[)].

25 [(3)] **(c)** A [warehouseman's] **warehouse's** lien for charges and expenses
26 under subsection [(1)] **(a)** or a security interest under subsection [(2)] **(b)** is also
27 effective against any person [who] **that** so entrusted the bailor with possession
28 of the goods that a pledge of them by [him] **the bailor** to a good-faith purchaser
29 for value would have been valid [but]. **However, the lien or security interest**
30 is not effective against a person [as to whom the document confers no right in the
31 goods covered by it under section 400.7-503] **that before issuance of a**
32 **document of title had a legal interest or a perfected security interest**
33 **in the goods and that did not:**

34 **(1) Deliver or entrust the goods or any document of title covering**
35 **the goods to the bailor or the bailor's nominee with:**

36 **(A) Actual or apparent authority to ship, store, or sell;**

37 **(B) Power to obtain delivery under section 400.7-403; or**

38 **(C) Power of disposition under sections 400.2-403, 400.2A-304(2),**
39 **400.2A-305(2), 400.9-320, or 400.9-321(c) or other statute or rule of law;**
40 **or**

41 **(2) Acquiesce in the procurement by the bailor or its nominee of**
42 **any document.**

43 [(4)] **(d)** A warehouse's lien on household goods for charges and
44 expenses in relation to the goods under subsection (a) is also effective
45 against all persons if the depositor was the legal possessor of the goods
46 at the time of deposit. In this subsection, "household goods" means
47 furniture, furnishings, or personal effects used by the depositor in a
48 dwelling.

49 **(e)** A [warehouseman] **warehouse** loses [his] **its** lien on any goods
50 [which he] **that it** voluntarily delivers or [which he] unjustifiably refuses to
51 deliver.

400.7-210. [(1)] **(a)** Except as **otherwise** provided in subsection [(2)]
2 **(b)**, a [warehouseman's] **warehouse's** lien may be enforced by public or private
3 sale of the goods, in [bloc] **bulk** or in [parcels] **packages**, at any time or place
4 and on any terms [which] **that** are commercially reasonable, after notifying all
5 persons known to claim an interest in the goods. [Such] **The** notification must
6 include a statement of the amount due, the nature of the proposed sale, and the
7 time and place of any public sale. The fact that a better price could have been
8 obtained by a sale at a different time or in a [different] method **different** from
9 that selected by the [warehouseman] **warehouse** is not of itself sufficient to

10 establish that the sale was not made in a commercially reasonable manner. **The**
11 **warehouse sells in a commercially reasonable manner** if the
12 [warehouseman either] **warehouse** sells the goods in the usual manner in any
13 recognized market [therefor] **therefore**, [or if he] sells at the price current in
14 [such] **that** market at the time of [his] **the** sale, or [if he has] otherwise [sold]
15 **sells** in conformity with commercially reasonable practices among dealers in the
16 type of goods sold[, he has sold in a commercially reasonable manner]. A sale of
17 more goods than apparently necessary to be offered to [insure] **ensure**
18 satisfaction of the obligation is not commercially reasonable, except in cases
19 covered by the preceding sentence.

20 [(2)] **(b)** A [warehouseman's] **warehouse may enforce its** lien on
21 goods, other than goods stored by a merchant in the course of [his] **its** business
22 [may be enforced only as follows], **only if the following requirements are**
23 **satisfied:**

24 [(a)] **(1)** All persons known to claim an interest in the goods must be
25 notified.

26 [(b)] The notification must be delivered in person or sent by registered or
27 certified letter to the last known address of any person to be notified.

28 [(c)] **(2)** The notification must include an itemized statement of the claim,
29 a description of the goods subject to the lien, a demand for payment within a
30 specified time not less than ten days after receipt of the notification, and a
31 conspicuous statement that unless the claim is paid within that time the goods
32 will be advertised for sale and sold by auction at a specified time and place.

33 [(d)] **(3)** The sale must conform to the terms of the notification.

34 [(e)] **(4)** The sale must be held at the nearest suitable place to [that]
35 where the goods are held or stored.

36 [(f)] **(5)** After the expiration of the time given in the notification, an
37 advertisement of the sale must be published once a week for two weeks
38 consecutively in a newspaper of general circulation where the sale is to be
39 held. The advertisement must include a description of the goods, the name of the
40 person on whose account [they] **the goods** are being held, and the time and place
41 of the sale. The sale must take place at least fifteen days after the first
42 publication. If there is no newspaper of general circulation where the sale is to
43 be held, the advertisement must be posted at least ten days before the sale in not
44 [less] **fewer** than six conspicuous places in the neighborhood of the proposed
45 sale.

46 [(3)] **(c)** Before any sale pursuant to this section, any person claiming a
47 right in the goods may pay the amount necessary to satisfy the lien and the
48 reasonable expenses incurred [under] **in complying with** this section. In that
49 event, the goods [must] **may** not be sold[,] but must be retained by the
50 [warehouseman] **warehouse** subject to the terms of the receipt and this article.

51 [(4)] The warehouseman] **(d)** **A warehouse** may buy at any public sale

52 **held** pursuant to this section.

53 [(5)] **(e)** A purchaser in good faith of goods sold to enforce a
54 [warehouseman's] **warehouse's** lien takes the goods free of any rights of persons
55 against [whom] **which** the lien was valid, despite **the warehouse's**
56 noncompliance [by the warehouseman] with [the requirements of] this section.

57 [(6) The warehouseman] **(f) A warehouse** may satisfy [his] **its** lien from
58 the proceeds of any sale pursuant to this section but [must] **shall** hold the
59 balance, if any, for delivery on demand to any person to [whom he] **which the**
60 **warehouse** would have been bound to deliver the goods.

61 [(7)] **(g)** The rights provided by this section [shall be] **are** in addition to
62 all other rights allowed by law to a creditor against [his] **a** debtor.

63 [(8) Where] **(h) If** a lien is on goods stored by a merchant in the course
64 of [his] **its** business, the lien may be enforced in accordance with [either]
65 subsection [(1)] **(a)** or [(2)] **(b)**.

66 [(9) The warehouseman] **(i) A warehouse** is liable for damages caused
67 by failure to comply with the requirements for sale under this section and, in case
68 of willful violation, is liable for conversion.

400.7-301. [(1)] **(a)** A consignee of a nonnegotiable bill [who] **of lading**
2 **which** has given value in good faith, or a holder to [whom] **which** a negotiable
3 bill has been duly negotiated, relying [in either case] upon the description
4 [therein] of the goods[,] **in the bill** or upon the date [therein] shown **in the bill**,
5 may recover from the issuer damages caused by the misdating of the bill or the
6 nonreceipt or misdescription of the goods, except to the extent that the
7 [document] **bill** indicates that the issuer does not know whether any part or all
8 of the goods in fact were received or conform to the description, **such** as [where]
9 **in a case in which** the description is in terms of marks or labels or kind,
10 quantity, or condition or the receipt or description is qualified by "contents or
11 condition of contents of packages unknown", "said to contain", "shipper's weight,
12 load, and count", or [the like] **words of similar import**, if [such] **that**
13 indication be true.

14 [(2) When] **(b) If** goods are loaded by [an] **the** issuer [who is a common
15 carrier,] **of a bill of lading;**

16 **(1)** The issuer [must] **shall** count the packages of goods if [package
17 freight] **shipped in packages** and ascertain the kind and quantity if **shipped**
18 **in bulk** [freight. In such cases] ; **and**

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

22 [(3) When] **(c) If** bulk [freight is] **goods are** loaded by a shipper [who]
23 **that** makes available to the issuer **of a bill of lading** adequate facilities for
24 weighing [such freight, an] **those goods, the** issuer [who is a common carrier
25 must] **shall** ascertain the kind and quantity within a reasonable time after

26 receiving the [written] **shipper's** request [of the shipper] **in a record** to do so.
27 In [such cases] **that case**, "shipper's weight" or [other] words of [like purport]
28 **similar import** are ineffective.

29 [(4)] **(d)** The issuer [may] **of a bill of lading**, by [inserting] **including**
30 in the bill the words "shipper's weight, load, and count," or [other] words of [like
31 purport] **similar import**, **may** indicate that the goods were loaded by the
32 shipper[;], and, if [such] **that** statement [be] **is** true, the issuer [shall] **is not** [be]
33 liable for damages caused by the improper loading. [But their] **However**,
34 omission **of such words** does not imply liability for [such] damages **caused by**
35 **improper loading**.

36 [(5)] **(e)** A shipper [shall be deemed to have guaranteed] **guarantees**
37 to [the] **an** issuer the accuracy at the time of shipment of the description, marks,
38 labels, number, kind, quantity, condition, and weight, as furnished by [him;] **the**
39 **shipper**, and the shipper shall indemnify the issuer against damage caused by
40 inaccuracies in [such] **those** particulars. [The] **This** right of [the issuer to such]
41 indemnity [shall in no way] **does not** limit [his] **the issuer's** responsibility
42 [and] **or** liability under the contract of carriage to any person other than the
43 shipper.

400.7-302. [(1)] **(a)** The issuer of a through bill of lading, or other
2 document **of title** embodying an undertaking to be performed in part by
3 [persons] **a person** acting as its [agents] **agent** or by [connecting carriers] **a**
4 **performing carrier**, is liable to [anyone] **any person** entitled to recover on the
5 **bill or other** document for any breach by [such] **the** other [persons] **person** or
6 [by a connecting] **the performing** carrier of its obligation under the [document
7 but] **bill or other document**. **However**, to the extent that the bill **or other**
8 **document** covers an undertaking to be performed overseas or in territory not
9 contiguous to the continental United States or an undertaking including matters
10 other than transportation, this liability **for breach by the other person or**
11 **the performing carrier** may be varied by agreement of the parties.

12 [(2)] **(b)** If goods covered by a through bill of lading or other
13 document **of title** embodying an undertaking to be performed in part by
14 [persons] **a person** other than the issuer are received by [any such] **that** person,
15 [he] **the person** is subject, with respect to [his] **its** own performance while the
16 goods are in [his] **its** possession, to the obligation of the issuer. [His] **The**
17 **person's** obligation is discharged by delivery of the goods to another [such]
18 person pursuant to the **bill or other** document[,] and does not include liability
19 for breach by any other [such persons] **person** or by the issuer.

20 [(3)] **(c)** The issuer of [such] **a** through bill of lading or other document
21 [shall be] **of title described in subsection (a)** is entitled to recover from the
22 [connecting] **performing** carrier, or [such] other person in possession of the
23 goods when the breach of the obligation under the **bill or other** document
24 occurred[.]:

25 **(1)** The amount it may be required to pay to [anyone] **any person**
26 entitled to recover on the **bill or other** document [therefor] **for the breach**, as
27 may be evidenced by any receipt, judgment, or transcript [thereof,] **of judgment**;
28 and

29 **(2)** The amount of any expense reasonably incurred by [it] **the issuer** in
30 defending any action [brought] **commenced** by [anyone] **any person** entitled
31 to recover on the **bill or other** document [therefor] **for the breach**.

400.7-303. [(1)] **(a)** Unless the bill of lading otherwise provides, [the] **a**
2 carrier may deliver the goods to a person or destination other than that stated in
3 the bill or may otherwise dispose of the goods, **without liability for**
4 **misdelivery**, on instructions from:

5 [(a)] **(1)** The holder of a negotiable bill; [or]

6 [(b)] **(2)** The consignor on a nonnegotiable bill, [notwithstanding] **even**
7 **if the consignee has given** contrary instructions [from the consignee]; [or]

8 [(c)] **(3)** The consignee on a nonnegotiable bill in the absence of contrary
9 instructions from the consignor, if the goods have arrived at the billed destination
10 or if the consignee is in possession of the **tangible bill or in control of the**
11 **electronic bill**; or

12 [(d)] **(4)** The consignee on a nonnegotiable bill, if [he] **the consignee** is
13 entitled as against the consignor to dispose of [them] **the goods**.

14 [(2)] **(b)** Unless [such] instructions **described in subsection (a)** are
15 [noted on] **included in** a negotiable bill of lading, a person to [whom] **which** the
16 bill is duly negotiated [can] **may** hold the bailee according to the original terms.

400.7-304. [(1)] **(a)** Except [where] **as** customary in [overseas]
2 **international** transportation, a **tangible** bill of lading [must] **may** not be
3 issued in a set of parts. The issuer is liable for damages caused by violation of
4 this subsection.

5 [(2) Where a] **(b)** **If a tangible** bill of lading is lawfully [drawn] **issued**
6 in a set of parts, each of which [is numbered] **contains an identification code**
7 and **is** expressed to be valid only if the goods have not been delivered against any
8 other part, the whole of the parts [constitute] **constitutes** one bill.

9 [(3) Where a] **(c)** **If a tangible negotiable** bill of lading is lawfully
10 issued in a set of parts and different parts are negotiated to different persons, the
11 title of the holder to [whom] **which** the first due negotiation is made prevails as
12 to both the document **of title** and the goods even [though] **if** any later holder
13 may have received the goods from the carrier in good faith and discharged the
14 carrier's obligation by [surrender of his] **surrendering its** part.

15 [(4) Any] **(d)** **A person [who] that** negotiates or transfers a single part
16 of a **tangible** bill of lading [drawn] **issued** in a set is liable to holders of that
17 part as if it were the whole set.

18 [(5)] **(e)** The bailee [is obliged to] **shall** deliver in accordance with part
19 4 of this article against the first presented part of a **tangible** bill of lading

20 lawfully [drawn] **issued** in a set. [Such] Delivery **in this manner** discharges
21 the bailee's obligation on the whole bill.

400.7-305. [(1)] **(a)** Instead of issuing a bill of lading to the consignor at
2 the place of shipment, a carrier, [may] at the request of the consignor, **may**
3 procure the bill to be issued at destination or at any other place designated in the
4 request.

5 [(2)] **(b)** Upon request of [anyone] **any person** entitled as against [the]
6 **a carrier** to control the goods while in transit and on surrender of **possession or**
7 **control of** any outstanding bill of lading or other receipt covering [such] **the**
8 goods, the issuer, **subject to section 7-105**, may procure a substitute bill to be
9 issued at any place designated in the request.

400.7-307. [(1)] **(a)** A carrier has a lien on the goods covered by a bill of
2 lading **or on the proceeds thereof in its possession** for charges [subsequent
3 to] **after** the date of [its] **the carrier's** receipt of the goods for storage or
4 transportation, [(including demurrage and terminal charges)], and for expenses
5 necessary for preservation of the goods incident to their transportation or
6 reasonably incurred in their sale pursuant to law. [But] **However**, against a
7 purchaser for value of a negotiable bill of lading, a carrier's lien is limited to
8 charges stated in the bill or the applicable tariffs[,] or, if no charges are stated,
9 [then to] a reasonable charge.

10 [(2)] **(b)** A lien for charges and expenses under subsection [(1)] **(a)** on
11 goods [which] **that** the carrier was required by law to receive for transportation
12 is effective against the consignor or any person entitled to the goods unless the
13 carrier had notice that the consignor lacked authority to subject the goods to
14 [such] **those** charges and expenses. Any other lien under subsection [(1)] **(a)** is
15 effective against the consignor and any person [who] **that** permitted the bailor
16 to have control or possession of the goods unless the carrier had notice that the
17 bailor lacked [such] authority.

18 [(3)] **(c)** A carrier loses [his] **its** lien on any goods [which he] **that it**
19 voluntarily delivers or [which he] unjustifiably refuses to deliver.

400.7-308. [(1)] **(a)** A carrier's lien **on goods** may be enforced by public
2 or private sale of the goods, in [bloc] **bulk** or in [parcels] **packages**, at any time
3 or place and on any terms [which] **that** are commercially reasonable, after
4 notifying all persons known to claim an interest in the goods. [Such] **The**
5 notification must include a statement of the amount due, the nature of the
6 proposed sale, and the time and place of any public sale. The fact that a better
7 price could have been obtained by a sale at a different time or in a [different]
8 method **different** from that selected by the carrier is not of itself sufficient to
9 establish that the sale was not made in a commercially reasonable manner. [If]
10 The carrier [either] **sells goods in a commercially reasonable manner if**
11 **the carrier** sells the goods in the usual manner in any recognized market
12 therefor, [or if he] sells at the price current in [such] **that** market at the time of

13 [his] **the** sale, or [if he has] otherwise [sold] **sells** in conformity with
14 commercially reasonable practices among dealers in the type of goods sold [he has
15 sold in a commercially reasonable manner]. A sale of more goods than apparently
16 necessary to be offered to [insure] **ensure** satisfaction of the obligation is not
17 commercially reasonable, except in cases covered by the preceding sentence.

18 [(2)] **(b)** Before any sale pursuant to this section, any person claiming a
19 right in the goods may pay the amount necessary to satisfy the lien and the
20 reasonable expenses incurred [under] **in complying with** this section. In that
21 event, the goods [must] **may** not be sold[,] but must be retained by the carrier,
22 subject to the terms of the bill **of lading** and this article.

23 [(3)] **(c)** A carrier may buy at any public sale pursuant to this
24 section.

25 [(4)] **(d)** A purchaser in good faith of goods sold to enforce a carrier's lien
26 takes the goods free of any rights of persons against [whom] **which** the lien was
27 valid, despite **the carrier's** noncompliance [by the carrier] with [the
28 requirements of] this section.

29 [(5)] **(e)** A carrier may satisfy [his] **its** lien from the proceeds of any
30 sale pursuant to this section but [must] **shall** hold the balance, if any, for
31 delivery on demand to any person to [whom he] **which the carrier** would have
32 been bound to deliver the goods.

33 [(6)] **(f)** The rights provided by this section [shall be] **are** in addition to
34 all other rights allowed by law to a creditor against [his] **a** debtor.

35 [(7)] **(g)** A carrier's lien may be enforced [in accordance with] **pursuant**
36 **to** either subsection [(1)] **(a)** or the procedure set forth in subsection [(2)] **(b)** of
37 section 400.7-210.

38 [(8)] **(h)** A carrier is liable for damages caused by failure to comply
39 with the requirements for sale under this section and, in case of willful violation,
40 is liable for conversion.

400.7-309. [(1)] **(a)** A carrier [who] **that** issues a bill of lading, whether
2 negotiable or nonnegotiable, [must] **shall** exercise the degree of care in relation
3 to the goods which a reasonably careful [man] **person** would exercise under
4 [like] **similar** circumstances. This subsection does not [repeal or change] **affect**
5 any [law] **statute, regulation,** or rule of law [which] **that** imposes liability upon
6 a common carrier for damages not caused by its negligence.

7 [(2)] **(b)** Damages may be limited by a [provision] **term in the bill of**
8 **lading or in a transportation agreement** that the carrier's liability [shall]
9 **may** not exceed a value stated in the [document] **bill or transportation**
10 **agreement** if the carrier's rates are dependent upon value and the consignor [by
11 the carrier's tariff] is afforded an opportunity to declare a higher value [or a
12 value as lawfully provided in the tariff, or where no tariff is filed he] **and the**
13 **consignor** is [otherwise] advised of [such] **the** opportunity[; but no]. **However,**
14 such **a** limitation is **not** effective with respect to the carrier's liability for

15 conversion to its own use.

16 [(3)] (c) Reasonable provisions as to the time and manner of presenting
 17 claims and [instituting] **commencing** actions based on the shipment may be
 18 included in a bill of lading or [tariff] **a transportation agreement**.

 400.7-401. The obligations imposed by this article on an issuer apply to
 2 a document of title [regardless of the fact that

3 (a) **even if:**

4 (1) The document [may] **does** not comply with the requirements of this
 5 article or of any other [law] **statute, rule,** or regulation regarding its [issue]
 6 **issuance**, form, or content; [or]

7 [(b)] (2) The issuer [may have] violated laws regulating the conduct of
 8 [his] **its** business; [or]

9 [(c)] (3) The goods covered by the document were owned by the bailee [at
 10 the time] **when** the document was issued; or

11 [(d)] (4) The person issuing the document [does] **is** not [come within the
 12 definition of warehouseman] **a warehouse** [if it] **but the document** purports
 13 to be a warehouse receipt.

 400.7-402. [Neither] A duplicate [nor] **or** any other document of title
 2 purporting to cover goods already represented by an outstanding document of the
 3 same issuer [confers] **does not confer** any right in the goods, except as provided
 4 in the case of **tangible bills of lading** in a set of **parts**, overissue of documents
 5 for fungible goods, [and] substitutes for lost, stolen, or destroyed documents, **or**
 6 **substitute documents issued pursuant to section 400.7-105**. [But] The
 7 issuer is liable for damages caused by [his] **its** overissue or failure to identify a
 8 duplicate document [as such] by conspicuous notation [on its face].

 400.7-403. [(1) The] (a) A bailee [must] **shall** deliver the goods to a
 2 person entitled under [the] **a** document [who] **of title if the person** complies
 3 with subsections [(2)] (b) and [(3)] (c), unless and to the extent that the bailee
 4 establishes any of the following:

5 [(a)] (1) Delivery of the goods to a person whose receipt was rightful as
 6 against the claimant;

7 [(b)] (2) Damage to or delay, loss, or destruction of the goods for which
 8 the bailee is not liable;

9 [(c)] (3) Previous sale or other disposition of the goods in lawful
 10 enforcement of a lien or on [warehouseman's] **a warehouse's** lawful termination
 11 of storage;

12 [(d)] (4) The exercise by a seller of [his] **its** right to stop delivery
 13 pursuant to [the provisions of the article on sales (] section 400.2-705 D)] **or by**
 14 **a lessor of its right to stop delivery pursuant to section 400.2A-526;**

15 [(e)] (5) A diversion, reconsignment, or other disposition pursuant to [the
 16 provisions of this article (] section 400.7-303 D)] or tariff regulating such right];

17 [(f)] (6) Release, satisfaction, or any other [fact affording a] personal

18 defense against the claimant; **or**

19 [(g)] **(7)** Any other lawful excuse.

20 [(2)] **(b)** A person claiming goods covered by a document of title [must]
21 **shall** satisfy the bailee's lien [where] **if** the bailee so requests or [where] **if** the
22 bailee is prohibited by law from delivering the goods until the charges are paid.

23 [(3)] **(c)** Unless [the] **a** person claiming **the goods** is [one] **a person**
24 against [whom] **which** the document [confers no] **of title does not confer a**
25 right under section [400.7-503(1), he must] **400.7-503(a):**

26 **(1) The person claiming under a document shall** surrender [for
27 cancellation or notation] **possession or control** of [partial deliveries] any
28 outstanding negotiable document covering the goods[,] **for cancellation or**
29 **indication of partial deliveries; and**

30 **(2)** The bailee [must] **shall** cancel the document or conspicuously [note]
31 **indicate in the document** the partial delivery [thereon] or [be] **the bailee is**
32 liable to any person to [whom] **which** the document is duly negotiated.

33 [(4)] "Person entitled under the document" means holder in the case of a
34 negotiable document, or the person to whom delivery is to be made by the terms
35 of or pursuant to written instructions under a nonnegotiable document.]

400.7-404. A bailee [who] **that** in good faith [including observance of
2 reasonable commercial standards] has received goods and delivered or otherwise
3 disposed of [them] **the goods** according to the terms of [the] **a** document of title
4 or pursuant to this article is not liable [therefor. This rule applies] **for the**
5 **goods** even [though] **if:**

6 **(1)** The person from [whom he] **which the bailee** received the goods
7 [had no] **did not have** authority to procure the document or to dispose of the
8 goods [and even though]; **or**

9 **(2)** The person to [whom he] **which the bailee** delivered the goods [had
10 no] **did not have** authority to receive [them] **the goods.**

400.7-501. [(1)] **(a) The following rules apply to** a negotiable
2 **tangible** document of title [running]:

3 **(1) If the document's original terms run** to the order of a named
4 person, **the document** is negotiated by [his endorsement] **the named person's**
5 **indorsement** and delivery. After [his endorsement] **the named person's**
6 **indorsement** in blank or to bearer, any person [can] **may** negotiate [it] **the**
7 **document** by delivery alone.

8 **(2) [(a) A negotiable document of title] If the document's original**
9 **terms run to bearer, it is** [also] negotiated by delivery alone [when by its
10 original terms it runs to bearer].

11 [(b) When a document running]

12 **(3) If the document's original terms run** to the order of a named
13 person **and it** is delivered to [him] **the named person**, the effect is the same
14 as if the document had been negotiated.

15 [(3)] (4) Negotiation of [a negotiable] **the** document [of title] after it has
16 been [endorsed] **indorsed** to a [specified] **named** person requires [endorsement]
17 **indorsement** by the [special endorsee as well as] **named person and** delivery.

18 [(4)] (5) A [negotiable] document [of title] is ["duly negotiated[" when]
19 if it is negotiated in the manner stated in this [section] **subsection** to a holder
20 [who] **that** purchases it in good faith, without notice of any defense against or
21 claim to it on the part of any person, and for value, unless it is established that
22 the negotiation is not in the regular course of business or financing or involves
23 receiving the document in settlement or payment of a money obligation.

24 [(5) Endorsement] (b) **The following rules apply to a negotiable**
25 **electronic document of title:**

26 (1) **If the document's original terms run to the order of a named**
27 **person or to bearer, the document is negotiated by delivery of the**
28 **document to another person. Indorsement by the named person is not**
29 **required to negotiate the document.**

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

33 (3) **A document is duly negotiated if it is negotiated in the**
34 **manner stated in this subsection to a holder that purchases it in good**
35 **faith, without notice of any defense against or claim to it on the part of**
36 **any person, and for value, unless it is established that the negotiation**
37 **is not in the regular course of business or financing or involves taking**
38 **delivery of the document in settlement or payment of a monetary**
39 **obligation.**

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

42 [(6)] (d) The naming in a negotiable bill **of lading** of a person to be
43 notified of the arrival of the goods does not limit the negotiability of the bill [nor]
44 **or** constitute notice to a purchaser [thereof] **of the bill** of any interest of [such]
45 **that** person in the goods.

 400.7-502. [(1)] (a) Subject to [the following section and to the provisions
2 of section] **sections** 400.7-205 [on fungible goods] **and 400.7-503**, a holder to
3 [whom] **which** a negotiable document of title has been duly negotiated acquires
4 thereby:

5 [(a)] (1) Title to the document;

6 [(b)] (2) Title to the goods;

7 [(c)] (3) All rights accruing under the law of agency or estoppel, including
8 rights to goods delivered to the bailee after the document was issued; and

9 [(d)] (4) The direct obligation of the issuer to hold or deliver the goods
10 according to the terms of the document free of any defense or claim by [him] **the**
11 **issuer** except those arising under the terms of the document or under this

12 article[,], **but** in the case of a delivery order, the bailee's obligation accrues only
 13 upon **the bailee's acceptance of the delivery order** and the obligation acquired
 14 by the holder is that the issuer and any [endorser] **indorser** will procure the
 15 acceptance of the bailee.

16 [(2)] **(b)** Subject to [the following] section **400.7-503**, title and rights [so]
 17 acquired **by due negotiation** are not defeated by any stoppage of the goods
 18 represented by the document **of title** or by surrender of [such] **the** goods by the
 19 bailee[,] and are not impaired even [though] **if**:

20 **(1)** The **due** negotiation or any prior **due** negotiation constituted a breach
 21 of duty [or even though];

22 **(2)** Any person has been deprived of possession of [the] **a negotiable**
 23 **tangible document or control of a negotiable electronic** document by
 24 misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion[,]
 25 ; or [even though]

26 **(3)** A previous sale or other transfer of the goods or document has been
 27 made to a third person.

400.7-503. [(1)] **(a)** A document of title confers no right in goods against
 2 a person [who] **that** before issuance of the document had a legal interest or a
 3 perfected security interest in [them] **the goods** and [who neither

4 (a) delivered] **that did not**:

5 **(1)** **deliver** or [entrusted them] **entrust the goods** or any document of
 6 title covering [them] **the goods** to the bailor or [his or her] **the bailor's**
 7 nominee with:

8 **(A)** Actual or apparent authority to ship, store, or sell [or with] ;

9 **(B)** Power to obtain delivery under [this article (]section 400.7-403[)]; or
 10 [with]

11 **(C)** Power of disposition under [this chapter (sections] **section** 400.2-403
 12 [and], **400.2A-304(2), 400.2A-305(2), 400.9-320[)], or 9-321(c)** or other statute
 13 or rule of law; [nor

14 (b) acquiesced] **or**

15 **(2)** **Acquiesce** in the procurement by the bailor or [his or her] **its**
 16 nominee of any document [of title].

17 [(2)] **(b)** Title to goods based upon an unaccepted delivery order is subject
 18 to the rights of [anyone] **any person** to [whom] **which** a negotiable warehouse
 19 receipt or bill of lading covering the goods has been duly negotiated. [Such a]
 20 **That** title may be defeated under section 400.7-504 to the same extent as the
 21 rights of the issuer or a transferee from the issuer.

22 [(3)] **(c)** Title to goods based upon a bill of lading issued to a freight
 23 forwarder is subject to the rights of [anyone] **any person** to [whom] **which** a bill
 24 issued by the freight forwarder is duly negotiated[; but]. **However**, delivery by
 25 the carrier in accordance with part 4 of this article pursuant to its own bill of
 26 lading discharges the carrier's obligation to deliver.

400.7-504. [(1)] **(a)** A transferee of a document **of title**, whether
2 negotiable or nonnegotiable, to [whom] **which** the document has been delivered
3 but not duly negotiated, acquires the title and rights [which his] **that its**
4 transferor had or had actual authority to convey.

5 [(2)] **(b)** In the case of a **transfer of a nonnegotiable document of title**,
6 until but not after the bailee receives [notification] **notice** of the transfer, the
7 rights of the transferee may be defeated:

8 [(a)] **(1)** By those creditors of the transferor [who] **which** could treat the
9 [sale] **transfer** as void under section 400.2-402 **or 400.2A-308**; [or

10 (b)] **(2)** By a buyer from the transferor in ordinary course of business if
11 the bailee has delivered the goods to the buyer or received notification of [his]
12 **the buyer's rights**;

13 **(3)** **By a lessee from the transferor in ordinary course of business**
14 **if the bailee has delivered the goods to the lessee or received**
15 **notification of the lessee's rights**; or

16 [(c)] **(4)** As against the bailee, by good-faith dealings of the bailee with
17 the transferor.

18 [(3)] **(c)** A diversion or other change of shipping instructions by the
19 consignor in a nonnegotiable bill of lading which causes the bailee not to deliver
20 **the goods** to the consignee defeats the consignee's title to the goods if [they] **the**
21 **goods** have been delivered to a buyer in ordinary course of business **or a lessee**
22 **in ordinary course of business** and, in any event, defeats the consignee's
23 rights against the bailee.

24 [(4)] **(d)** Delivery **of the goods** pursuant to a nonnegotiable document
25 **of title** may be stopped by a seller under section 400.2-705 **or a lessor under**
26 **section 2A-526**, [and] subject to the [requirement] **requirements** of due
27 notification [there provided] **in those sections**. A bailee [honoring] **that**
28 **honors** the seller's **or lessor's** instructions is entitled to be indemnified by the
29 seller **or lessor** against any resulting loss or expense.

400.7-505. The [endorsement] **indorsement** of a **tangible** document of
2 title issued by a bailee does not make the [endorser] **indorser** liable for any
3 default by the bailee or [by] previous [endorsers] **indorsers**.

400.7-506. The transferee of a negotiable **tangible** document of title has
2 a specifically enforceable right to have [his] **its** transferor supply any necessary
3 [endorsement] **indorsement**, but the transfer becomes a negotiation only as of
4 the time the [endorsement] **indorsement** is supplied.

400.7-507. [Where] If a person negotiates or [transfers] **delivers** a
2 document of title for value, otherwise than as a mere intermediary under section
3 400.7-508, [then] unless otherwise agreed, [he] **the transferor, in addition to**
4 **any warranty made in selling or leasing the goods**, warrants to [his] **its**
5 immediate purchaser only [in addition to any warranty made in selling the goods

6 (a)] that:

7 **(1)** The document is genuine; [and
8 (b) that he has no]
9 **(2) The transferor does not have** knowledge of any fact [which] **that**
10 would impair [its] **the document's** validity or worth; and
11 [(c) that his]
12 **(3) The** negotiation or [transfer] **delivery** is rightful and fully effective
13 with respect to the title to the document and the goods it represents.

400.7-508. A collecting bank or other intermediary known to be entrusted
2 with documents **of title** on behalf of another or with collection of a draft or other
3 claim against delivery of documents warrants by [such] **the** delivery of the
4 documents only its own good faith and authority[. This rule applies] even
5 [though] **if the collecting bank or other** intermediary has purchased or made
6 advances against the claim or draft to be collected.

400.7-509. [The question] Whether a document **of title** is adequate to
2 fulfill the obligations of a contract for sale, **a contract for lease**, or the
3 conditions of a **letter of credit** is [governed] **determined** by [the articles on
4 sales (article 2) and on letters of credit (article 5)] **article 2, 2A, or 5**.

400.7-601. [(1)] **(a)** If a document [has been] **of title is** lost, stolen, or
2 destroyed, a court may order delivery of the goods or issuance of a substitute
3 document and the bailee may without liability to any person comply with [such]
4 **the** order. If the document was negotiable [the claimant must post], **a court**
5 **may not order delivery of the goods or issuance of a substitute**
6 **document without the claimant's posting** security [approved by the court to
7 indemnify] **unless it finds that** any person [who] **that** may suffer loss as a
8 result of nonsurrender of **possession or control of** the document **is**
9 **adequately protected against the loss**. If the document was [not negotiable]
10 **nonnegotiable**, [such security may be required at the discretion of] the court
11 **may require security**. The court may also [in its discretion] order payment of
12 the bailee's reasonable costs and [counsel] **attorney's fees in any action under**
13 **this subsection**.

14 [(2)] **(b)** A bailee [who] **that**, without **a** court order, delivers goods to a
15 person claiming under a missing negotiable document **of title** is liable to any
16 person injured thereby[, and]. If the delivery is not in good faith [becomes], **the**
17 **bailee is** liable for conversion. Delivery in good faith is not conversion [if made
18 in accordance with a filed classification or tariff or, where no classification or
19 tariff is filed,] if the claimant posts security with the bailee in an amount at least
20 double the value of the goods at the time of posting to indemnify any person
21 injured by the delivery [who] **which** files a notice of claim within one year after
22 the delivery.

400.7-602. [Except where the] **Unless a** document **of title** was originally
2 issued upon delivery of the goods by a person [who had no] **that did not have**
3 power to dispose of them, [no] **a lien [attaches] does not attach** by virtue of any

4 judicial process to goods in the possession of a bailee for which a negotiable
5 document of title is outstanding unless **possession or control of** the document
6 [be] **is** first surrendered to the bailee or [its] **the document's** negotiation **is**
7 enjoined[, and]. The bailee [shall] **may** not be compelled to deliver the goods
8 pursuant to process until **possession or control of** the document is surrendered
9 to [him] **the bailee** or [impounded by] **to** the court. [One who purchases] **A**
10 **purchaser of** the document for value without notice of the process or injunction
11 takes free of the lien imposed by judicial process.

400.7-603. If more than one person claims title **to** or possession of the
2 goods, the bailee is excused from delivery until [he] **the bailee** has [had] a
3 reasonable time to ascertain the validity of the adverse claims or to [bring]
4 **commence** an action [to compel all claimants to interplead and may compel
5 such] **for interpleader. The bailee may assert an** interpleader[,] either in
6 defending an action for nondelivery of the goods[,] or by original action[,
7 whichever is appropriate].

400.7-703. **This article applies to a document of title that is**
2 **issued or a bailment that arises on or after the effective date of this**
3 **article. This article does not apply to a document of title that is issued**
4 **or a bailment that arises before the effective date of this article even**
5 **if the document of title or bailment would be subject to this article if**
6 **the document of title had been issued or bailment had arisen on or**
7 **after the effective date of this article. This article does not apply to a**
8 **right of action that has accrued before the effective date of this article.**

400.7-704. **A document of title issued or a bailment that arises**
2 **before the effective date of this article and the rights, obligations, and**
3 **interests flowing from that document or bailment are governed by any**
4 **statute or other rule amended or repealed by this article as if**
5 **amendment or repeal had not occurred and may be terminated,**
6 **completed, consummated, or enforced under that statute or other rule.**

[400.1-207. (1) A party who, with explicit reservation of
2 rights, performs or promises performance or assents to performance
3 in a manner demanded or offered by the other party does not
4 thereby prejudice the rights reserved. Such words as "without
5 prejudice", "under protest" or the like are sufficient.

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

[400.1-208. A term providing that one party or his successor
2 in interest may accelerate payment or performance or require
3 collateral or additional collateral "at will" or "when he deems
4 himself insecure" or in words of similar import shall be construed
5 to mean that he shall have power to do so only if he in good faith
6 believes that the prospect of payment or performance is
7 impaired. The burden of establishing lack of good faith is on the

8 party against whom the power has been exercised.]

2 [400.7-604. To the extent that the provisions of this article
3 conflict with the provisions of sections 415.400 to 415.430 the
provisions of sections 415.400 to 415.430 shall control.]

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