

DRAFT

FOR DISCUSSION ONLY

**PROPOSED REVISIONS TO
UNIFORM COMMERCIAL CODE,
ARTICLE 7—DOCUMENTS OF TITLE**

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

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ON UNIFORM STATE LAWS

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UNIFORM COMMERCIAL CODE

- ARTICLE 7 - ~~WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER~~

DOCUMENTS OF TITLE

TABLE OF CONTENTS

SECTION 7-101. SHORT TITLE.	1
SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.	1
SECTION 7-103. RELATION OF ARTICLE TO TREATY, STATUTE, TARIFF, CLASSIFICATION OR REGULATION.	4
SECTION 7-104. NEGOTIABLE AND NON-NEGOTIABLE WAREHOUSE RECEIPT, BILL OF LADING OR OTHER DOCUMENT OF TITLE	4
SECTION 7-105. RE-ISSUANCE IN ALTERNATE MEDIUM.	6
SECTION 7-106. CONTROL OF AN ELECTRONIC DOCUMENT.	7

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

SECTION 7-201. WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER GOVERNMENT BONDS	
SECTION 7-202. FORM OF WAREHOUSE RECEIPT; [ESSENTIAL][SIGNIFICANT] TERMS; OPTIONAL TERMS.	9
SECTION 7-203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.	11
SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE MAN'S LIABILITY.	11
SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES.	13
SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSE MAN'S OPTION.	14
SECTION 7-207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.	15
SECTION 7-208. ALTERED WAREHOUSE RECEIPTS.	16
SECTION 7-209. LIEN OF WAREHOUSE MAN	16
SECTION 7-210. ENFORCEMENT OF WAREHOUSE MAN'S LIEN.	21

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

SECTION 7-301. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.	24
SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.	26
SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.	27
SECTION 7-304. <u>TANGIBLE</u> BILLS OF LADING IN A SET.	28
SECTION 7-305. DESTINATION BILLS.	30
SECTION 7-306. ALTERED BILLS OF LADING.	30
SECTION 7-307. LIEN OF CARRIER.	31
SECTION 7-308. ENFORCEMENT OF CARRIER'S LIEN.	32
SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.....	35

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.	36
SECTION 7-402. DUPLICATE RECEIPT OR BILL; OVERISSUE.	37
SECTION 7-403. OBLIGATION OF WAREHOUSE MAN OR CARRIER TO DELIVER; EXCUSE.....	37
SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO RECEIPT OR BILL. ...	40

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE NEGOTIATION".	40
SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.	42

SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.	44
SECTION 7-504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.....	45
SECTION 7-505. INDORSER NOT A GUARANTOR FOR OTHER PARTIES.	46
SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL INDORSEMENT.....	46
SECTION 7-507. WARRANTIES ON NEGOTIATION OR TRANSFER <u>DELIVERY</u> OF RECEIPT OR BILL.	47
SECTION 7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS.	48
SECTION 7-509. RECEIPT OR BILL: WHEN ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.....	48
PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS	
SECTION 7-601. LOST, <u>STOLEN OR DESTROYED</u> AND MISSING DOCUMENTS.	49
SECTION 7-602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE DOCUMENT.	50
SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.....	50
Section from Article 10 Effective Date and Repealer that interrelates to Article 7	51
Conforming amendments to other Articles of the UCC	52

1 **UNIFORM COMMERCIAL CODE**

2 **- ARTICLE 7 - ~~WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER~~**

3 **DOCUMENTS OF TITLE**

4 ***Prefatory Note***

5 *The re-lettering of subsections and renumbering of paragraphs complies with the*
6 *NCCUSL style manual. Similarly, the cosmetic changes proposed are based upon application of*
7 *the style rules. Each change should be examined to make sure it does not change the intended*
8 *legal effect of the section.*

9 **PART 1. GENERAL**

10 **SECTION 7-101. SHORT TITLE.** This ~~Article~~ article shall be known and may be cited as
11 Uniform Commercial Code-Documents of Title.

12 **SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

13 ~~(a) (1)~~ In this ~~Article~~ article, unless the context otherwise requires:

14 ~~(1) (a)~~ "Bailee" means the person ~~that~~ who by a warehouse receipt, bill of lading
15 or other document of title acknowledges possession of goods and contracts to deliver them.

16 ~~(2)~~ "Carrier" means a person engaged in the business of transporting goods for
17 hire. The term "carrier" [may] include[s] freight forwarders.

18 ~~(3) (b)~~ "Consignee" means the person named in a bill of lading to which ~~whom~~ or
19 to whose order the bill promises delivery.

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

22 ~~(5) (d)~~ "Delivery order" means a record which contains an ~~written~~ order to deliver
23 goods directed to a warehouse~~man~~, carrier or other person ~~that~~ who in the ordinary course of

business issues warehouse receipts or bills of lading.

(6) ~~(e)~~ "Document" means document of title as defined in the general definitions in Article 1 (Section 1-201).

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

(8) ~~(f)~~ "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(9) ~~(g)~~ "Issuer" means a bailee that ~~who~~ issues a document except that in relation to an unaccepted delivery order it means the person that ~~who~~ orders the possessor of goods to deliver. Issuer includes any person for which ~~whom~~ an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if notwithstanding that the issuer received no goods, or that the goods were misdescribed, or that in any other respect the agent or employee violated the issuer's ~~his~~ instructions.

(10) "Sign" means, with present intent to authenticate or adopt a record,

(i) to execute or adopt a tangible symbol; or

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

(11) ~~(h)~~ "Warehouseman" is a person engaged in the business of storing goods for hire.

[(12) "Overseas" means a shipment by water or by air or a contract contemplating such shipment in so far as by usage of trade or agreement the shipment is subject to the commercial, financing, or shipping practices characteristic of international deep water

1 commerce.]

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

4 “Control”. Section 7-106.

5 "Duly negotiate". Section 7-501.

6 "Person entitled under the document". Section 7-403(4).

7 (c) (3) Definitions in other articles ~~Articles~~ applying to this article ~~Article~~ and the
8 sections in which they appear are:

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

10 ["Overseas". Section 2-323.]

11 "Receipt" of goods. Section 2-103.

12 (d) (4) In addition Article 1 contains general definitions and principles of construction
13 and interpretation applicable throughout this article ~~Article~~.

14 ***Reporter's Note***

15 *The definition of delivery order is revised to make it medium neutral. The definition of*
16 *document incorporates the definitions from Article 1, including the definitions of electronic and*
17 *tangible documents of title. The definition of sign is copied from Revised Article 2. UETA § 2*
18 *uses the term “electronic signature” which is defined as “an electronic sound, symbol, or*
19 *process attached to or logically associated with a record and executed or adopted by a person*
20 *with the intent to sign the record.” At this time, the definition of control is contained in a new*
21 *section 7-106.*

22 *The term “warehouseman” is changed to “warehouse” for gender neutrality reasons.*

23 *The term “carrier” is a new definition added per Committee decision March 2001.*

24 *Depending upon whether a freight forwarders issues a bill of lading, freight forwarders may also*
25 *be carriers in the surface transportation industry. The term “carrier” thus makes special*
26 *reference to freight forwarders to indicate their possible status as a carrier. Prima U.S. Inc. v.*
27 *M/V Addiriyah, 223 F.3d 126 (2nd Cir. 2000).*

28 *The overseas definition is new for Article 7 but comes from § 2-323(3). At the January*
29 *2002 meeting, the suggestion was made to include the overseas definition to Article 7 in light of*

1 *the possible revision of Article 2. The word “overseas” is used in §§ 7-104(b) [deleted], 7-302,*
2 *and 7-304. The definition of overseas is bracketed in § 7-102(a) and § 7-102(c) to allow the*
3 *Committee to make the final decision as to whether the definition is needed and whether the*
4 *definition should be added as an Article 7 definition.*

5 *Other changes to this section are made to conform with the NCCUSL style manual.*
6

7 **SECTION 7-103. RELATION OF ARTICLE TO TREATY, STATUTE, TARIFF,**
8 **CLASSIFICATION OR REGULATION.**

9 To the extent that any treaty or statute of the United States, regulatory statute of this State or
10 [public] [published] tariff, classification or regulation filed or issued pursuant thereto is
11 applicable, the provisions of this article ~~Article~~ are subject thereto.

12 ***Reporter’s Notes***

13 *This provision applies to tariffs that are mandated by the government. Self-published*
14 *tariffs (i.e. tariffs that are not pursuant to a regulatory statute of the State) are not within Article*
15 *7.*

16 *The words “public” and “published” are bracketed to allow the Committee to discuss*
17 *which is the appropriate word to convey the correct meaning. Some carriers must still comply*
18 *with a filed rate (e.g. household goods carriers and non-vessel operating common carriers in*
19 *maritime transport) but most rates are now unregulated in the sense that no governmental*
20 *agency has the power to approve or disapprove the rate before it becomes effective. However,*
21 *the deregulation law allows carriers to cooperate in rate bureaus that establish classifications of*
22 *goods, rates for various classifications, and rules limiting liability for the various classifications.*
23 *No governmental agency approves these rates, classifications, and rules but these tariffs are*
24 *published and are available upon request by the shipper. Shippers now generally have the*
25 *obligation to request the tariffs. These trends have occurred primarily at the federal level but*
26 *similar issues exist for intra-state transportation.*
27
28

29 **SECTION 7-104. NEGOTIABLE AND NON-NEGOTIABLE WAREHOUSE RECEIPT,**
30 **BILL OF LADING OR OTHER DOCUMENT ~~OF TITLE~~.**

31 (a) ~~(1)~~ A ~~warehouse receipt, bill of lading or other document of title~~ is negotiable if by its
32 terms the goods are to be delivered to bearer or to the order of a named person; ~~or~~

33 ~~—————(b) where recognized in overseas trade, if it runs to a named person or assigns.~~

(b) (2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written an order in a record signed by the same or another named person.

(c) A document is not negotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is not negotiable.

Reporter's Notes

The deletions in subsection (a) noted above were suggested at the October 2001 meeting. Subsection (b) is edited for medium neutrality. An electronic document of title may be negotiable.

Subsection (c) is new and allows the issuer to stamp or otherwise legend a document of title as non-negotiable regardless of having the language in subsection (a) in the document. However, once issued as a negotiable document of title, the document cannot be changed from a negotiable document to a non-negotiable document. However, one can fail to negotiate a negotiable document by due negotiation. Subsection (c) is similar to Section 3-104(d). This addition is based upon discussion at the October 2001 meeting.

~~**SECTION 7-105. CONSTRUCTION AGAINST NEGATIVE IMPLICATION.**~~

~~The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.~~

Reporter's Notes

This deletion is based upon discussion at the October 2001 meeting. No court has cited Section 7-105 as a substantive provision important for the decision.

1 **SECTION 7-105. RE-ISSUANCE IN ALTERNATE MEDIUM.**

2 (a) Upon request of a person entitled under an electronic document, the issuer of the
3 electronic document may issue a tangible document as a substitute for the electronic document if:

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

6 (2) the tangible document when issued contains a statement that it is issued in
7 substitution for the electronic document.

8 (b) Upon issuance of the tangible document in accordance with subsection (a), the
9 electronic document ceases to have any effect or validity.

10 (c) Upon issuance of the tangible document in accordance with subsection (a), the person
11 that procured issuance of the tangible document warrants to all subsequent persons entitled
12 under the tangible document that it was a person entitled under the electronic document at the
13 time it surrendered control of the electronic document to the issuer.

14 (d) Upon request of a person entitled under a tangible document, the issuer of the tangible
15 document may issue an electronic document as a substitute for the tangible document if:

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

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

20 (e) Upon issuance of the electronic document in accordance with subsection (d), the
21 tangible document ceases to have any effect or validity.

22 (f) Upon issuance of the electronic document in accordance with subsection (d), the

1 person that procured issuance of the electronic document warrants to all subsequent persons
2 entitled under the electronic document that it was a person entitled under the tangible document
3 at the time it surrendered possession of the tangible document to the issuer.

4 ***Reporter's Note***

5 *Pursuant to the Committee's decision at the January 2002 meeting, this section sets up a*
6 *protocol for converting documents from one medium to another. The effect of subsequent*
7 *dealings with the document after conversion will depend upon what medium the document is in*
8 *at the time it is transferred or presented. The concept of "person entitled under the document" 7-*
9 *403, encompasses both holders of negotiable documents and persons to whom delivery is to be*
10 *made under the terms of a non-negotiable document. The above section is loosely modeled on*
11 *the CMI Draft Instrument on Transport Law (2.2.1 and 2.2.2) although that protocol appears to*
12 *limit the conversion from one medium to another to negotiable documents. This section is not so*
13 *limited. Unlike the CMI, this section includes a warranty that the person who surrenders the*
14 *original document makes to persons subsequently entitled under the substitute document.*

15
16 **SECTION 7-106. CONTROL OF AN ELECTRONIC DOCUMENT.**

17 A person has control of an electronic document if the electronic document is created, stored, and
18 assigned in such a manner that:

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

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

22 (a) the person to which the document was issued; or

23 (b) if the authoritative copy indicates that the document has been transferred, the
24 person to which the document was most recently transferred;

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

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

_____ (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a
copy that is not the authoritative copy; and

_____ (6) any revision of the authoritative copy is readily identifiable as authorized or
unauthorized.

Reporter's Note

This section follows UETA § 16 and applies to electronic negotiable and non-negotiable documents. The comments to this section should be consistent with the comments to UETA. This section was in the January draft as section 7-501A and has been moved here as it is a definition that is used throughout Article 7 but also has substantive requirements that make it inappropriate to contain in the definition section.

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

SECTION 7-201. WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER GOVERNMENT BOND.

(a) ~~(1)~~ Except as provided in subsection (b), a ~~✓~~ warehouse receipt may only be issued by
a ~~any~~ warehouseman.

~~(b) (2) Where~~ If goods, including distilled spirits and agricultural commodities, are stored
under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the
nature of warehouse receipts, a receipt issued for the goods is treated ~~has like effect~~ as a
warehouse receipt even though issued by a person that ~~who~~ is the owner of the goods and is not a
warehouseman.

Reporter's Notes

1 *The deletions are to achieve gender neutrality and to clarify that the storage under bond*
2 *is when a statute requires the storage to be under bond. The term “government bond” is an*
3 *inaccurate descriptor of what the statute provides. The remaining changes are for style.*

4 *Query: Should this section have a subsection (c) referring to delivery orders defined in*
5 *Section 7-102? Or would a cross-reference to Section 7-102 in the official comments be*
6 *sufficient?*

7
8 **SECTION 7-202. FORM OF WAREHOUSE RECEIPT; [ESSENTIAL] [SIGNIFICANT]**
9 **TERMS; OPTIONAL TERMS.**

10 (a) (1) A warehouse receipt need not be in any particular form.

11 (b) (2) Unless a warehouse receipt provides for ~~embodies within its written or printed~~
12 ~~terms~~ each of the following, the warehouseman is liable for damages caused to a person injured
13 ~~by the omission to a person injured thereby:~~

14 (1) (a) the location of the warehouse where the goods are stored;

15 (2) (b) the date of issue of the receipt;

16 (3) (c) the identification code ~~consecutive number~~ of the receipt;

17 (4) (d) a statement whether the goods received will be delivered to the bearer, to a
18 specified person, or to a specified person or ~~his~~ its order;

19 (5) (e) the rate of storage and handling charges, ~~except that where~~ ; however, if
20 goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a
21 non-negotiable receipt;

22 (6) (f) a description of the goods or of the packages containing them;

23 (7) (g) the signature of the warehouseman, ~~which may be made by his authorized~~
24 ~~agent;~~

(8) ~~(h)~~ if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(9) (i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his its agent ~~who~~ that issues ~~it~~ the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(c) (3) A warehouseman may insert in his its receipt any other terms which are not contrary to the provisions of this Act and do not impair his its obligation of delivery (Section 7-403) or his its duty of care (Section 7-204). Any contrary provisions ~~shall be~~ are ineffective.

Reporter's Note

This section is revised to make reference to the warehouse receipt in a medium neutral manner. The idea that these terms must be provided for in the warehouse receipt allows for a number of records collectively to be a warehouse receipt. The idea of an identification code is a substitute for a “consecutive number” in order to accommodate electronic documents. The signature of the warehouse will usually be by agents acting on behalf of the warehouse. Questions regarding agency authority are left to other laws. Changes are also made to implement gender neutrality and style.

In the heading for this section, the words “essential” and “significant” are bracketed in order to allow the Committee to choose the correct word for the heading. Case law is split about the legal consequence of omitting the terms in Section 7-202(b). Some courts have been influenced by the word “essential” to hold that a document cannot in essence be a warehouse receipt if essential terms are missing. Other courts have held that the omission of the Section 7-202(b) terms only means that the person who omitted the term(s) risks liability for damage caused by the omission. The reporters hold the opinion that the latter line of cases is correct. The reporters intend to state that opinion in the Comment. By changing the word “essential” to “significant,” the Committee can subtly concur in the reporters opinion about the best line of reasoning relating to Section 7-202(b) terms and their omission.

1 **SECTION 7-203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.**

2 A party to or purchaser for value in good faith of a document of title other than a bill of lading
3 relying ~~in either case~~ upon the description therein of the goods may recover from the issuer
4 damages caused by the non-receipt or misdescription of the goods, except to the extent that the
5 document conspicuously indicates that the issuer does not know whether any part or all of the
6 goods in fact were received or conform to the description, as where the description is in terms of
7 marks or labels or kind, quantity or condition, or the receipt or description is qualified by
8 "contents, condition and quality unknown", "said to contain" or the like, if the ~~such~~ indication be
9 true, or the party or purchaser otherwise has notice.

10 ***Reporter's Note***

11 *The Committee suggested in October 2001 that Section 7-201 be combined with Section*
12 *7-301. The Reporter did not implement this suggestion because the organizational structure of*
13 *Article 7 separates warehouse receipts (and all other documents of title) in part ii from bills of*
14 *lading in part iii. The Reporter proposes that the Committee continue the present organizational*
15 *structure of Article 7. Section 7-201 applies to warehouse receipts and all other documents of*
16 *title. Changes to this section are made pursuant to the NCCUSL style manual.*

17
18 **SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF**
19 **WAREHOUSEMAN'S LIABILITY.**

20 ~~(a) (1)~~ A warehouseman is liable for damages for loss, ~~of or~~ injury, or delay to the goods
21 caused by ~~his~~ its failure to exercise ~~such~~ care in regard to the goods ~~them as that~~ a reasonably
22 careful ~~man~~ person would exercise under like circumstances but unless otherwise agreed the
23 warehouse ~~he~~ is not liable for damages which could not have been avoided by the exercise of
24 ~~such~~ that care.

(b) (2) Damages may be limited [by a term] [in a conspicuous clause] in the warehouse receipt or storage agreement limiting the amount of liability in case of loss, injury or delay or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; ~~provided, however, that~~ The warehouse's ~~such~~ liability may on ~~written~~ request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods covered by the storage agreement or the warehouse receipt thereunder, in which event increased rates may be charged based on ~~such~~ the increased valuation, but ~~that no~~ such no increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's [public] [published] tariff, if any. No ~~such~~ limitation is effective with respect to the warehouseman's liability for conversion to ~~his~~ its own use.

(c) (3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt, the storage agreement, or [public] [published] tariff. [These provisions apply to claims based on the warehouse's accepted liability under subsection (1) and to claims based on the warehouse's conversion to its own use.] [These provisions do not apply to claims based on the warehouse's conversion to its own use.]

(d) ~~(4)~~ This section does not impair or repeal ...

Note: Insert in subsection (4) (d) a reference to any statute which imposes a higher responsibility upon the warehouseman or invalidates contractual limitations which would be permissible under this Article.

Reporter's Notes

1 The changes that should be noted for purpose of electronic documents is that the
2 “written” request by the bailor to increase the bailee’s liability can be made in a record. The
3 other changes are based upon the discussion at the last Drafting Committee meeting or are style
4 changes.

5 The reporter added the word “delay” to subsections (a) and (b) in order to clarify that
6 delay may also cause damages for which the warehouse would be liable. Adding delay is
7 consistent with Section 7-403(a)(2) and consistent with common law and case decisions. The
8 reporter changed the word “damage” to “injury” in subsection (b) to be consistent with
9 subsection (a).

10 Note that the additional sentence in subsection (c) is bracketed for further study and
11 discussion and does not reflect a decision by the Drafting Committee. The Committee may
12 choose between the section as it reads in the current Article 7, the section with the additional
13 inclusive bracketed sentence, or the section with the additional exclusive bracketed sentence.

14 Per the committee decision in January 2002, two alternative sections were to be drafted
15 to present a choice as to whether the notice of the right to increase liability must be
16 conspicuously disclosed or whether the statute should stay as is. The reporter responded to this
17 Committee request by placing the words “by a term” and “in a conspicuous clause” in brackets.
18 The phrase “in a conspicuous clause” is the same phrase as the reporter uses in Section 7-309.
19 Standard practice in current warehouse receipts is to put this limitation of damages clause in all
20 capital letters and often to make reference to the limitation of damages clause on the front of the
21 warehouse receipt. Hence, standard warehouse practice appears to be to make the limitation of
22 damages clause conspicuous.

23 The reporter did not draft an alternative that imposes additional affirmative duties upon
24 the warehouse – e.g. specifically informing the bailor of the opportunity to increase the liability
25 exposure of the warehouse, a separate signature by the bailor accepting the limitation of
26 damages, and/or specifically informing the bailor that the warehouse does not carry property
27 insurance for the bailor. The reporter did not do so because, as between commercial entities, the
28 case law does not support additional affirmative duties and the practices of warehouses do not
29 support additional affirmative duties. As for persons who store personal household goods, the
30 Committee may desire to address again whether a separate consumer-protection sub-section in
31 Section 7-204 should be drafted imposing additional affirmative duties upon warehouses.

32 33 **SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN**

34 **CASES.** A buyer in the ordinary course of business of fungible goods sold and delivered by a
35 warehouseman who that is also in the business of buying and selling such goods takes free of any
36 claim under a warehouse receipt even ~~though~~ if the receipt is negotiable and it has been duly
37 negotiated.

1 *Reporter's Note*

2 *The edits make clear that the principle applies to both negotiable and non-negotiable*
3 *warehouse receipts. The concept of due negotiation involves the idea of possessing the document*
4 *if it is tangible or control of the document if electronic. See 7-106.*

5
6 **SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSEMAN'S OPTION.**

7 (a) (1) A warehouseman may, upon notifying the person on whose account the goods
8 are held and any other person known to claim an interest in the goods, require payment of any
9 charges and removal of the goods from the warehouse at the termination of the period of storage
10 fixed by the document, or, if no period is fixed, within a stated period not less than thirty days
11 after the notification. If the goods are not removed before the date specified in the notification,
12 the warehouseman may sell them in accordance with Section 7-210. ~~the provisions of the section~~
13 ~~on enforcement of a warehouseman's lien (Section 7-210).~~

14 (b) (2) If a warehouseman in good faith believes that the goods are about to deteriorate or
15 decline in value to less than the amount of his its lien within the time prescribed in subsection
16 (a) (1) and Section 7-210 for notification, advertisement and sale, the warehouseman may specify
17 in the notification any reasonable shorter time for removal of the goods and, ~~if in case~~ the goods
18 are not removed, may sell them at public sale held not less than one week after a single
19 advertisement or posting.

20 (c) (3) If, as a result of a quality or condition of the goods of which the warehouseman
21 had no notice at the time of deposit, the goods are a hazard to other property or to the warehouse
22 or to persons, the warehouseman may sell the goods at public or private sale without
23 advertisement on reasonable notification to all persons known to claim an interest in the goods.

1 If the warehouseman after a reasonable effort is unable to sell the goods ~~he~~ it may dispose of
2 them in any lawful manner and ~~shall~~ incur no liability by reason of ~~such~~ that disposition.

3 ~~(d) (4)~~ The warehouseman must deliver the goods to any person entitled to them under
4 this ~~Article~~ article upon due demand made at any time prior to sale or other disposition under this
5 section.

6 ~~(e) (5)~~ The warehouseman may satisfy ~~his~~ its lien from the proceeds of any sale or
7 disposition under this section but must hold the balance for delivery on the demand of any person
8 to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

9 ***Reporter's Note***

10 *Changes to this section are for style purposes.*

11
12 **SECTION 7-207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.**

13 ~~(a) (1)~~ Unless the warehouse receipt otherwise provides, a warehouseman must keep
14 separate the goods covered by each receipt so as to permit at all times identification and delivery
15 of those goods except that different lots of fungible goods may be commingled.

16 ~~(b) (2)~~ Fungible goods so commingled are owned in common by the persons entitled
17 thereto and the warehouseman is severally liable to each owner for that owner's share. ~~Where~~ If
18 because of overissue a mass of fungible goods is insufficient to meet all the receipts ~~which~~ the
19 warehouseman has issued against it, the persons entitled include all holders to whom overissued
20 receipts have been duly negotiated.

21 ***Reporter's Note***

22 *Changes to this section are for style purposes.*

1
2 **SECTION 7-208. ALTERED WAREHOUSE RECEIPTS.** ~~Where~~ If a blank in a negotiable
3 tangible warehouse receipt has been filled in without authority, a purchaser for value and without
4 notice of the want of authority may treat the insertion as authorized. Any other unauthorized
5 alteration leaves any receipt, whether tangible or electronic, enforceable against the issuer
6 according to its original tenor.

7 ***Reporter's Note***

8 *The first sentence has been revised to make clear that the rule only applies to tangible,*
9 *i.e. non-electronic warehouse receipts. The second sentence applies to both tangible and*
10 *electronic receipts.*

11 *Compare to Section 7-306. See especially the Reporter's Note to Section 7-306.*

12
13 **SECTION 7-209. LIEN OF WAREHOUSEMAN.**

14 ~~(1)~~ (a) (1) A warehouseman has a specific lien against the bailor on the goods covered by
15 a warehouse receipt or storage agreement or on the proceeds thereof in ~~his~~ its possession for
16 charges for storage or transportation (including demurrage and terminal charges), insurance,
17 labor, or charges present or future in relation to the goods, and for expenses necessary for
18 preservation of the goods or reasonably incurred in their sale pursuant to law.

19 (2) If the person on whose account the goods are held is liable for like charges or
20 expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt
21 or storage agreement that a lien is claimed for charges and expenses in relation to other goods,
22 the warehouseman also has a general lien against the goods covered by the warehouse receipt or
23 storage agreement or on the proceeds thereof ~~him~~ for such charges and expenses whether or not

1 the other goods have been delivered by the warehouseman.

2 (3) But A warehouse's specific lien is enforceable against persons entitled under the
3 document, provided however, that as against a person to whom a negotiable warehouse receipt is
4 duly negotiated, a warehouseman's specific lien is limited to charges in an amount or at a rate
5 specified on in the warehouse receipt or if no charges are so specified then to a reasonable charge
6 for storage of the goods covered by the warehouse receipt subsequent to the date of the
7 warehouse receipt. A warehouse's general lien is enforceable against a person entitled under the
8 document, provided however, that the general lien is not enforceable against a person to which a
9 negotiable document is duly negotiated.

10 (b) (2) The warehouseman may also reserve a security interest under Article 9 against the
11 bailor for a maximum amount specified on the receipt for charges other than those specified in
12 subsection (1a), such as for money advanced and interest. ~~Such a~~ A security interest is governed
13 by the Article on Secured Transactions (Article 9).

14 (c) (1) (3)(a) A warehouseman's lien for charges and expenses under subsection (1) (a) or
15 a security interest under subsection (2) (b) is also effective against any person ~~who~~ that so
16 entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ the bailor to a
17 good faith purchaser for value would have been valid but is not effective against a person as to
18 whom the document confers no right in the goods covered by it under Section 7-503.

19 (b) (2) A warehouseman's lien on household goods for charges and expenses in
20 relation to the goods under subsection (1) (a) is also effective against all persons if the depositor
21 was the legal possessor of the goods at the time of deposit. "Household goods" means furniture,
22 furnishings and personal effects used by the depositor in a dwelling.

(d) (4) A warehouseman loses his its lien on any goods which ~~he~~ it voluntarily delivers or which ~~he~~ it unjustifiably refuses to deliver.

Reporter's Note

Subsection (a) has three subsections: one dealing with the specific lien, one dealing with the general lien, and a third subsection dealing with priority of the lien as against persons entitled under the document. The additions to the subsection (a)(3) reflect the discussion at the January 2002 meeting. This subsection relies on the definition of person entitled under the document in 7-403. That definition includes both holders of a negotiable document and persons entitled to the goods under a non-negotiable document.

At the October 2001 meeting, the committee decided to delete subsection (c)(2). Based upon discussion at the January 2002 meeting, it is not clear that the committee has settled on that approach. Subsections (a)(3) and (c)(1) and (c)(2) set up three different sets of priority rules for the priority of the specific and general liens as against other claimants. These sections need to be considered in more detail.

Should packaging or other processing of the goods be part of the specific lien allowed under subsection (a)(1)? The committee decided at the January 2002 meeting to let the case law continue to develop and not to add to the statutory language on this point.

At the January 2002 meeting, the committee decided that a receipt was necessary in order to claim the lien but that it should be made clear in this section and 7-202 that the receipt need not do anything other than qualify as a document of title under the Article 1 definition. That is, all of the elements of 7-202 need not be present in order for the receipt to be valid for purposes of the lien arising under this section. The reporter also added the words “or storage agreement” in subsections (a) and (b) also to emphasize that the warehouse lien is a statutory possessory lien that arises automatically under a document of title or a contractual document between the bailor and the warehouse.

The Committee felt in January 2002 that much more discussion of warehouse liens would be needed during the April 2002 meeting. In order to promote fuller discussion, the reporter suggests that the Committee read anew the Reporter's Memorandum about Section 7-209 that Committee members received in September 2001. Additionally to promote fuller discussion, the reporter also includes a proposal concerning Section 7-209 submitted to the reporter by Mr. William Towle, on official observer to the Committee. To identify and distinguish Mr. Towle's proposal, the reporter has used THE LARGE-SMALL CAP FONT FOR MR. TOWLE'S PROPOSAL.

SECTION 7-209 LIEN OF WAREHOUSEMAN

(1) A WAREHOUSEMAN HAS A LIEN AGAINST THE BAILOR ON THE GOODS COVERED BY A WAREHOUSE RECEIPT OR ON THE PROCEEDS THEREOF IN HIS POSSESSION FOR CHARGES FOR STORAGE OR TRANSPORTATION (INCLUDING DEMURRAGE AND TERMINAL CHARGES), INSURANCE,

LABOR, OR CHARGES PRESENT OR FUTURE IN RELATION TO THE GOODS, AND FOR EXPENSES
NECESSARY FOR PRESERVATION OF THE GOODS OR REASONABLY INCURRED IN THEIR SALE
PURSUANT TO LAW. IF THE PERSON ON WHOSE ACCOUNT THE GOODS ARE HELD IS LIABLE FOR LIKE
CHARGES OR EXPENSES IN RELATION TO OTHER GOODS WHENEVER DEPOSITED AND IT IS STATED IN
THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT THAT A LIEN IS CLAIMED FOR CHARGES AND
EXPENSES IN RELATION TO OTHER GOODS, THE WAREHOUSEMAN ALSO HAS A LIEN AGAINST ~~HIM~~
THAT PERSON FOR SUCH CHARGES AND EXPENSES WHETHER OR NOT THE OTHER GOODS HAVE
BEEN DELIVERED BY THE WAREHOUSEMAN. BUT AGAINST A PERSON TO WHOM A NEGOTIABLE
WAREHOUSE RECEIPT IS DULY NEGOTIATED A WAREHOUSEMAN'S LIEN IS LIMITED TO CHARGES IN
AN AMOUNT OR AT A RATE SPECIFIED ON THE WAREHOUSE RECEIPT OR IF NO CHARGES ARE SO
SPECIFIED THEN TO A REASONABLE CHARGE FOR STORAGE OF THE GOODS COVERED BY THE
WAREHOUSE RECEIPT SUBSEQUENT TO THE DATE OF THE WAREHOUSE RECEIPT.

(2) THE WAREHOUSEMAN MAY ALSO RESERVE A SECURITY INTEREST AGAINST THE BAILOR
FOR A MAXIMUM AMOUNT SPECIFIED ON THE WAREHOUSE RECEIPT FOR CHARGES OTHER THAN
THOSE SPECIFIED IN SUBSECTION (1), SUCH AS FOR MONEY ADVANCED AND INTEREST. SUCH A
SECURITY INTEREST IS GOVERNED BY THE ARTICLE ON SECURED TRANSACTIONS (ARTICLE 9).

(3) (A) A WAREHOUSEMAN'S LIEN FOR CHARGES AND EXPENSES UNDER SUBSECTION (1) ~~OR~~
~~A SECURITY INTEREST UNDER SUBSECTION (2) IS ALSO~~ EFFECTIVE AGAINST A SECURED PARTY
WHO HAS A PERFECTED OR UNPERFECTED SECURITY INTEREST IN THE GOODS, AND IS ALSO
EFFECTIVE AGAINST THE OWNER OF THE GOODS UNLESS THE OWNER CAN ESTABLISH THAT THE
OWNER DID NOT KNOW OR BY FOLLOWING COMMERCIALY REASONABLE PRACTICES COULD NOT
HAVE KNOWN THAT THE GOODS WOULD BE WAREHOUSED.

1 ~~ANY PERSON WHO SO ENTRUSTED THE BAILOR WITH POSSESSION OF THE GOODS THAT A PLEDGE OF~~
2 ~~THEM BY HIM TO A GOOD FAITH PURCHASER FOR VALUE WOULD HAVE BEEN VALID BUT IS NOT~~
3 ~~EFFECTIVE AGAINST A PERSON AS TO WHOM THE DOCUMENT CONFERS NO RIGHT IN THE GOODS~~
4 ~~COVERED BY IT UNDER SECTION 7-503.~~

5 _____ [ALTERNATIVE (3)(A): A WAREHOUSE LIEN FOR CHARGES AND EXPENSES UNDER
6 SUBSECTION (1) IS EFFECTIVE AGAINST THE OWNER OF THE GOODS AND A SECURED PARTY WHO
7 HAS A PERFECTED OR UNPERFECTED SECURITY INTEREST IN THE GOODS UNLESS THE OWNER OR
8 THE SECURED PARTY CAN ESTABLISH THAT THE OWNER DID NOT KNOW OR BY FOLLOWING
9 COMMERCIALLY REASONABLE PRACTICES COULD NOT HAVE KNOWN THAT THE GOODS WOULD BE
10 WAREHOUSED.]

11 (B) A WAREHOUSE~~MAN~~'S LIEN ON HOUSEHOLD GOODS FOR CHARGES AND EXPENSES IN
12 RELATION TO THE GOODS UNDER SUBSECTION (1) IS ALSO EFFECTIVE AGAINST ALL PERSONS IF THE
13 DEPOSITOR WAS THE LEGAL POSSESSOR OF THE GOODS AT THE TIME OF DEPOSIT. "HOUSEHOLD
14 GOODS" MEANS FURNITURE, FURNISHINGS AND PERSONAL EFFECTS USED BY THE DEPOSITOR IN A
15 DWELLING.

16 _____ [ALTERNATIVE (3): A WAREHOUSE'S LIEN ON GOODS FOR CHARGES AND EXPENSES UNDER
17 SUBSECTION (1) IS EFFECTIVE AGAINST ALL PERSONS IF THE DEPOSITOR WAS THE LEGAL
18 POSSESSOR OF THE GOODS AT THE TIME OF DEPOSIT.]

19 (4) A WAREHOUSE~~MAN~~ LOSES HIS LIEN ON ANY GOODS WHICH HE VOLUNTARILY DELIVERS
20 OR WHICH HE UNJUSTIFIABLY REFUSES TO DELIVER.

21 **PURPOSE OF CHANGES:**

22 SUBSECTION (1) IS NOT DIVIDED INTO TWO SUBSECTIONS SINCE IT WAS DECIDED THAT THE
23 SPECIFIC AND GENERAL LIEN WOULD BE TREATED THE SAME WITH RESPECT TO THE PRIORITY

1 ISSUE. IF THAT REASON FOR MAKING THE DIVISION NO LONGER EXISTS THEN IT WOULD BE
2 PREFERABLE TO LEAVE THE SUBPARAGRAPH AS WRITTEN. "OR STORAGE AGREEMENT" WAS
3 ADDED TO ALLOW THE GENERAL LIEN TO BE CLAIMED ON EITHER THE WAREHOUSE RECEIPT OR
4 STORAGE AGREEMENT. THIS IS CONSISTENT WITH 7-204 WHERE THE LIMITATION OF DAMAGES CAN
5 BE ON THE RECEIPT OR STORAGE AGREEMENT. "HIM" WAS REPLACED WITH "THAT PERSON" TO BE
6 CONSISTENT WITH THE START OF THE SENTENCE REGARDING CLAIMING THE GENERAL LIEN.

7 SUBSECTION (3)(A) WOULD CLEARLY STATE THAT THE WAREHOUSE LIEN HAS PRIORITY
8 OVER THE SECURED PARTY. THE OWNER WOULD BE REASONABLY PROTECTED FROM THE THIEF OR
9 THE CONVERTER.

10 ALTERNATIVE (3)(A) WOULD REASONABLY PROTECT BOTH THE OWNER AND THE SECURED
11 PARTY.

12 ALTERNATIVE 3 WOULD ELIMINATE THE (A) AND (B) AND HAVE ALL GOODS SUBJECT TO
13 THE LIEN IF THE DEPOSITOR WAS THE A LEGAL POSSESSOR OF THE GOODS AT THE TIME OF
14 DEPOSIT.
15

16 **SECTION 7-210. ENFORCEMENT OF WAREHOUSEMAN'S LIEN.**

17 (a) (1) Except as provided in subsection (b) (2), a warehouseman's lien may be enforced
18 by public or private sale of the goods in ~~block~~ bulk or in ~~parcels~~ packages, at any time or place
19 and on any terms which are commercially reasonable, after notifying all persons known to claim
20 an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the
21 nature of the proposed sale and the time and place of any public sale. The fact that a better price
22 could have been obtained by a sale at a different time or in a different method from that selected
23 by the warehouseman is not of itself sufficient to establish that the sale was not made in a
24 commercially reasonable manner. If the warehouseman ~~either~~ sells the goods in the usual
25 manner in any recognized market therefor, ~~or if he~~ sells at the price current in ~~such~~ that market at
26 the time of ~~his~~ the sale, or ~~if he~~ has otherwise sold in conformity with commercially reasonable
27 practices among dealers in the type of goods sold, ~~he~~ it has sold in a commercially reasonable
28 manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of
29 the obligation is not commercially reasonable except in cases covered by the preceding sentence.

1 ~~(b) (2)~~ A warehouseman's lien on goods, other than goods stored by a merchant in the
2 course of his its business, may be enforced only as follows:

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

4 ~~(b)~~ The notification must be delivered in person or sent by registered or certified
5 letter to the last known address of any person to be notified.

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

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

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

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

22 ~~(c) (3)~~ Before any sale pursuant to this section any person claiming a right in the goods

1 may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this
2 section. In that event the goods ~~must~~ may not be sold, but must be retained by the warehouseman
3 subject to the terms of the receipt and this ~~article~~ Article.

4 (d) ~~(4)~~ The warehouseman may buy at any public sale pursuant to this section.

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

8 (f) ~~(6)~~ The warehouseman may satisfy ~~his~~ its lien from the proceeds of any sale pursuant
9 to this section but must hold the balance, if any, for delivery on demand to any person to ~~whom~~
10 which ~~he~~ it would have been bound to deliver the goods.

11 (g) ~~(7)~~ The rights provided by this section ~~shall be~~ are in addition to all other rights
12 allowed by law to a creditor against ~~his~~ a debtor.

13 (h) ~~(8) Where~~ If a lien is on goods stored by a merchant in the course of ~~his~~ its business,
14 the lien may be enforced in accordance with either subsection ~~(a) (1)~~ or ~~(b) (2)~~.

15 (i) ~~(9)~~ The warehouseman is liable for damages caused by failure to comply with the
16 requirements for sale under this section and, in case of willful violation, is liable for conversion.

17 ***Reporter's Note***

18 *Sending notification by registered mail does not allow for electronic notification. Absent*
19 *some policy reason for heightened notice requirements that would require a paper notification,*
20 *the warehouse should be able to give this notice electronically. Rev. 9 allows the notice of sale*
21 *to be given electronically as it requires a "reasonable authenticated notification of disposition."*
22 *Rev. 9-611. Sections 9-613 and 9-614 specify what must be in the notification and provide a safe*
23 *harbor form. Nowhere does it mandate that the notification be on paper. At the January 2002*
24 *meeting, the committee decided that this section should not be conformed to procedural*
25 *requirements imposed by Revised Article 9 on sales after default.*

26 *The comments to this section should contain a cross reference to the interpleader section,*

1 7-603.

2 *Except for the words "warehouse" and "carrier," the language of Section 7-210 reads*
3 *identically to Section 7-308.*
4

5 **PART 3. BILLS OF LADING: SPECIAL PROVISIONS**

6 **SECTION 7-301. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION; "SAID TO**
7 **CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.**

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

17 (b) ~~(2)~~ ~~When~~ If goods are loaded by ~~an~~ the issuer of the bill of lading ~~who is a common~~
18 ~~carrier~~, the issuer must count the packages of goods if shipped in packages ~~package freight~~ and
19 ascertain the kind and quantity if shipped in bulk freight. ~~In such cases and words such as~~
20 "shipper's weight, load and count" or other words indicating that the description was made by the
21 shipper are ineffective except as to ~~freight goods~~ freight goods concealed by packages.

22 (c) ~~(3)~~ ~~When~~ If bulk ~~freight is~~ goods are loaded by a shipper ~~who~~ that makes available to
23 the issuer of the bill of lading adequate facilities for weighing ~~such freight those goods, an the~~

1 issuer ~~who is a common carrier~~ must ascertain the kind and quantity within a reasonable time
2 after receiving the ~~written request of the shipper's~~ request in a record to do so. In ~~such~~ that cases
3 "shipper's weight" or other words of like purport are ineffective.

4 (d) (4) The issuer may by ~~inserting~~ including in the bill of lading the words "shipper's
5 weight, load and count" or other words of like purport indicate that the goods were loaded by the
6 shipper; ~~and if such that statement be is~~ true the issuer ~~shall~~ is not be liable for damages caused
7 by the improper loading; ~~however, But~~ their omission does not imply liability for ~~such~~ damages
8 caused by improper loading.

9 (e) (5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the
10 time of shipment of the description, marks, labels, number, kind, quantity, condition and weight,
11 as furnished by ~~him~~ the shipper; and the shipper shall indemnify the issuer against damage
12 caused by inaccuracies in ~~such~~ those particulars. The right of the issuer to ~~such~~ that indemnity
13 shall in no way limit ~~his~~ its responsibility and liability under the contract of carriage to any
14 person other than the shipper.

15 ***Reporter's Note***

16 *With a tangible non-negotiable bill of lading, there is no requirement that the consignee*
17 *have possession of the bill in order to have rights under subsection (1). Thus a consignee under*
18 *an electronic non-negotiable bill does not need "delivery" of the electronic bill. This section*
19 *also contains the idea of due negotiation which includes electronic negotiable bills, 7-501. In*
20 *subsection (3) "written request" is changed to "request in a record."*

21 *The references to common carriers were deleted as obsolete after deregulation and to*
22 *insure consistency with the definition of the term "Carrier."*

23 *The wording in this section – such as "contents or condition of contents of packages*
24 *unknown" or "shipper's weight, load and count" –to indicate that the shipper loaded the goods*
25 *or that the carrier does not know the description, condition, or contents of the loaded packages*
26 *continues to be appropriate as commonly understood in the transportation industry. The reasons*
27 *for this wording are as important today as when this section initially was approved. Moreover,*
28 *the Reporter did not desire to change this familiar language because the comparable debate in*

1 *the study for the proposed reform of COGSA was the most contentious issue discussed,*
2 *according to Professor Michael F. Sturley, the COGSA Study Reporter. This Reporter adopted*
3 *the stance that discretion is the better part of valor.*

4 *At the January 2002 meeting, the committee was informed that the word “freight” in*
5 *international practice means the price of the shipment not the goods being shipped. Changes*
6 *have been made to make the section compatible on that issue with international practice.*
7 *Domestic land transport also uses the word “freight” to refer commonly to the price of the*
8 *shipment. Hence, changing the word “freight” to the word “goods” is a clarifying change that*
9 *fits both international and domestic practice. However at times, the word “freight” apparently*
10 *means “cargo” – e.g. freight forwarders.*

11 *Remaining changes to this section are style changes.*
12

13 **SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.**

14 (a) (1) The issuer of a through bill of lading or other document embodying an undertaking
15 to be performed in part by persons acting as its agents or by performing ~~connecting~~ carriers is
16 liable to anyone entitled to recover on the document for any breach by ~~such~~ the other persons or
17 ~~by a~~ the performing ~~connecting~~ carriers of ~~its~~ their obligation under the document but to the
18 extent that the bill covers an undertaking to be performed overseas or in territory [that is not a
19 State and] not contiguous to the continental United States or an undertaking including matters
20 other than transportation this liability may be varied by agreement of the parties.

21 (b) (2) ~~Where~~ If goods covered by a through bill of lading or other document embodying
22 an undertaking to be performed in part by persons other than the issuer are received by ~~any such~~
23 that person, the person ~~he~~ is subject with respect to ~~his~~ its own performance while the goods are
24 in ~~its~~ his possession to the obligation of the issuer. The person's ~~His~~ obligation is discharged by
25 delivery of the goods to another ~~such~~ person pursuant to the document, and does not include
26 liability for breach by any other ~~such~~ persons or by the issuer.

27 (c) (3) The issuer of ~~such a~~ through bill of lading or other document ~~shall be~~ described in

1 subsection (a) is entitled to recover from the performing ~~connecting~~ carrier or ~~such~~ other person
2 in possession of the goods when the breach of the obligation under the document occurred, the
3 amount it may be required to pay to anyone entitled to recover on the document therefor, as may
4 be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense
5 reasonably incurred by it the issuer in defending any action brought by anyone entitled to recover
6 on the document therefor.

7 ***Reporter's Note***

8 *The word "performing" is substituted for "connecting" in order to conform Article 7 to*
9 *the terminology used in the newly adopted OAS Through Bill of Lading for Road Transport (Feb.*
10 *2002) and the CMI Draft Instrument on Transport Law (Dec. 2001). Does the Committee desire*
11 *that a definition of performing carrier be added to Section 7-102? The reporter could copy the*
12 *definition in the OAS or the CMI documents.*

13 *Other changes are for gender neutrality and style.*
14

15 **SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.**

16 (a) ~~(1)~~ Unless the bill of lading otherwise provides, the carrier may deliver the goods to a
17 person or destination other than that stated in the bill or may otherwise dispose of the goods,
18 without liability for misdelivery, on instructions from

19 (1) ~~(a)~~ the holder of a negotiable bill; or

20 (2) ~~(b)~~ the consignor on a non-negotiable bill ~~notwithstanding~~ even if the
21 consignee has given contrary instructions ~~from the consignee;~~ or

22 (3) ~~(c)~~ the consignee on a non-negotiable bill in the absence of contrary

1 instructions from the consignor, if the goods have arrived at the billed destination or if the
2 consignee is in possession of the tangible bill or in control of the electronic bill;

3 (4) ~~(d)~~ the consignee on a non-negotiable bill if ~~he~~ the consignee is entitled as
4 against the consignor to dispose of ~~them~~ the goods.

5 (b) (2) Unless ~~such~~ instructions are ~~noted~~ included in on a negotiable bill of lading, a
6 person to ~~whom~~ which the bill is duly negotiated can hold the bailee according to the original
7 terms.

8 ***Reporter's Note***

9 *The words "without liability for misdelivery" were added to clarify the legal*
10 *consequences of this section. These words come from the present Official Comment to Section 7-*
11 *303.*

12 *The comments should also reference Section 2-705 Seller's Stoppage of Delivery in*
13 *Transit or Otherwise. Would the Committee want a parallel stoppage-in-transit provision*
14 *directly in Article 7? Or is the cross-reference to Section 2-705 in the comments to Section 7-*
15 *303 sufficient?*

16 *Changes are made to accommodate electronic bills of lading and for style reasons. The*
17 *control concept applies to both negotiable and non negotiable bills of lading. 7-106.*

18 19 **SECTION 7-304. TANGIBLE BILLS OF LADING IN A SET.**

20 (a) ~~(1)~~ Except ~~where~~ as customary in overseas transportation, a tangible bill of lading
21 ~~must~~ may not be issued in a set of parts. The issuer is liable for damages caused by violation of
22 this subsection.

23 (b) (2) ~~Where~~ If a tangible bill of lading is lawfully drawn in a set of parts, each of which
24 ~~is numbered~~ contains an identification code and is expressed to be valid only if the goods have
25 not been delivered against any other part, the whole of the parts constitute one bill.

26 (c) ~~(3)~~ ~~Where~~ If a tangible negotiable bill of lading is lawfully issued in a set of parts and

different parts are negotiated to different persons, the title of the holder to ~~whom~~ which the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of its ~~his~~ part.

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

(e) ~~(5)~~ The bailee is obliged to deliver in accordance with Part 4 of this ~~Article~~ article against the first presented part of a tangible bill of lading lawfully drawn in a set. ~~Such~~ That delivery discharges the bailee's obligation on the whole bill.

Reporter's Note

At the January 2002 drafting committee meeting, the committee decided to limit this section to tangible bills of lading. There is some issue as to whether this section should be retained depending upon whether commercial practice is to allow for bills of lading in a set. Tangible bills of lading in a set are still used in some nations in international trade. Consequently, a tangible bill of lading part of a set could be at issue in a lawsuit that might come within the scope of Article. 7

UETA Section 16 requires that electronic bills of lading be a single, authoritative copy. UNCITRAL calls this the "guarantee of singularity." Consequently, this section should be restricted to tangible bills of lading. The comments should explain why this section differentiates between tangible bills of lading and electronic bills of lading. In addition, the comments should explain that this section does not apply to data messages that are not the single, authoritative copy.

SECTION 7-305. DESTINATION BILLS.

(a) ~~(1)~~ Subject to Section 7-105, instead ~~instead~~ of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(b) ~~(2)~~ Upon request of anyone entitled as against ~~the~~ a carrier to control the goods while

1 in transit and on surrender of possession or control of any outstanding bill of lading or other
2 receipt covering ~~such~~ the goods, the issuer may, subject to Section 7-105, procure a substitute bill
3 to be issued at any place designated in the request.

4 ***Reporter's Note***

5 *This section originally contemplated tangible bills of lading. However, there does not*
6 *seem to be any reason to limit it to tangible bills and provided that the requirements of 7-105 on*
7 *procuring substitute bills in a different medium are complied with, this section could continue to*
8 *operate and serve a purpose.*

9
10 **SECTION 7-306. ALTERED BILLS OF LADING.**

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

13 ***Reporter's Note***

14 *Compare section 7-208. Section 7-208 treats an unauthorized filling in of a blank as*
15 *authorized if a purchaser for value and without notice of the lack of authorization is enforcing*
16 *the receipt. The drafting committee should consider whether there is a reason to have a different*
17 *rule for bills of lading. Otherwise the sections state the same rule. This rule applies to both*
18 *tangible and electronic bills of lading. Section 7-306 has generated no litigation.*

19 *The unauthorized alteration of an electronic bill of lading appears to be impossible in the*
20 *BOLERO system. In BOLERO, the holder may request an amendment but only the issuer may*
21 *grant or deny the amendment. Hence, if the holder requests an amendment and the issuer grants*
22 *the request, the issue would have authorized the amendment and, therefore, should be held*
23 *accountable for the agreed upon amended terms of the bill of lading. If the issuer denies the*
24 *amendment, the bill of lading remains unaltered with the original terms as issued. Whether the*
25 *amendment would have any legal effect on third parties is outside the scope of this section and*
26 *Article 7.*

27 *UETA Section 16 demands systems similar to the BOLERO system. UETA Section 16(c)*
28 *sub-sections (1)&(6) require that systems issuing electronic documents have the capability to*
29 *maintain the electronic documents unaltered and readily to identify revisions as authorized or*
30 *unauthorized. Electronic systems have the capability to readily identify authorized or*
31 *unauthorized alterations because of the historical logs of all computer transactions affecting the*
32 *electronic document. See Comment 3 to UETA Section 16. As a result of these UETA*
33 *safeguards, the reporter believes that computer hackers exist as a technological risk but not as a*

1 *legal risk (as between the issuer and the holder) under sections 7-208 and 7-306.*
2

3 **SECTION 7-307. LIEN OF CARRIER.**

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

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

16 Alternative subsection (b)

17 [(b) The carrier's lien under subsection (a) is effective against all persons if the bailor was
18 the legal possessor of the goods at the time of deposit for carriage.]

19 (c) ~~(3)~~ A carrier loses ~~his~~ its lien on any goods which ~~he~~ it voluntarily delivers or which
20 ~~he~~ it unjustifiably refuses to deliver.

21 ***Reporter's Note***

22 *Compare Section 7-209 Warehouse Lien. The carrier's lien under this section is a*
23 *specific lien on the goods not a general lien. A carrier obtains a lien only when it issues a bill of*

1 *lading as the warehouse obtains a lien only when it issues a warehouse receipt. Part 3 of Article*
2 *7 has no section that parallels Section 7-202. However, the reporter intends to emphasize in the*
3 *comments to this section that the carrier lien is a possessory lien that arises regardless of the*
4 *form or terms of the bill of lading. See the reporter's note to Section 7-202 and Section 7-209.*

5 *Alternate Subsection (b) raises policy issues on what should be the priority of the lien as*
6 *against other persons claiming the goods. Compare Section 7-209. Query: should priority*
7 *disputes between carrier liens and security interests be addressed explicitly?*

8 *Note also that Subsection (b) as presently drafted allows a carrier lien, if the carrier is*
9 *required by law to accept the carriage, to be effective, in some instances, even as against stolen*
10 *transported goods. Query: does this fit with present-day transportation realities in light of*
11 *deregulation?*

13 **SECTION 7-308. ENFORCEMENT OF CARRIER'S LIEN.**

14 (a) ~~(1)~~ A carrier's lien may be enforced by public or private sale of the goods, in ~~block~~
15 bulk or in ~~parcels~~ packages, at any time or place and on any terms which are commercially
16 reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The
17 notification must include a statement of the amount due, the nature of the proposed sale and the
18 time and place of any public sale. The fact that a better price could have been obtained by a sale
19 at a different time or in a different method from that selected by the carrier is not of itself
20 sufficient to establish that the sale was not made in a commercially reasonable manner. If the
21 carrier either sells the goods in the usual manner in any recognized market therefor, ~~or if he~~ sells
22 at the price current in ~~such~~ that market at the time of ~~his~~ the sale, or ~~if he~~ has otherwise sold in
23 conformity with commercially reasonable practices among dealers in the type of goods sold, ~~he~~ it
24 has sold in a commercially reasonable manner. A sale of more goods than apparently necessary
25 to be offered to ensure satisfaction of the obligation is not commercially reasonable except in
26 cases covered by the preceding sentence.

27 (b) ~~(2)~~ Before any sale pursuant to this section any person claiming a right in the goods

1 may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this
2 section. In that event the goods ~~must~~ may not be sold, but must be retained by the carrier subject
3 to the terms of the bill and this ~~Article~~ article.

4 ~~(c) (3)~~ The carrier may buy at any public sale pursuant to this section.

5 ~~(d) (4)~~ A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods
6 free of any rights of persons against ~~whom~~ which the lien was valid, despite the carrier's
7 noncompliance ~~by the carrier~~ with the requirements of this section.

8 ~~(e) (5)~~ The carrier may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this
9 section but must hold the balance, if any, for delivery on demand to any person to ~~whom he~~
10 which it would have been bound to deliver the goods.

11 ~~(f) (6)~~ The rights provided by this section ~~shall be~~ are in addition to all other rights
12 allowed by law to a creditor against ~~his~~ a debtor.

13 ~~(g) (7)~~ A carrier's lien may be enforced in accordance with either subsection ~~(1)~~ (a) or the
14 procedure set forth in subsection ~~(2)~~ (b) of Section 7-210.

15 [Alternate (g) If a lien is on goods carried for a merchant in the course of its business, the
16 lien may be enforce in accordance with either subsection (a) or (i).]

17 ~~(h) (8)~~ The carrier is liable for damages caused by failure to comply with the requirements
18 for sale under this section and, in case of willful violation, is liable for conversion.

19 [(i) A carrier's lien on goods, other than goods carried for a merchant in the course of his
20 its business, may be enforced only as follows:

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

22 (2) The notification must include an itemized statement of the claim, a

1 description of the goods subject to the lien, a demand for payment within a specified time not
2 less than ten days after receipt of the notification, and a conspicuous statement that unless the
3 claim is paid within that time the goods will be advertised for sale and sold by auction at a
4 specified time and place.

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

6 (4) The sale must be held at the nearest suitable place to ~~that~~ where the goods are
7 held or stored.

8 (5) After the expiration of the time given in the notification, an advertisement of
9 the sale must be published once a week for two weeks consecutively in a newspaper of general
10 circulation where the sale is to be held. The advertisement must include a description of the
11 goods, the name of the person on ~~whose~~ which account ~~they~~ the goods are being held, and the
12 time and place of the sale. The sale must take place at least fifteen days after the first
13 publication. If there is no newspaper of general circulation where the sale is to be held, the
14 advertisement must be posted at least ten days before the sale in not less than six conspicuous
15 places in the neighborhood of the proposed sale.]

16 ***Reporter's Note***

17 *"Notification" as used in this section and as defined in revised article 1, 1-202, includes*
18 *electronic notification.*

19 *Except for the words "carrier" and "warehouse," the language of Section 7-308 reads*
20 *identically to Section 7-210.*

21 *Bracketed subsection (i) and alternate (g) bring into Section 7-308 subsections that*
22 *presently exist in Section 7-210 but that have never been in Section 7-308. The Committee asked*
23 *for this parallelism between Section 7-308 and Section 7-210 for further discussion and*
24 *consideration at the April meeting. If the Committee adopts these bracketed subsections, the*
25 *reporter would rearrange Section 7-308 so that its arrangement matches the Section 7-210*
26 *arrangement. Note that Section 7-308(g) allows a carrier to use Section 7-210(b) procedures*
27 *but subsection (g) does not mandate the Section 7-210(b) procedures for consumer goods.*

1
2 **SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S**
3 **LIABILITY.**

4 (a) ~~(1)~~ A carrier ~~who~~ that issues a bill of lading whether negotiable or non-negotiable
5 must exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ person
6 would exercise under like circumstances. This subsection does not repeal or change any law or
7 rule of law which imposes liability upon a common carrier for damages not caused by its
8 negligence.

9 (b) ~~(2)~~ Damages for loss, injury or delay may be limited by a provision that the carrier's
10 liability shall not exceed a value stated in the document if the carrier's rates are dependent upon
11 value and the consignor ~~by the carrier's tariff~~ is afforded an opportunity to declare a higher value
12 ~~or a value as lawfully provided in the tariff, or where no tariff is filed he~~ and the consignor is
13 ~~otherwise~~ advised of ~~such~~ the opportunity in a conspicuous clause; ~~but however, no such the~~
14 limitation is not effective with respect to the carrier's liability for conversion to its own use.

15 (c) ~~(3)~~ Reasonable provisions as to the time and manner of presenting claims and
16 instituting actions based on the shipment may be included in a bill of lading [~~or tariff~~] [or
17 {public} {published} tariff]. [These provisions apply to claims based on the carrier's accepted
18 liability under subsection (a) and to claims based on the warehouse's conversion to its own use.]
19 [These provisions do not apply to claims based on the warehouse's conversion to its own use.]

20 ***Reporter's Note***

21 *Is the addition of conspicuous necessary?*
22 *The bracketed language in the first sentence of subsection (c): is a reference to tariffs*
23 *desired or necessary? The reference was kept for warehouses in Section 7-204(c).*

1 *The reporter added the words “loss, injury, or delay” to subsection (b) for consistency*
2 *with Section 7-403(a)(2). These words were also added to Section 7-204. See the reporter’s*
3 *note to Section 7-204.*

4 *The alternate second sentences in subsection (c) raise the same policy issue raised in*
5 *Section 7-204. See the reporter’s note about these alternatives to that section.*
6

7 **PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL**

8 **OBLIGATIONS**

9 **SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT** 10 **OF ISSUER.**

11 The obligations imposed by this ~~Article~~ article on an issuer apply to a document of title
12 regardless of the fact that;

13 (a) the document may not comply with the requirements of this ~~Article~~ article or of any
14 other law or regulation regarding its issue, form or content; ~~or~~

15 (b) the issuer may have violated laws regulating the conduct of ~~his~~ its business; ~~or~~

16 (c) the goods covered by the document were owned by the bailee at the time the
17 document was issued; or

18 (d) the person issuing the document does not come within the definition of
19 warehouseman if it purports to be a warehouse receipt.

20 ***Reporter’s Note***

21 *Compare Section 7-103 and Section 10-103. The Committee should also think of the*
22 *impact of Section 7-401(d) upon the discussion about the scope of Article 7. Although this*
23 *section is about the obligations of issuers, the fact that Section 7-401 makes the form or content*
24 *irrelevant to an issuer’s obligations is consistent with the reporter’s de-emphasis of form in the*
25 *comments to Section 7-202, 7-209, and 7-307 when issuers desire to assert a lien against bailed*
26 *goods.*

27 **SECTION 7-402. DUPLICATE RECEIPT OR BILL; OVERISSUE.**

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. ~~But the~~ The issuer is liable for damages caused by ~~his~~ its overissue or failure to identify a duplicate document ~~as such~~ by a conspicuous notation ~~on its~~ face.

Reporter's Note

"On its face" has been deleted as incompatible with electronic documents. Conversion of a document from one medium to another under section 7-105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the original document is not surrendered or the notation that it is a substitute document is not made as required by section 7-105, then the purported substitute document should be treated as a duplicate under this section.

**SECTION 7-403. OBLIGATION OF WAREHOUSEMAN OR CARRIER TO DELIVER;
EXCUSE.**

(a) ~~(1)~~ The bailee must deliver the goods to a person entitled under the document ~~who~~ that complies with subsections ~~(2)~~ (b) and ~~(3)~~ (c), unless and to the extent that the bailee establishes any of the following:

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

(2) ~~(b)~~ damage to or delay, loss or destruction of the goods for which the bailee is not liable ~~[, but the burden of establishing negligence in such cases is on the person entitled under the document];~~

(3) ~~(c)~~ previous sale or other disposition of the goods in lawful enforcement of a

1 lien or on warehouseman's lawful termination of storage;

2 ~~(4) (d)~~ the exercise by a seller of ~~its~~ his right to stop delivery pursuant to the
3 provisions of ~~the Article on Sales~~ (Section 2-705);

4 ~~(5) (e)~~ a diversion, reconsignment or other disposition pursuant to the provisions
5 of ~~this Article~~ (Section 7-303) ~~or tariff regulating such right~~;

6 ~~(6) (f)~~ release, satisfaction or any other fact affording a personal defense against
7 the claimant;

8 ~~(7) (g)~~ any other lawful excuse.

9 ~~(b) (2)~~ A person claiming goods covered by a document of title must satisfy the bailee's
10 lien ~~where~~ if the bailee so requests or ~~where~~ if the bailee is prohibited by law from delivering the
11 goods until the charges are paid.

12 ~~(c) (3)~~ Unless the person claiming the goods is one against ~~whom~~ which the document
13 confers no right under Section 7-503(1), a person claiming under a document ~~he~~ must surrender
14 possession or control of ~~for cancellation or notation of partial deliveries~~ any outstanding
15 negotiable document covering the goods for cancellation or indication of partial deliveries, and
16 the bailee must cancel the document or conspicuously ~~note~~ indicate the partial delivery ~~thereon~~
17 within the document or be liable to any person to ~~whom~~ which the document is duly negotiated.

18 ~~(d) (4)~~ "Person entitled under the document" means holder in the case of a negotiable
19 document, or the person to ~~whom~~ which delivery of the goods is to be made by the terms of or
20 pursuant to ~~written~~ instructions in a record under a non-negotiable document.

21 Note: The brackets in (1)(b) indicate that State enactments may differ on this point without
22 serious damage to the principle of uniformity.

1 **Reporter's Note**

2 *At the January 2002 meeting, the committee decided to eliminate the previously*
3 *bracketed language in subsection (a)(2).*

4 *This section will need to be considered when the priority issues of lien of a warehouse or*
5 *carrier is discussed. In the January 2002 draft, the reporter bracketed an additional sentence to*
6 *subsection (b) which read as follows: "When the person claiming the goods refuses to pay the*
7 *bailee's lien, the bailee may lawfully refuse to deliver to that person." Committee members*
8 *considered the language redundant and asked the report to provide a short note in the April*
9 *draft explaining this redundant language. The reporter looked anew at the cases – e.g. Nikolas*
10 *v. Patrick, 215 N.W.2d 715 (Mich. App. 1974) and Republic of Austria v. H. G. Ollendorff, Inc.,*
11 *7 UCC Rptr. Serv. 535 (N.Y. Supreme Court 1970) . Both cases discussed whether a warehouse*
12 *lien was effective against a true owner whose goods were bailed by a third party. In light of the*
13 *fact pattern of these cases, the bracketed sentence is redundant because the Committee has*
14 *addressed the issue of against whom the lien is effective in Section 7-209 and 7-307. If the bailee*
15 *desires to maintain possession of the goods until the effectiveness of the lien against the person*
16 *claiming the goods is settled, the bailee may be entitled to use the interpleader provision of*
17 *Section 7-603 or to sue directly under subsection (b) demanding payment of the lien before*
18 *delivering the goods to the claimant. The reporter will cross-reference the interpleader section*
19 *in the comments to this section.*

20 *The term "person entitled under the document" is being used throughout the draft. The*
21 *comments will indicate that subsection (a)(2) is only stating the common law. Under NCCUSL*
22 *style rules, the definition should be relocated to the definition section, 7-102.*
23

24 **SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO**
25 **RECEIPT OR BILL.**

26 A bailee ~~who~~ that in good faith ~~including observance of reasonable commercial standards~~ has
27 received goods and delivered or otherwise disposed of them according to the terms of the
28 document of title or pursuant to this ~~Article~~ article is not liable therefor. This rule applies even
29 though the person from ~~whom he~~ which the bailee received the goods had no authority to procure
30 the document or to dispose of the goods and even though the person to ~~whom he~~ which the bailee
31 delivered the goods had no authority to receive them.

32 **Reporter's Note**

The changes reflect style changes and the adoption of the expanded meaning of good faith, see section 7-102. The comments should inform the bailee of its option to use Section 7-603 Conflicting Claims; Interpleader.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE NEGOTIATION".

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

(1) If the document's original terms run ~~running~~ to the order of a named person, it is negotiated by ~~his~~ the named person's indorsement and delivery. After the named person's ~~his~~ indorsement in blank or to bearer any person can negotiate it by delivery alone;

(2)(a) ~~A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.~~ If the document's original terms run to bearer, it is negotiated by delivery alone;

(3) ~~(b) When a document running~~ If the document's original terms run to the order of a named person and it is delivered to him the named person, the effect is the same as if the document had been negotiated;

(4) ~~(3)~~ Negotiation of a ~~negotiable document of title~~ the document after it has been indorsed to a ~~specified~~ named person requires indorsement by the named person ~~special indorsee~~ as well as delivery;

(5) (4) A negotiable document of title is "duly negotiated" when if it is negotiated in the manner stated in this subsection to a holder ~~who~~ that purchases it in good faith without

notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

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

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

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

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

~~(5)~~ (c) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

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

Reporter's Note

This section provides the foundation for treatment of a negotiable electronic document of

1 *title and allows due negotiation of that document using the concept of control to substitute for*
2 *physical transfer of possession. Note the definition of delivery as revised in the proposed*
3 *conforming amendments to Article 1. The idea of control is set forth in section 7-106 and is*
4 *drawn from UETA § 16. Rights acquired under a non-negotiable electronic document are*
5 *addressed in 7-504.*

6 *Query: Compare proposed Section 7-104(c) with this section regarding the ability of a*
7 *person to designate a document as non-negotiable.*

8

9 **SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.**

10 (a) ~~(1)~~ Subject to ~~the following section~~ Section 7-503 and to the provisions of Section
11 7-205 on fungible goods, a holder to ~~whom~~ which a negotiable document ~~of title~~ has been duly
12 negotiated acquires thereby:

13 (1) ~~(a)~~ title to the document;

14 (2) ~~(b)~~ title to the goods;

15 (3) ~~(c)~~ all rights accruing under the law of agency or estoppel, including rights to
16 goods delivered to the bailee after the document was issued; and

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

23 (b) ~~(2)~~ Subject to ~~the following section~~ Section 7-503, title and rights ~~so~~ acquired by due
24 negotiation are not defeated by any stoppage of the goods represented by the document or by
25 surrender of ~~such~~ the goods by the bailee, and are not impaired even ~~though~~ if:

_____ (1) the due negotiation or any prior due negotiation constituted a breach of duty;

or

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

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

Reporter's Note

As Section 7-502 only applies to negotiable documents and due negotiation, its language has been changed to clarify this fact. It applies to both tangible and electronic negotiable documents.

SECTION 7-503. DOCUMENT ~~OF TITLE~~ TO GOODS DEFEATED IN CERTAIN CASES.

(a) ~~(1)~~ A negotiable document of title confers no right in goods against a person ~~who~~ that before issuance of the document had a legal interest or a perfected security interest in ~~them~~ the goods and ~~who~~ that neither:

(1) ~~(a)~~ delivered or entrusted ~~them~~ the goods or any document ~~of title~~ covering ~~them~~ the goods to the bailor or ~~his~~ the bailor's nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under ~~this Article~~ (Section 7-403) or with power of disposition under ~~this Act~~ (Sections 2-403 and 9-320) or other statute or rule of law; nor

(2) ~~(b)~~ acquiesced in the procurement by the bailor or ~~his~~ its nominee of any document ~~of title~~.

(b) ~~(2)~~ Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a title~~ Title may be defeated under ~~the next section~~ Section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) ~~(3)~~ Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to ~~whom~~ which a bill issued by the freight forwarder is duly negotiated; ~~but~~ however delivery by the carrier in accordance with Part 4 of this ~~Article~~ article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Reporter's Note

This section applies to both tangible and electronic documents of title.

**SECTION 7-504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE NEGOTIATION;
EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.**

(a) (1) A transferee of a document, whether negotiable or non-negotiable, to ~~whom~~ which the document has been delivered but not duly negotiated, acquires the title and rights which ~~his~~ its transferor had or had actual authority to convey.

(b) ~~(2)~~ In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(1) ~~(a)~~ by those creditors of the transferor who that could treat the sale as void under Section 2-402; or

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

(3) ~~(c)~~ as against the bailee by good faith dealings of the bailee with the transferor.

(c) (3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if ~~they~~ the goods have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) ~~(4)~~ Delivery of the goods pursuant to a non-negotiable document may be stopped by a seller under Section 2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

Reporter's Note

Notice the revised definition of delivery in Article 1 as it applies to documents. That definition incorporates the concept of control as the substitute for possession of the document. This section applies to both tangible and electronic documents of title. Changes to this section are for style only.

SECTION 7-505. INDORSER NOT A GUARANTOR FOR OTHER PARTIES.

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

(b) Purported indorsements of an electronic document have no effect on any person's
rights or liabilities under the document.

Reporter's Note

This rule is negating any inference that by indorsing the document, the indorser is liable for the bailee's obligations or for previous indorser's obligations. Because indorsement is a concept that applies only to tangible documents, having a similar rule for electronic documents is not necessary. Electronic documents will not contain any indorsements. Subsection (b) is

1 suggested in order to make that clear. At least one of the reporters doesn't think subsection (b)
2 is necessary and that the issue can be covered in the comments.

3
4 **SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL**
5 **INDORSEMENT.**

6 (a) The transferee of a negotiable tangible document ~~of title~~ has a specifically enforceable
7 right to have its ~~his~~ transferor supply any necessary indorsement but the transfer becomes a
8 negotiation only as of the time the indorsement is supplied.

9 (b) Indorsement of an electronic document is not required to negotiate the document.

10 ***Reporter's Note***

11 *Indorsement is a concept associated only with tangible negotiable documents. Electronic*
12 *documents will not be indorsed so there need not be any enforceable right to compel the*
13 *indorsement or to link negotiation as of the time of the indorsement being supplied. Subsection*
14 *(b) is probably not necessary given 7-501(b)(1).*

15
16 **SECTION 7-507. WARRANTIES ON NEGOTIATION OR ~~TRANSFER~~ DELIVERY OF**
17 **RECEIPT OR BILL.**

18 ~~Where~~ If a person negotiates or ~~transfers~~ delivers a document ~~of title~~ for value otherwise
19 than as a mere intermediary under Section 7-508 ~~the next following section~~, then unless
20 otherwise agreed the transferor ~~he~~ warrants to ~~his~~ its immediate purchaser only in addition to any
21 warranty made in selling [or leasing] the goods:

22 (a) that the document is genuine; ~~and~~

23 (b) that the transferor ~~he~~ has no knowledge of any fact which would impair its validity or
24 worth; and

1 (c) that ~~his~~ the negotiation or ~~transfer~~ delivery is rightful and fully effective with respect
2 to the title to the document and the goods it represents.

3 ***Reporter's Note***

4 *Delivery is substituted for transfer as delivery is a defined term and transfer is not. In*
5 *addition, delivery connotes "voluntary" transfer of possession or control. The warranty should*
6 *arise only in connection with a voluntary action.*

7 *At the Committee's suggestion, the reporter has added the bracketed words in the*
8 *opening sentence to facilitate discussion as to whether documents of title could ever be used with*
9 *the leasing of goods. If documents of title are used with the leasing of goods, warranties should*
10 *also arise under Article 2A just as warranties presently arise under Article 2. The reporter*
11 *knows of one case, Bank of New York v. Amoco Oil Co., 35 F.3d 643 (2nd Cir. 1994), in which the*
12 *lessor (owner) of goods obtained a negotiable document of title from the lessee relating to the*
13 *leased goods. The lessor negotiated the document to its lender who, when the lessor went*
14 *bankrupt, demanded re-delivery of the leased goods by presenting the negotiable document to the*
15 *lessee. It is not clear that Section 7-507 would apply to the Amoco Oil Co. case. However, the*
16 *reporter can imagine a documentary transaction in which the goods are being leased by the*
17 *consignee rather than bought by the consignee.*
18

19 **SECTION 7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS.**

20 A collecting bank or other intermediary known to be entrusted with documents on behalf
21 of another or with collection of a draft or other claim against delivery of documents warrants by
22 ~~such~~ the delivery of the documents only its own good faith and authority. This rule applies even
23 though the intermediary has purchased or made advances against the claim or draft to be
24 collected.

25 ***Reporter's Note***

26 *The reporter will indicate in the comments -- either in this section or in 7-102(c) -- the*
27 *cross references to Article 4 that are needed to clarify the terms used in Section 7-508.*
28

29 **SECTION 7-509. RECEIPT OR BILL: WHEN ADEQUATE COMPLIANCE WITH**

1 **COMMERCIAL CONTRACT.**

2 The question whether a document is adequate to fulfill the obligations of a contract for
3 sale, [contract for lease], or the conditions of a letter of credit is governed by ~~the Articles on~~
4 ~~Sales (Article 2)~~ [Article 2A] and ~~on Letters of Credit (Article 5)~~.

5 ***Reporter's Note***

6 *The bracketed language about leases and Article 2A interrelates to the bracketed*
7 *language in Section 7-507 and the accompanying reporter's note. Similar issues exist in this*
8 *section. Other changes are for style only.*

9
10 **PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS**
11 **PROVISIONS**

12 **SECTION 7-601. LOST, STOLEN OR DESTROYED AND MISSING DOCUMENTS.**

13 (a) ~~(1)~~ If a document has been lost, stolen or destroyed, a court may order delivery of the
14 goods or issuance of a substitute document and the bailee may without liability to any person
15 comply with ~~such~~ the order. If the document was negotiable the claimant must post security
16 approved by the court to indemnify any person ~~who~~ that may suffer loss as a result of
17 non-surrender of possession or control of the document. If the document was not negotiable,
18 ~~such~~ security may be required at the discretion of the court. The court may also in its discretion
19 order payment of the bailee's reasonable costs and counsel fees.

20 (b) ~~(2)~~ A bailee ~~who~~ that without court order delivers goods to a person claiming under a
21 missing negotiable document is liable to any person injured thereby, and if the delivery is not in
22 good faith becomes liable for conversion. Delivery in good faith is not conversion ~~if made in~~
23 ~~accordance with a filed classification or tariff or, where no classification or tariff is filed, if the~~
24 claimant posts security with the bailee in an amount at least double the value of the goods at the

1 time of posting to indemnify any person injured by the delivery who files a notice of claim within
2 one year after the delivery.

3 ***Reporter's Note***

4 *Changes are for style and to accommodate electronic documents. The deletion of the*
5 *tariff language accords with the committee's decision based upon the elimination of government*
6 *mandated tariffs. Changes in the heading are to reflect more accurately the language in the*
7 *section itself and the language of Section 7-402 Cross-reference should be made to Section 7-*
8 *402 in the comments to this section.*

9 *The Committee asked the reporter to research whether Section 7-601 had generated*
10 *significant litigation and, if so, to consider using Section 3-309 as a model for missing*
11 *documents to avoid further litigation. The reporter found only two cases and neither*
12 *significantly questioned Section 7-601. The Committee in January 2002 had decided that if no*
13 *significant litigation existed, Section 7-601 should be left as presently written.*

14 *Query: should the duplicate issued by Court order carry a legend that it is a duplicate?*
15 *See Section 7-402.*

16 **SECTION 7-602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE**
17 **DOCUMENT.**

18 ~~Except where~~ Unless the document was originally issued upon delivery of the goods by a
19 person ~~who~~ that had no power to dispose of them, no lien attaches by virtue of any judicial
20 process to goods in the possession of a bailee for which a negotiable document of title is
21 outstanding unless possession or control of the document ~~be~~ is first surrendered to the bailee or
22 its negotiation enjoined, ~~and the~~ . The bailee ~~shall~~ may not be compelled to deliver the goods
23 pursuant to process until possession or control of the document is surrendered to the bailee ~~him~~
24 or ~~to~~ impounded by the court. ~~One who purchases~~ A purchaser of the document for value
25 without notice of the process or injunction takes free of the lien imposed by judicial process.

26 ***Reporter's Note***

27 *Changes are for style only.*

1 **SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.**

2 (a) If the bailee reasonably believes that more than one person claims or will claim title or
3 possession of the goods, the bailee is excused from delivery until the bailee ~~he~~ has had a
4 reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all
5 claimants to interplead and may compel such interpleader, either in defending an action for
6 non-delivery of the goods, or by original action, whichever is appropriate.

7 ***Reporter's Note***

8 *Subsection (a) is redrafted to overrule case-law holding that the bailee may not use*
9 *Section 7-603 until more than one claimant has made claims directly to the bailee.*

10 *Proposed subsection (b) was new and bracketed for further discussion. It was drafted to*
11 *protect bailees who comply with a court order from being sued for misdelivery or refusal to*
12 *deliver by claimants who lost the lawsuit. Subsection (b) makes explicit what is likely implicit in*
13 *Section 7-403. As proposed subsection (b) read as follows: [(b) If a court order resolves*
14 *conflicting claims to a document of title or the goods covered by it, a bailee may without liability*
15 *to any person comply with the court order.] The reporter withdraws subsection (b). The reporter*
16 *believes that comments in Section 7-403 and Section 7-603 can clarify the appropriate*
17 *relationship between Section 7-403(g) "other lawful excuses" for not delivering and Section 7-*
18 *603 interpleader. See, Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc., 162*
19 *Ga. App. 741, 293 S.E.2d 30 (1982) (Storage Company sued for misdelivery after complying with*
20 *Bankruptcy Court order to deliver goods to bankruptcy debtor. The plaintiff against the Storage*
21 *Company was a person who had filed a garnishment action against the bankruptcy debtor prior*
22 *to the bankruptcy filing. Judgment for Storage Co. using Sections 7-403(g) and 7-603.)*

23 *The state or federal process of interpleader otherwise applies to the bailee's action for*
24 *interpleader allowed by this section. Reference will be made to these state and federal statutes*
25 *in the comments to indicate that, for example, these state and federal interpleader statutes may*
26 *permit a bailee to protect its lien in the interpleader action.*

27
28 **Section from Article 10 Effective Date and Repealer that interrelates to Article 7**

29 **SECTION 10-104. LAWS NOT REPEALED**

30 ~~[1] The Article on Documents of Title (Article 7) does not repeal or modify any laws~~
31 prescribing the form or contents of documents of title or the services or facilities to be afforded

1 by bailees, or otherwise regulating bailee's businesses in respects not specifically dealt with
2 herein; but the fact that such laws are violated does not affect the status of a document of title
3 which otherwise complies with the definition of a document of title (~~Section 1-201~~).

4 ***Reporter's notes***

5 *Should this section be moved to Section 7-103 as a subsection (2)? If moved, its official*
6 *comments would accompany the text. If not moved, the cross-references for Section 7-103*
7 *probably should refer to this Section 10-104.*

8 *Does the language of this section and Section 7-103 need slight tweaking to insure that*
9 *the courts interpret these sections as complementary rather than contradictory? See also Section*
10 *7-401. This section needs to be considered in light of the transition provisions that will be*
11 *drafted.*
12

13 **Conforming amendments to other Articles of the UCC**

14 **Sections from old Article 1**

15 **SECTION 1-201. GENERAL DEFINITIONS.**

16 Subject to additional definitions contained in the subsequent Articles of this Act which are
17 applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this
18 Act:

19 * * * *

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

23 (6) "Bill of lading" means a document of title evidencing the receipt of goods for
24 shipment issued by a person engaged in the business of transporting or forwarding goods, ~~and~~
25 ~~includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading~~

1 ~~does for marine or rail transportation, and includes an air consignment note or air waybill.~~

2 * * * *

3 ~~(10) “Conspicuous”: A term or clause is conspicuous when it is so written that a~~
4 ~~reasonable person against whom it is to operate ought to have noticed it. A printed heading in~~
5 ~~capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of~~
6 ~~a form is “conspicuous” if it is in larger or other contrasting type or color. But in a telegram any~~
7 ~~stated term is “conspicuous”. Whether a term or clause is “conspicuous” or not is for decision by~~
8 ~~the court.~~

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

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

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

18 * * * *

19 (14) “Delivery” with respect to an electronic document of title means voluntary transfer
20 of control and with respect to instruments, tangible documents of title, chattel paper, or
21 certificated securities means voluntary transfer of possession.

22 ~~(15) “Document of title” includes bill of lading, dock warrant, dock receipt, warehouse~~

1 ~~receipt or order for the delivery of goods, and also any other~~ means a record ~~document~~ which in
2 the regular course of business or financing is treated as adequately evidencing that the person in
3 possession or control of the record ~~it~~ is entitled to receive, control, hold, and dispose of the
4 ~~record document~~ and the goods it the record covers and includes a bill of lading, transport
5 document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods. To be a
6 document of title, ~~a the record document~~ must purport to be issued by or addressed to a bailee
7 and purport to cover goods in the bailee's possession which are either identified or are fungible
8 portions of an identified mass. The term includes an electronic document of title or a tangible
9 document of title.

10
11 (15a) "Electronic document of title" means a document of title evidenced by a record
12 consisting of information stored in an electronic medium.

13 (15b) "Tangible document of title" means a document of title evidenced by a record
14 consisting of information that is inscribed on a tangible medium.

15 * * * *

16 (20) "Holder," with respect to a negotiable instrument, means the person in possession if
17 the instrument is payable to bearer or, in the case of an instrument payable to an identified
18 person, if the identified person is in possession. "Holder" with respect to a negotiable tangible
19 document of title means the person in possession of the document if the goods are deliverable to
20 bearer or to the order of the person in possession and with respect to a negotiable electronic
21 document of title means the person in control of the document.

22 * * * *

1 (25) Subject to subsection (27), a ~~A~~ person has “notice” of a fact if the person ~~when~~

2 (a) ~~he~~ has actual knowledge of it; ~~or~~

3 (b) ~~he~~ has received a notice or notification of it; or

4 (c) from all the facts and circumstances known to ~~him~~ the person at the time in
5 question, ~~he~~ has reason to know that it exists.

6 A person “knows” or has “knowledge” of a fact when the person ~~he~~ has actual knowledge of it.
7 “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to
8 reason to know. The time and circumstances under which a notice or notification may cease to
9 be effective are not determined by this Act.

10 (26) A person “notifies” or “gives” a notice or notification to another person by taking
11 such steps as may be reasonably required to inform the other person in ordinary course, whether
12 or not ~~such other~~ the other person actually comes to know of it. Subject to subsection (27), a ~~A~~
13 person “receives” a notice or notification when

14 (a) it comes to ~~his~~ that person’s attention; or

15 (b) it is duly delivered in a form reasonable under the circumstances at the place
16 of business through which the contract was made or at another location ~~any other place~~ held out
17 by that person ~~him~~ as the place for receipt of such communications.

18 (27) Notice, knowledge, or a notice or notification received by an organization is
19 effective for a particular transaction from the time when it is brought to the attention of the
20 individual conducting that transaction, and in any event, from the time when it would have been
21 brought to the individual’s ~~his~~ attention if the organization had exercised due diligence. An
22 organization exercises due diligence if it maintains reasonable routines for communicating

1 significant information to the person conducting the transaction and there is reasonable
2 compliance with the routines. Due diligence does not require an individual acting for the
3 organization to communicate information unless such communication is part of the individual's
4 his regular duties or the individual ~~unless he~~ has reason to know of the transaction and that the
5 transaction would be materially affected by the information.

6 * * * *

7 ~~(38) "Send" in connection with any writing or notice means to deposit in the mail or~~
8 ~~deliver for transmission by any other usual means of communication with postage or cost of~~
9 ~~transmission provided for and properly addressed and in the case of an instrument to an address~~
10 ~~specified thereon or otherwise agreed, or if there be none to any address reasonable under the~~
11 ~~circumstances. The receipt of any writing or notice within the time at which it would have~~
12 ~~arrived if properly sent has the effect of a proper signing.~~

13 (38) "Send" in connection with a writing, record, or notice means:

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

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

20 * * * *

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

1 *Reporter's Notes*

2 *The changes to the definitions in subsections (10), (25) through (27) and (38) conform*
3 *these definitions to those in Revised Article 1. The remaining definitions are altered in order to*
4 *accommodate electronic documents of title.*

5 **Sections from revised Article 1 (2001)**

6 **SECTION 1-201. GENERAL DEFINITIONS.**

7 * * *

8 (b) Subject to definitions contained in other articles of [the Uniform Commercial Code]
9 that apply to particular articles or parts thereof:

10 * * *

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

14 (6) "Bill of lading" means a document of title evidencing the receipt of goods for
15 shipment issued by a person engaged in the business of transporting or forwarding goods.

16 * * *

17 (14) "Delivery", with respect to an electronic document of title means voluntary
18 transfer of control and with respect to an instrument, a tangible document of title, or chattel
19 paper, means voluntary transfer of possession.

20 (15) "Document of title" ~~includes bill of lading, dock warrant, dock receipt,~~
21 ~~warehouse receipt or order for the delivery of goods, and also any other~~ means a record
22 ~~document~~ which in the regular course of business or financing is treated as adequately evidencing
23 that the person in possession or control of the record it is entitled to receive, control, hold, and

1 dispose of the record document and the goods it the record covers and includes a bill of lading,
2 transport document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods.
3 To be a document of title, a the record document must purport to be issued by or addressed to a
4 bailee and purport to cover goods in the bailee's possession which are either identified or are
5 fungible portions of an identified mass. The term includes an electronic document of title or a
6 tangible document of title.

7 (15a) "Electronic document of title" means a document of title evidenced by a
8 record consisting of information stored in an electronic medium.

9 (15b) "Tangible document of title" means a document of title evidenced by a
10 record consisting of information that is inscribed on a tangible medium.

11 * * *

12 (20) "Holder" means:

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

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

17 (C) a person in control of a negotiable electronic document of title.

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

20 ***Reporter's Note***

21 *Several definitions in Article 1 must be modified in order to allow for electronic*
22 *documents of title. Suggested amendments to those definitions are reflected above.*

23 *The amendments reflect reliance on the concept and definition of "record" as used in*

1 other UCC revisions. That definition is in revised Article 1 (1-201(b)(31) and provides:

2 “Record” means information that is inscribed on a tangible medium or that is
3 stored in an electronic or other medium and is retrievable in perceivable form.

4 The amendments also reflect reliance on dividing documents of title into electronic
5 documents of title and tangible documents of title following the model applied to chattel paper in
6 Revised Article 9. The definitions of electronic and tangible documents of title are new and are
7 borrowed from Revised Article 9 which used the concepts to deal with electronic chattel paper.
8 See Rev. 9 §§ 9-102(a)(31) and (a)(78). Unlike UETA § 16 on transferrable record, electronic
9 documents of title are not limited to documents that begin as electronic but may include
10 documents that originate in paper and are later converted to an electronic medium. See § 7-105
11 regarding the protections that must take place in order to be converted from one medium to the
12 other.

13 The words bearer and holder as used in Article 7 are used only in reference to negotiable
14 documents of title. Thus it makes sense to change the definitions to be limited to negotiable
15 documents. Control is a key concept in the redraft as it applies to electronic documents.

16 Delivery is a word that is used in connection with both negotiable and non negotiable
17 documents of title.

18
19 The following sections of the UCC mention the words document, documents, or
20 documentary referring to documents of title. After we have settled on an approach within Article
21 7 as it relates to electronic documents of title, these sections will be examined to determine
22 whether conforming amendments to these sections are necessary to incorporate that approach
23 across the UCC.

24 Article 2	4-503
25 2-401	4-504
26 2-503	
27 2-504	Article 5
28 2-505	5-102(a)(6), (10) and (12)
29 2-506	5-108
30 2-509	5-109
31 2-705	5-110
32	5-111
33 Article 2A	5-113
34 cross reference in 2A-103	5-114
35	5-118 (added by Rev. 9)
36 Article 4	
37 4-104 (definition of documentary draft)	
38 4-202	
39 4-204	
40 4-210	Revised 9
41 4-301	9-102(a)(30), (42), (44), and (77)
42 4-302	9-301
43 4-501	9-310

1	9-312	9-331
2	9-313	9-338
3	9-317	9-601
4	9-322	

5

6 **Proposed Effective Date and Transition Provisions**

7 **SECTION 7-701. EFFECTIVE DATE.**

8 This Act will become effective at 12:01 a.m. on _____, 200 .

9 **Reporter's Note**

10 There does not appear to be any need for transition rules under Article 7 in contrast to
11 Article 9. Article 7 seemingly can become effective in a prospective manner without causing any
12 transition problems. The Committee may desire to propose a uniform effective date, after
13 allowing sufficient time for state legislatures to enact revised Article 7.

14

15 **Proposed Scope Provision**

16 The Committee instructed the reporter to draft a proposed scope provision for
17 consideration at the April meeting after all other sections of revised Article 7 have been
18 discussed.

19 **SECTION 7-107. SCOPE OF ARTICLE 7.**

20 This article applies to commercial bailments for the care, custody and control of goods.
21 Commercial bailments often, but not always, involve the issuance of document of title. The
22 issuance of a document is sufficient by itself to bring the transaction within the scope of this
23 article. This article does not apply to consignments (bailments for sale) covered by Article 9 of

1 the Uniform Commercial Code.

2 **Reporter's Note**

3 *The reporter asks the Committee to read anew the Memorandum on Scope that was*
4 *distributed to the Committee in September 2001. The memorandum contains a fuller discussion*
5 *of the decisions the reporter made in drafting the proposed scope provision and the issues the*
6 *Committee should address in deciding to adopt or to reject a scope provision for Article 7.*

7 *As stated in the memorandum, the reporter's basic conclusion is that the present*
8 *approach of the courts to Article 7 scope issues – reliance on definitions and the overall context*
9 *of Article 7 – has been satisfactory. With one exception mention in the next paragraph, the*
10 *courts do not appear to be rendering confusing or contradictory opinions about the coverage of*
11 *Article 7.*

12 *The reporter highlights one issue – whether the self-storage industry involves commercial*
13 *bailments or landlord-tenant relationships. Compare Drake v. West Virginia Self-Storage, Inc.,*
14 *509 S.E.2d 21 (W. Va. 1998) (landlord-tenant relationship) with Gonzalez v. A-1 Self-Storage,*
15 *Inc., 41 UCC Rep. Serv. 2d. 1119 (N.J. Sup. Ct 2000) (commercial bailment). If the Committee*
16 *decides against a scope provision for Article 7, the reporter could discuss the self-storage*
17 *industry in the comments to the definitions in Section 7-102, setting forth the Committee's view*
18 *about self-storage.*

21 **Reporter's Query**

23 Article 7 does not address one topic that the OAS Non-negotiable Through Bill of Lading
24 addresses – salvage. The CMI Draft Instrument on Transport Law does not appear to address
25 salvage, though it does address undeliverable goods. A very quick search of databases reveals a
26 few domestic cases in which salvage has been an issue, primarily as part of the damage
27 calculation in contrast to an independent concept about ownership of the damaged goods. Does
28 the Committee desire that Article 7 contain a provision about salvage?