

DRAFT

FOR DISCUSSION ONLY

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

*Addressing Electronic Issues
WITH REPORTER'S NOTES*

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

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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1 surrounding text of the same size by symbols or other marks that call attention to the language.

2 * * *

3 (14) “Delivery”, with respect to an instrument, a tangible document of title, or chattel
4 paper, means voluntary transfer of possession and with respect to an electronic document of title
5 means a voluntary transfer of control.

6 (15) “Document of title” means a record or records which are a ~~includes~~ bill of lading,
7 dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, ~~and also~~ or any
8 other record or records document which in the regular course of business or financing ~~is~~ are
9 treated as adequately evidencing that the person in possession or control of the record or records
10 ~~it~~ is entitled to receive, control, hold, and dispose of the record or records document and the
11 goods it covers. To be a document of title, a the record or records document must purport to be
12 issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are
13 either identified or are fungible portions of an identified mass. A document of title includes an
14 electronic document of title and a tangible document of title.

15 (15a) “Electronic document of title” means a document of title evidenced by a record
16 or records consisting of information stored in an electronic medium and which the issuer of the
17 document expressly has agreed is an electronic document of title.

18 (15b) “Tangible document of title” means a document of title evidenced by a record
19 or records consisting of information that is inscribed on a tangible medium.

20 * * *

21 (20) “Holder” means:

22 (A) the person in possession of a negotiable instrument that is payable either to

1 bearer or to an identified person that is the person in possession; or

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

4 _____ (C) a person in control of a negotiable electronic document of title [if the goods
5 are deliverable either to bearer or to the order of {A NAMED PERSON} {the person in control}.

6 * * *

7 (39) “Signed” includes any symbol executed or adopted with present intention to
8 adopt or accept a writing.”

9 * * *

10 (45) “Warehouse receipt” means a record or records receipt issued by a person
11 engaged in the business of storing goods for hire.

12 (46) “Writing” includes printing, typewriting, or any other intentional reduction to
13 tangible form. “Written” has a corresponding meaning.

14
15 **SECTION 1-307. PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS.**

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

20 ***Reporter’s Note***

21 *The above sections are included for the use of the Drafting Committee. Several definitions in*
22 *Article 1 must be modified in order to allow for electronic documents of title. Suggested*
23 *amendments to those definitions are reflected above.*

1	2-505	5-109
2	2-506	5-110
3	2-509	5-111
4	2-705	5-113
5		5-114
6	<i>Article 2A</i>	5-118 (<i>added by Rev. 9</i>)
7	<i>cross reference in 2A-103</i>	
8		
9	<i>Article 4</i>	
10	<i>4-104 (definition of documentary draft)</i>	
11	4-202	<i>Revised 9</i>
12	4-204	9-102(a)(30), (42), (44), and (77)
13	4-210	9-301
14	4-301	9-310
15	4-302	9-312
16	4-501	9-313
17	4-503	9-317
18	4-504	9-322
19	<i>Article 5</i>	9-331
20	5-102(a)(6), (10) and (12)	9-338
21	5-108	9-601
22		

1 **UNIFORM COMMERCIAL CODE**

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

3 **DOCUMENTS OF TITLE**

4 ***Prefatory Note***

5 *This draft is designed to address issues of medium neutrality and electronic documents of*
6 *title and incorporates changes made after the October 2001 drafting committee meeting. To the*
7 *extent a section did not appear to be affected by these issues, the section was included but no*
8 *changes were made to the language.*

9
10 **PART 1. GENERAL**

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

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

14 (1) In this Article, unless the context otherwise requires:

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

17 (b) "Consignee" means the person named in a bill to whom or to whose order the bill
18 promises delivery.

19 (c) "Consignor" means the person named in a bill as the person from whom the goods
20 have been received for shipment.

21 (d) "Delivery order" means a record which contains an ~~written~~ order to deliver goods
22 directed to a warehouseman, carrier or other person who in the ordinary course of business issues
23 warehouse receipts or bills of lading.

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

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

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

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

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

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

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

13 or process.

14 (yy) "Carrier" is a person engaged in the business of transporting goods for hire. The
15 term "Carrier" includes Freight Forwarders.

16 (2) Other definitions applying to this Article or to specified Parts thereof, and the sections
17 in which they appear are:

18 "Duly negotiate". Section 7-501.

19 "Control". Section 7-501A.

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

21 (3) Definitions in other Articles applying to this Article and the sections in which they
22 appear are:

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

2 "Overseas". Section 2-323.

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

4 (4) In addition Article 1 contains general definitions and principles of construction and
5 interpretation applicable throughout this Article.

6 ***Reporter’s Note***

7 *The definition of delivery order is revised to make it medium neutral. The definition of*
8 *document incorporates the definitions from Article 1, including the definitions of electronic and*
9 *tangible documents of title. The definition of sign is copied from Revised Article 2. UETA § 2*
10 *uses the term “electronic signature” which is defined as “an electronic sound, symbol, or*
11 *process attached to or logically associated with a record and executed or adopted by a person*
12 *with the intent to sign the record.” At this time, the definition of control is contained in a new*
13 *section 7-501A. It may be appropriate to move that definition to this section.*

14 *The term “warehouseman” is shorted to “warehouse” for gender neutrality reasons.*

15 *THE TERM “CARRIER” IS A NEW DEFINITION ADDED PER COMMITTEE DECISION MARCH 2001.*
16 *FREIGHT FORWARDERS ARE ALSO CARRIERS IN THE SURFACE TRANSPORTATION INDUSTRY AND ARE*
17 *SPECIFICALLY INCLUDED WITHIN THE TERM “CARRIER.”*

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

23 To the extent that any treaty or statute of the United States, regulatory statute of this State or
24 public tariff, classification or regulation filed or issued pursuant thereto is applicable, the
25 provisions of this Article are subject thereto.

26 ***Reporter’s Notes***

27
28 *This provision applies to tariffs that are publically mandated. Self published tariffs are not*
29 *within Article 7.*

30
31

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

4 *Reporter's Notes*

5 This deletion is based upon discussion at the October 2001 meeting. NO COURT HAS CITED
6 SECTION 7-105 AS A SUBSTANTIVE PROVISION IMPORTANT FOR THE DECISION.
7

8
9 **PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

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

12 (1) A warehouse receipt may only be issued by ~~any~~ warehouseman.

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

17 *Reporter's Notes*

18 *The deletions are to achieve gender neutrality and to clarify that the storage under bond is*
19 *when a statute requires the storage to be under bond. The term "government bond" is an*
20 *inaccurate descriptor of what the statute provides.*

21
22 *QUERY: SHOULD THIS SECTION HAVE A SUBSECTION (3) REFERRING TO DELIVERY ORDERS*
23 *DEFINED IN SECTION 7-102(D)? OR WOULD A CROSS-REFERENCE TO SECTION 7-102(D) IN THE*
24 *OFFICIAL COMMENTS BE SUFFICIENT?*
25

26
27
28 **SECTION 7-202. FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS;**

1 **OPTIONAL TERMS.**

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

3 (2) Unless a warehouse receipt expressly states ~~embodies within its written or printed~~
4 ~~terms~~ each of the following, the warehouseman is liable for damages caused to the person injured
5 by the omission ~~to a person injured thereby~~:

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

7 (b) the date of issue of the receipt;

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

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

11 (e) the rate of storage and handling charges, except that where goods are stored under
12 a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

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

14 (g) the authorized signature of the warehouseman, ~~which may be made by his~~
15 ~~authorized agent~~;

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

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

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

4 ***Reporter's Note***

5 *This section is revised to make reference to the warehouse receipt in a medium neutral*
6 *manner. The idea that these terms must be expressly stated in the warehouse receipt allows for a*
7 *number of records collectively to be a warehouse receipt. See definition of warehouse receipt in*
8 *Article 1. The idea of an identification code is a substitute for a "consecutive number" in order*
9 *to accommodate electronic documents. Changes are also made to implement gender neutrality.*
10

11
12 **SECTION 7-203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.**

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

21 ***Reporter's Note***

22 *Even though no changes have been suggested to the text, the Committee should read this*
23 *section with electronic documents of title in mind as to the requirement of "conspicuous." Is the*
24 *definition of conspicuous in Revised Article 1 adequate for this purpose?*
25

26 *THE COMMITTEE SUGGESTED IN OCTOBER 2001 THAT SECTION 7-201 BE COMBINED WITH*
27 *SECTION 7-301. THE REPORTER DID NOT IMPLEMENT THIS SUGGESTION BECAUSE THE*

1 ORGANIZATIONAL STRUCTURE OF ARTICLE 7 SEPARATES WAREHOUSE RECEIPTS (AND ALL OTHER
2 DOCUMENTS OF TITLE) IN PART II FROM BILLS OF LADING IN PART III. THE REPORTER PROPOSES THAT
3 THE COMMITTEE CONTINUE THE PRESENT ORGANIZATIONAL STRUCTURE OF ARTICLE 7. SECTION 7-
4 201 APPLIES TO WAREHOUSE RECEIPTS AND ALL OTHER DOCUMENTS OF TITLE.
5

6 THE WORDS "GOOD FAITH" IN SECTION 7-201 MEAN "HONESTY IN FACT." IN ACCORDANCE WITH
7 THE COMMITTEE REQUEST IN OCTOBER 2001, THROUGHOUT THIS DRAFT THE REPORTER HAS
8 ATTEMPTED TO DISTINGUISH BETWEEN PURCHASERS IN GOOD FAITH WHO MUST ACT WITH HONESTY IN
9 FACT AND WAREHOUSES AND CARRIERS WHO MUST ACT WITH GOOD FAITH INCLUDING THE
10 OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING. WAREHOUSES AND
11 CARRIERS, AS MERCHANTS, CAN BE EXPECTED TO ABIDE BY THE EXPANDED DEFINITION OF GOOD
12 FAITH THAT APPEARS IN THE OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE.
13
14

15 **SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF**
16 **WAREHOUSEMAN'S LIABILITY.**

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

21 (2) Except as otherwise provided in subsection (5), damages may be limited by a term in
22 the warehouse receipt or storage agreement limiting the amount of liability in case of loss or
23 ~~damage, and setting forth a specific liability per article or item, or value per unit of weight,~~
24 beyond which the warehouseman shall not be liable; provided, however, that such liability may
25 on ~~written~~ request of the bailor in a record at the time of signing such storage agreement or
26 within a reasonable time after receipt of the warehouse receipt be increased on part or all of the
27 goods thereunder, in which event increased rates may be charged based on such increased
28 valuation, but that no such increase shall be permitted contrary to ~~a lawful limitation of liability~~

1 ~~contained in~~ the warehouseman's public tariff, if any. No such limitation is effective with respect
2 to the warehouseman's liability for conversion to his its own use.

3 (3) Reasonable provisions as to the time and manner of presenting claims and instituting
4 actions based on the bailment may be included in the warehouse receipt, the storage agreement,
5 or public tariff. [These provisions apply to claims based on the warehouse's accepted liability
6 under subsection (1) and to claims on the warehouse's conversion.]

7 (4) This section does not impair or repeal ...

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

11 [(5) As between a warehouse and a consumer WHO DOES NOT AGREE TO PAY STORAGE
12 RATES BASED ON FULL VALUE LIABILITY FOR THE WAREHOUSE, damages may be limited as
13 allowed in subsection (2) but only if:

14 _____ (a) the limitation on amount of liability is conspicuous in the storage agreement or
15 warehouse receipt; and

16 _____ (b) the consumer has agreed to the limitation on the amount of liability by so
17 indicating {in a record} {on the storage agreement or warehouse receipt} and by accepting or
18 insuring against the risk of the amount of loss above the limitation.]

19 ***Reporter's Notes***

20 *The changes that should be noted for purpose of electronic documents is that the "written"*
21 *request by the bailor to increase the bailee's liability can be made in a record. The other*
22 *changes are based upon the discussion at the last Drafting Committee meeting. Note that the*
23 *additional sentence in subsection (3) and the additional subsection (5) are bracketed for further*
24 *study and discussion and do not reflect a decision by the Drafting Committee to the additions. In*

1 subsection (5), having the customer indicate “on” the warehouse receipt or storage agreement
2 that the customer has agreed to the limitation of liability may not be workable in the electronic
3 environment, thus the bracketed alternatives within subsection (5) above.
4

5 *IN BRACKETED SUBSECTION (5), THE WORD “CONSUMER” SHOULD HAVE THE SAME MEANING AS*
6 *GIVEN IN ARTICLE 9 SECTION 102(A)(25) – A PERSON WHO ENTERED THE STORAGE RELATIONSHIP*
7 *PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.*
8
9

10
11 **SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN**

12 **CERTAIN CASES.** A buyer in the ordinary course of business of fungible goods sold and
13 delivered by a warehouseman ~~man who~~ which is also in the business of buying and selling such goods
14 takes free of any claim under a negotiable warehouse receipt even though it has been duly
15 negotiated.

16 ***Reporter’s Note***

17 *The concept of due negotiation involves the idea of possessing the document if it is tangible or*
18 *control of the document if electronic. See 7-501.*
19

20
21
22 **SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSEMAN'S**
23 **OPTION.**

24 (1) A warehouseman may on notifying the person on whose account the goods are held
25 and any other person known to claim an interest in the goods require payment of any charges and
26 removal of the goods from the warehouse at the termination of the period of storage fixed by the
27 document, or, if no period is fixed, within a stated period not less than thirty days after the
28 notification. If the goods are not removed before the date specified in the notification, the

1 warehouseman may sell them in accordance with the provisions of the section on enforcement of
2 a warehouseman's lien (Section 7-210).

3 (2) If a warehouseman in good faith INCLUDING THE OBSERVANCE OF REASONABLE
4 COMMERCIAL STANDARDS OF FAIR DEALING believes that the goods are about to deteriorate or
5 decline in value to less than the amount of his its lien within the time prescribed in subsection (1)
6 and Section 7-210 for notification, advertisement and sale, the warehouseman may specify in the
7 notification any reasonable shorter time for removal of the goods and in case the goods are not
8 removed, may sell them at public sale held not less than one week after a single advertisement or
9 posting.

10 (3) If as a result of a quality or condition of the goods of which the warehouseman had
11 no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to
12 persons, the warehouseman may sell the goods at public or private sale without advertisement on
13 reasonable notification to all persons known to claim an interest in the goods. If the
14 warehouseman after a reasonable effort is unable to sell the goods ~~he~~ it may dispose of them in
15 any lawful manner and shall incur no liability by reason of such disposition.

16 (4) The warehouseman must deliver the goods to any person entitled to them under this
17 Article
18 upon due demand made at any time prior to sale or other disposition under this section.

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

22 ***Reporter's Note***

1 Under Revised Article 1, the notification of parties may be electronic notification. See
2 Section 1-202. To notify someone requires that the party notifying take “such steps as may be
3 reasonably required to inform the other in ordinary course, whether or not the other person
4 actually comes to know of it.” This would apply to both electronic and non electronic forms of
5 notice.
6
7
8

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

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

13 (2) Fungible goods so commingled are owned in common by the persons entitled thereto
14 and the warehouseman is severally liable to each owner for that owner's share. Where because of
15 overissue a mass of fungible goods is insufficient to meet all the receipts which the
16 warehouseman has issued against it, the persons entitled include all holders to whom overissued
17 receipts have been duly negotiated [OWNERS, WHETHER THROUGH NEGOTIABLE OR NON-NEGOTIABLE
18 DOCUMENTS, AND ALL WHO CLAIM FROM THE OWNERS UNDER SECTION 7-502 OR SECTION 7-504 OF
19 THIS ARTICLE.]

20 ***Reporter's Note***

21 *This section uses the concept of duly negotiated as defined in 7-501 and thus accommodate*
22 *electronic documents of title.*

23 *THE BRACKETED LANGUAGE IN SUBSECTION (2) IS PRESENTED FOR FURTHER DISCUSSION BY THE*
24 *DRAFTING COMMITTEE BASED ON THE REPORTER'S MEMO OF SEPTEMBER 18, 2001.*
25
26
27

28 **SECTION 7-208. ALTERED WAREHOUSE RECEIPTS.** Where a ~~blank provision~~ in a
29 negotiable warehouse receipt has been ~~filled in~~ included without authority, a purchaser for value

1 and without notice of the want of authority may treat the ~~insertion~~ inclusion as authorized. Any
2 other unauthorized alteration leaves any receipt enforceable against the issuer according to its
3 original tenor.

4 ***Reporter's Note***

5 *The additions and strikeouts above are designed to provide a medium neutral way of*
6 *referring to the inclusion of unauthorized additions to a negotiable warehouse receipt.*

7 *QUERY: SHOULD THE DISTINCTION BETWEEN AN UNAUTHORIZED INCLUSION (SENTENCE ONE) AND*
8 *AN UNAUTHORIZED ALTERATION (SENTENCE TWO) BE CLARIFIED? SECTION 7-208 HAS GENERATED NO*
9 *LITIGATION.*

10
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12
13 **SECTION 7-209. LIEN OF WAREHOUSEMAN.**

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

20 (b) If the person on whose account the goods are held is liable for like charges or
21 expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt
22 that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also
23 has a general lien against the goods covered by the warehouse receipt ~~him~~ for such charges and
24 expenses whether or not the other goods have been delivered by the warehouseman. [Subject to
25 subsection (1)(c), the warehouse may enforce the general lien against the subsequent person in
26 possession or control of the document.]

1 (c) ~~But~~ As against a person to whom a negotiable warehouse receipt is duly negotiated a
2 warehouseman's lien, specific or general, is limited to charges in an amount or at a rate specified
3 on the warehouse receipt or if no charges are so specified then to a reasonable charge for storage
4 of the goods covered by the warehouse receipt subsequent to the date of the warehouse receipt
5 [and for storage of the other goods covered by the general lien claimed in the warehouse receipt.]

6 (2) The warehouseman may also reserve a security interest against the bailor for a
7 maximum amount specified on the receipt for charges other than those specified in subsection
8 (1), such as for money advanced and interest. Such a security interest is governed by the Article
9 on Secured Transactions (Article 9).

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

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

19 [ALTERNATE SUBSECTION (3) THE WAREHOUSE'S SPECIFIC LIEN UNDER SUBSECTION
20 (1) IS EFFECTIVE AGAINST ALL PERSONS IF THE BAILOR WAS THE LEGAL POSSESSOR OF THE GOODS
21 AT THE TIME OF DEPOSIT. THE WAREHOUSE'S SPECIFIC LIEN TAKES PRIORITY OVER ALL
22 PERFECTED OR UNPERFECTED SECURITY INTERESTS IF THE BAILOR WAS THE LEGAL POSSESSOR OF

1 THE GOODS AT THE TIME OF DEPOSIT. THE WAREHOUSE'S GENERAL LIEN TAKES PRIORITY OVER
2 UNPERFECTED, BUT NOT PERFECTED, SECURITY INTERESTS IF THE BAILOR WAS THE LEGAL
3 POSSESSOR OF THE GOODS AT THE TIME OF DEPOSIT.]

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

6 ***Reporter's Note***

7 *Subsection (1) uses the term duly negotiated and incorporates electronic documents. 7-501.*
8 *The splitting of subsection (a) into three subsections, one dealing with the specific lien, one*
9 *dealing with the general lien, and a third subsection dealing with priority of the lien as against a*
10 *subsequent holder of the warehouse receipt is new and based upon discussions at the October*
11 *2001 meeting.*

12
13 *The deletion of subsection (3)(b) reflects discussion at the October 2001 meeting. ALTERNATE*
14 *SUBSECTION (3) IS IN BRACKETS SO THAT THE DRAFTING COMMITTEE MAY PURSUE THE POLICY ISSUES*
15 *THE COMMITTEE RAISED AT THE OCTOBER MEETING. THESE POLICY ISSUES ARE ARTICULATED IN THE*
16 *REPORTER'S MEMORANDUM OF SEPTEMBER 20, 2001 AND MR. WILLIAM TOWLE'S MEMORANDUM OF*
17 *NOVEMBER 26, 2001.*

18
19 *Should packaging or other processing of the goods be part of the specific lien allowed under*
20 *subsection (1)(a)? Whether the general lien should be enforceable against a person to whom a*
21 *negotiable document has been duly negotiated is an open question. See bracketed language in*
22 *subsection (1)(c).*

23
24 *THE TRIGGER FOR WHEN A WAREHOUSE GAINS A WAREHOUSE LIEN REMAINS OPEN FOR*
25 *COMMITTEE DECISION. THE COMPETING TRIGGERS ARE POSSESSION OF THE GOODS OR ISSUANCE OF A*
26 *WAREHOUSE RECEIPT. AS PRESENTLY DRAFTED, THE TRIGGER IS THE ISSUANCE OF A WAREHOUSE*
27 *RECEIPT.*

28
29
30
31 **SECTION 7-210. ENFORCEMENT OF WAREHOUSEMAN'S LIEN.**

32 (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by
33 public or private sale of the goods in block or in parcels, at any time or place and on any terms
34 which are commercially reasonable, after notifying all persons known to claim an interest in the

1 goods. Such notification must include a statement of the amount due, the nature of the proposed
2 sale and the time and place of any public sale. The fact that a better price could have been
3 obtained by a sale at a different time or in a different method from that selected by the
4 warehouseman is not of itself sufficient to establish that the sale was not made in a commercially
5 reasonable manner. If the warehouseman either sells the goods in the usual manner in any
6 recognized market therefor, or if ~~he~~ it sells at the price current in such market at the time of ~~his~~
7 the sale, or if ~~he~~ the warehouse has otherwise sold in conformity with commercially reasonable
8 practices among dealers in the type of goods sold, ~~he~~ it has sold in a commercially reasonable
9 manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of
10 the obligation is not commercially reasonable except in cases covered by the preceding sentence.

11 (2) A warehouseman's lien on [CONSUMER] goods [~~other than goods stored by a merchant~~
12 ~~in the course of his its business~~] may be enforced only as follows:

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

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

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

21 ~~(d)~~ (c) The sale must conform to the terms of the notification.

22 ~~(e)~~ (d) The sale must be held at the nearest suitable place to that where the goods are

1 held or stored.

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

10 (3) Before any sale pursuant to this section any person claiming a right in the goods may
11 pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this
12 section. In that event the goods must not be sold, but must be retained by the warehouseman
13 subject to the terms of the receipt and this Article.

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

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

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

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

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

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

5 ***Reporter's Note***

6 *Sending notification by registered mail does not allow for electronic notification. Absent*
7 *some policy reason for heightened notice requirements that would require a paper notification,*
8 *the warehouse should be able to give this notice electronically. Does the Revised Article 1*
9 *definition of notify give enough protection to the person to be notified? Rev. 1-202(d). Rev. 9*
10 *allows the notice of sale to be given electronically as it requires a "reasonable authenticated*
11 *notification of disposition." Rev. 9-611.*

12
13 *THE BRACKETED LANGUAGE IN SUBSECTION (2) IS OFFERED TO CLARIFY THAT THE SUBSECTION*
14 *(2) PROCEDURES ARE FOR CONSUMER GOODS AS A CONSUMER PROTECTION SUBSECTION.*

15
16 *Sections 9-613 and 9-614 specify what must be in the notification and provide a safe harbor*
17 *form. Nowhere does it mandate that the notification be on paper. ENFORCEMENT PROVISIONS IN*
18 *ARTICLE 9 ARE MUCH MORE ELABORATE THAN SECTION 7-210, INCLUDING SAFE HARBOR FORMS FOR*
19 *COMMERCIAL AND CONSUMER ENFORCEMENT SALES. DOES THE COMMITTEE DESIRE THAT ARTICLE 7*
20 *PARALLEL THESE MORE ELABORATE PROVISIONS OF ARTICLE 9?*

21
22
23 *THE REPORTER INTERPRETS SUBSECTION (5) TO MEAN THAT THE WAREHOUSE GIVES NO WARRANTY*
24 *, SO LONG AS THE LIEN WAS VALID. AGAINST WHOM THE LIEN IS VALID IS A POLICY ISSUE THE*
25 *COMMITTEE WILL DECIDE UNDER SECTION 7-209. IN LIGHT OF SUBSECTION (5), THE REPORTER*
26 *SUGGESTS THAT THE WARRANTY PROVISIONS OF SECTION 9-610 NEED NOT BE IMITATED IN ARTICLE 7.*
27 *AS FAR AS THE REPORTER CAN ASCERTAIN, NO CASES NOR COMMENTARY ABOUT WAREHOUSE*
28 *WARRANTIES EXISTS, ASIDE FROM THE ISSUE AS TO WHETHER THE WAREHOUSE HAD A VALID LIEN.*

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

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

1 (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to
2 whom a negotiable bill has been duly negotiated relying in either case upon the description
3 therein of the goods, or upon the date therein shown, may recover from the issuer damages
4 caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to
5 the extent that the document 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 or condition of contents of packages unknown", "said to contain", "shipper's weight,
9 load and count" or the like, if such indication be true.

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

14 (3) When bulk freight is loaded by a shipper who makes available to the issuer adequate
15 facilities for weighing such freight, ~~an~~ THE ISSUER OF THE BILL OF LADING ~~who is a common~~
16 ~~carrier~~ must ascertain the kind and quantity within a reasonable time after receiving the ~~written~~
17 ~~request of the shipper's~~ request in a record to do so. In such cases "shipper's weight" or other
18 words of like purport are ineffective.

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

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

7 ***Reporter's Note***

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

13
14 *THE REFERENCES TO COMMON CARRIERS WERE DELETED AS OBSOLETE AFTER DEREGULATION AND*
15 *TO INSURE CONSISTENCY WITH THE DEFINITION OF THE TERM "CARRIER."*

16
17 *THE WORDING IN THIS SECTION – SUCH AS "CONTENTS OR CONDITION OF CONTENTS OF PACKAGES*
18 *UNKNOWN" OR "SHIPPER'S WEIGHT, LOAD AND COUNT" – TO INDICATE THAT THE SHIPPER LOADED*
19 *THE GOODS OR THAT THE CARRIER DOES NOT KNOW THE DESCRIPTION, CONDITION, OR CONTENTS OF*
20 *THE LOADED PACKAGES CONTINUES TO BE APPROPRIATE AS COMMONLY UNDERSTOOD IN THE*
21 *TRANSPORTATION INDUSTRY. THE REASONS FOR THIS WORDING ARE AS IMPORTANT TODAY AS WHEN*
22 *THIS SECTION INITIALLY WAS APPROVED. MOREOVER, THE REPORTER DID NOT DESIRE TO CHANGE*
23 *THIS FAMILIAR LANGUAGE BECAUSE THE COMPARABLE DEBATE IN THE STUDY FOR THE PROPOSED*
24 *REFORM OF COGSA WAS THE MOST CONTENTIOUS ISSUE DISCUSSED, ACCORDING TO PROFESSOR*
25 *MICHAEL F. STURLEY, THE COGSA STUDY REPORTER. THIS REPORTER ADOPTED THE STANCE THAT*
26 *DISCRETION IS THE BETTER PART OF VALOR.*

27
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29
30 **SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.**

31 (1) The issuer of a through bill of lading or other document embodying an undertaking to
32 be performed in part by persons acting as its agents or by connecting carriers is liable to anyone
33 entitled to recover on the document for any breach by such other persons or by a connecting

1 carrier of its obligation under the document but to the extent that the bill covers an undertaking to
2 be performed overseas or in territory not contiguous to the continental United States or an
3 undertaking including matters other than transportation this liability may be varied by agreement
4 of the parties.

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

11 (3) The issuer of such through bill of lading or other document shall be entitled to recover
12 from the connecting carrier or such other person in possession of the goods when the breach of
13 the obligation under the document occurred, the amount it may be required to pay to anyone
14 entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or
15 transcript thereof, and the amount of any expense reasonably incurred by ~~it~~ the issuer in
16 defending any action brought by anyone entitled to recover on the document therefor.

17 ***Reporter's Note***

18 *Changes to subsection (2) are for gender neutrality.*

19
20 **SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF**
21 **INSTRUCTIONS.**

22 (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a

1 person or destination other than that stated in the bill or may otherwise dispose of the goods on
2 instructions from

3 (a) the holder of a negotiable bill; or

4 (b) the consignor on a non-negotiable bill notwithstanding contrary instructions from
5 the consignee; or

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

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

11 (2) Unless such instructions are ~~noted~~ included on a negotiable bill of lading, a person to
12 whom the bill is duly negotiated can hold the bailee according to the original terms.

13 ***Reporter's Note***

14 *Changes are made to accommodate electronic bills of lading. The control concept applies to*
15 *both negotiable and non negotiable bills of lading. 7-501A.*
16
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19 **SECTION 7-304. BILLS OF LADING IN A SET.**

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

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

1 (3) Where a NEGOTIABLE bill of lading is lawfully issued in a set of parts and different
2 parts are negotiated to different persons, the title of the holder to whom the first due negotiation
3 is made prevails as to both the document and the goods even though any later holder may have
4 received the goods from the carrier in good faith and discharged the carrier's obligation by
5 surrender of ~~its~~ his part.

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

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

11 ***Reporter's Note***

12 *Changes are made to accommodate electronic bills of lading AND FOR CLARITY.*

13
14 **SECTION 7-305. DESTINATION BILLS.**

15 (1) Instead of issuing a tangible bill of lading to the consignor at the place of shipment a
16 carrier may at the request of the consignor procure the bill to be issued at destination or at any
17 other place designated in the request.

18 (2) Upon request of anyone entitled as against the carrier to control the goods while in
19 transit and on surrender of possession or control of any outstanding bill of lading or other receipt
20 covering such goods, the [CARRIER] issuer may procure a substitute tangible bill to be issued at
21 any place designated in the request.

22 ***Reporter's Note***

1 *This section contemplates a physical bill. Query whether the concept of issuing a bill at*
2 *“destination” or other physical place has any electronic counterpart?*

3 *THE BRACKETED LANGUAGE IS OFFERED FOR CLARITY.*
4
5
6

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

8 An unauthorized alteration or ~~filling in of a blank~~ inclusion of a provision in a bill of lading
9 leaves the bill enforceable according to its original tenor.

10 *Reporter’s Note*

11 *Compare section 7-208. SECTION 7-306 HAS GENERATED NO LITIGATION.*
12

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

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

20 (2) A lien for charges and expenses under subsection (1) on goods which the carrier was
21 required by law to receive for transportation is effective against the consignor or any person
22 entitled to the goods unless the carrier had notice that the consignor lacked authority to subject
23 the goods to such charges and expenses. Any other lien under subsection (1) is effective against
24 the consignor and any person who permitted the bailor to have control or possession of the goods
25 unless the carrier had notice that the bailor lacked such authority.

1 made in a commercially reasonable manner. If the carrier either sells the goods in the usual
2 manner in any recognized market therefor or if ~~he~~ it sells at the price current in such market at
3 the time of ~~his~~ its sale or if the carrier ~~he~~ has otherwise sold in conformity with commercially
4 reasonable practices among dealers in the type of goods sold ~~he~~ it has sold in a commercially
5 reasonable manner. A sale of more goods than apparently necessary to be offered to ensure
6 satisfaction of the obligation is not commercially reasonable except in cases covered by the
7 preceding sentence.

8 (2) Before any sale pursuant to this section any person claiming a right in the goods may
9 pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this
10 section. In that event the goods must not be sold, but must be retained by the carrier subject to
11 the terms of the bill and this Article.

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

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

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

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

21 (7) A carrier's lien may be enforced in accordance with either subsection (1) or the
22 procedure set forth in subsection (2) of Section 7-210.

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

3 ***Reporter's Note***

4 “Notification” as used in this section and as defined in revised article 1, 1-202, includes
5 electronic notification.

6
7 *QUERY: SHOULD SECTION 7-308 HAVE A CONSUMER GOODS -CONSUMER PROTECTION*
8 *SUBSECTION THAT MIRRORS SECTION 7-210(2). SECTION 7-308(7) ALLOWS A CARRIER TO USE*
9 *SECTION 7-210(2) PROCEDURES BUT DOES NOT MANDATE ITS USE FOR CONSUMER GOODS.*

10
11
12
13 **SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF**
14 **CARRIER'S LIABILITY.**

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

19 (2) Damages may be limited by a provision that the carrier's liability shall not exceed a
20 value stated in the document if the carrier's rates are dependent upon value and the consignor ~~by~~
21 ~~the carrier's tariff~~ is afforded an opportunity to declare a higher value ~~or a value as lawfully~~
22 ~~provided in the tariff, or where no tariff is filed he~~ and the consignor is otherwise advised of
23 such opportunity in a conspicuous manner; but no such limitation is effective with respect to the
24 carrier's liability for conversion to its own use.

25 (3) Reasonable provisions as to the time and manner of presenting claims and instituting
26 actions based on the shipment may be included in a bill of lading ~~or tariff~~.

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[ALTERNATE SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.

(1) A CARRIER IS LIABLE FOR DAMAGES FOR LOSS OF OR INJURY TO THE GOODS CAUSED BY ITS FAILURE TO EXERCISE SUCH CARE IN REGARD TO THEM THAT A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES BUT UNLESS OTHERWISE AGREED THE CARRIER IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE. THIS SUBSECTION DOES NOT REPEAL OR CHANGE ANY LAW OR RULE OF LAW WHICH IMPOSES LIABILITY UPON A CARRIER FOR DAMAGES NOT CAUSED BY NEGLIGENCE.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), DAMAGES MAY BE LIMITED BY A TERM IN THE BILL OF LADING OR TRANSPORTATION DOCUMENT LIMITING THE AMOUNT OF LIABILITY IN CASE OF LOSS OR DAMAGE BEYOND WHICH THE CARRIER SHALL NOT BE LIABLE; PROVIDED, HOWEVER, THAT SUCH LIABILITY MAY ON REQUEST OF THE BAILOR IN A RECORD AT THE TIME OF SIGNING SUCH BILL OR LADING OR TRANSPORTATION DOCUMENT, OR WITHIN A REASONABLE TIME AFTER RECEIPT OF THE BILL OF LADING OR TRANSPORTATION DOCUMENT, BE INCREASED ON PART OR ALL OF THE GOODS THEREUNDER, IN WHICH EVENT INCREASED RATES MAY BE CHARGED BASED ON SUCH INCREASED VALUATION, BUT THAT NO SUCH INCREASE SHALL BE PERMITTED CONTRARY TO CARRIER'S PUBLIC TARIFF, IF ANY. NO SUCH LIMITATION IS EFFECTIVE WITH RESPECT TO THE WAREHOUSEMAN'S LIABILITY FOR CONVERSION TO ITS OWN USE.

(3) REASONABLE PROVISIONS AS TO THE TIME AND MANNER OF PRESENTING CLAIMS AND INSTITUTING ACTIONS BASED ON THE BAILMENT MAY BE INCLUDED IN THE BILL OF LADING, THE

1 TRANSPORTATION DOCUMENT, OR PUBLIC TARIFF. THESE PROVISIONS APPLY TO CLAIMS BASED ON
2 THE CARRIER'S ACCEPTED LIABILITY UNDER SUBSECTION (1) AND TO CLAIMS ON THE CARRIER'S
3 CONVERSION.

4 _____ (4) AS BETWEEN A CARRIER AND A CONSUMER WHO DOES NOT AGREE TO PAY CARRIAGE
5 RATES BASED ON FULL VALUE LIABILITY FOR THE CARRIER, DAMAGES MAY BE LIMITED AS
6 ALLOWED IN SUBSECTION (2) BUT ONLY IF:

7 _____ (A) THE LIMITATION ON AMOUNT OF LIABILITY IS CONSPICUOUS IN THE BILL OF LADING
8 OR TRANSPORTATION DOCUMENT; AND

9 _____ (B) THE CONSUMER HAS AGREED TO THE LIMITATION ON THE AMOUNT OF LIABILITY BY
10 SO INDICATING {IN A RECORD} {ON THE BILL OF LADING OR TRANSPORTATION DOCUMENT} AND
11 BY ACCEPTING OR INSURING AGAINST THE RISK OF THE AMOUNT OF LOSS ABOVE THE LIMITATION.]

12 ***Reporter's Note***

13 *Is the addition of conspicuous necessary? Does it mean that the advise has to be in a*
14 *record? SECTION 7-309 HAS THE MINIMAL CHANGES NEED TO BECOME COMPATIBLE WITH*
15 *ELECTRONIC COMMERCE.*

16
17 *ALTERNATE SECTION 7-309 MEETS THE COMMITTEE'S REQUEST FOR COORDINATION AND*
18 *CONSISTENCY BETWEEN SECTION 7-210 AND SECTION 7-309. ALTERNATE SECTION 7-309 USES THE*
19 *LANGUAGE OF SECTION 7-210 AS MODIFIED FOR CARRIERS. POLICY ISSUES ARE THE SAME UNDER*
20 *ALTERNATE SECTION 7-309 AS FOR SECTION 7-210.*
21

22
23 **PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL**
24 **OBLIGATIONS**

25
26 **SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR**

1 *“On its face” has been deleted as incompatible with electronic documents. Does the concept*
2 *of conspicuous accomplish the same result?*
3
4
5

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

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

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

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

16 (c) previous sale or other disposition of the goods in lawful enforcement of a lien or
17 on warehouseman's lawful termination of storage;

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

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

22 (f) release, satisfaction or any other fact affording a personal defense against the
23 claimant;

24 (g) any other lawful excuse.

1 (2) A person claiming goods [~~covered by a document of title~~] must satisfy the bailee's lien
2 where the bailee so requests or where the bailee is prohibited by law from delivering the goods
3 until the charges are paid. WHEN THE PERSON CLAIMING THE GOODS REFUSES TO PAY THE
4 BAILEE'S LIEN, THE BAILEE MAY LAWFULLY REFUSE TO DELIVER TO THAT PERSON.

5 (3) Unless the person claiming is one against whom the document confers no right under
6 Sec. 7-503(1), a person claiming under a document ~~he~~ must surrender possession or control of for
7 ~~cancellation or notation of partial deliveries~~ any outstanding negotiable document covering the
8 goods for cancellation or indication of partial deliveries, and the bailee must cancel the document
9 or conspicuously ~~note~~ indicate the partial delivery ~~thereon~~ within the document or be liable to
10 any person to whom the document is duly negotiated.

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

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

16 ***Reporter's Note***

17 *Subsection (3) is revised to accommodate electronic documents. "Written" instruction is*
18 *changed to "in a record."*

19
20 *THE ADDED LANGUAGE IN SUBSECTION (1)(B) IS FOR CLARIFICATION.*

21
22 *THE BRACKETED LANGUAGE IN SUBSECTION (2) RESPONDS TO COMMITTEE DISCUSSION IN MARCH*
23 *2001 AS TO WHAT TRIGGERS A BAILEE'S LIEN – ISSUANCE OF A DOCUMENT OR POSSESSION OF THE*
24 *GOODS. THE ADDED SENTENCE IN SUBSECTION (2) REFLECTS A COMMITTEE SUGGESTION IN MARCH*
25 *2001. THE COMMITTEE MUST BE SATISFIED THAT THESE CHANGES ARE COMPATIBLE WITH*
26 *COMMITTEE DECISIONS RELATING TO SECTION 7-209 WAREHOUSE LIEN AND SECTION 7-307 CARRIER*
27 *LIEN.*

1 indorsement in blank or to bearer any person can negotiate it by delivery alone;

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

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

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

10 ~~(4) (e) A negotiable document of title is "duly negotiated" when it is negotiated in the~~
11 ~~manner stated in this subsection to a holder who purchases it in good faith without notice of any~~
12 ~~defense against or claim to it on the part of any person and for value, unless it is established that~~
13 ~~the negotiation is not in the regular course of business or financing or involves receiving the~~
14 ~~document in settlement or payment of a money obligation.~~

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

16 _____ (a) When the document's original terms run to the order of a named person, the
17 document is negotiated by the named person transferring control of the document to another
18 person. Indorsement by the named person is not required in order to negotiate the document;

19 _____ (b) When the document's original terms run to bearer, it is negotiated by transfer to
20 any person who has control of the document;

21 _____ (c) When the document's original terms run to the order of a named person and the
22 named person has control of the document, the effect is the same as if the document had been

1 negotiated;

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

7 (5) (3) Indorsement of a non-negotiable document neither makes it negotiable nor adds to
8 the transferee's rights.

9 (6) (4) The naming in a negotiable bill of a person to be notified of the arrival of the
10 goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of
11 any interest of such person in the goods.

12 ***Reporter’s Note***

13 *This section provides the foundation for treatment of a negotiable electronic document of*
14 *title and allows due negotiation of that document using the concept of control to substitute for*
15 *delivery. The idea of control is set forth in section 7-501A and is drawn from UETA § 16. This*
16 *reliance on the UETA which has been enacted in over 30 states serves to continue commercial*
17 *expectations that may have started to create “transferrable records” that were documents under*
18 *that section. Concepts of indorsement and delivery are retained for a negotiable tangible*
19 *document of title. Rights acquired under a non-negotiable electronic document are addressed in*
20 *7-504.*

21
22 *QUERY: DOES SECTION 7-104(3) CREATE ANY CONFUSION OR PROBLEMS FOR SECTION 7-501 OR*
23 *SECTION 7-501A?*

24
25
26
27 **SECTION 7-501A. CONTROL OF AN ELECTRONIC DOCUMENT.**

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

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

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

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

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

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

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

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

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

15 ***Reporter's Note***

16 *This section follows UETA § 16 and applies to electronic negotiable and non-negotiable*
17 *documents.*

1 *Subsection (2) equates possession and control and applies to negotiable tangible and*
2 *electronic documents. AS SECTION 7-502 ONLY APPLIES TO NEGOTIABLE DOCUMENTS, ITS LANGUAGE*
3 *HAS BEEN CHANGED TO CLARIFY THIS FACT.*
4
5
6

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

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

12 (a) delivered or entrusted ~~them~~ the goods or any tangible document ~~of title~~ or
13 transferred control of any electronic document covering ~~them~~ the goods to the bailor or ~~his~~ the
14 bailor's nominee with actual or apparent authority to ship, store or sell or with power to obtain
15 delivery under this Article (Section 7-403) or with power of disposition under this Act (Sections
16 2-403 and 9-320) or other statute or rule of law; nor

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

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

23 (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the
24 rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery
25 by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading

1 discharges the carrier's obligation to deliver.

2 ***Reporter's Note***

3 *Subsection (1) is revised to apply to negotiable tangible and electronic documents of title.*

4
5 **SECTION 7-504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE**
6 **NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.**

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

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

12 (a) by those creditors of the transferor who could treat the sale as void under Section
13 2-402; or

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

16 (c) as against the bailee by good faith dealings, INCLUDING THE OBSERVANCE OF
17 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING, of the bailee with the transferor.

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

22 (4) Delivery of the goods pursuant to a non-negotiable document may be stopped by a

1 seller under Section 2-705, and subject to the requirement of due notification there provided. A
2 bailee honoring the seller's instructions is entitled to be indemnified by the seller against any
3 resulting loss or expense.

4 ***Reporter's Note***

5 *Notice the revised definition of delivery in Article 1 as it applies to documents. That*
6 *definition incorporates the concept of control as the substitute for possession of the document.*
7
8
9

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

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

13 ***Reporter's Note***

14 *Indorsement is a concept associated only with tangible negotiable documents.*
15

16 **SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL**
17 **INDORSEMENT.**

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

21 ***Reporter's Note***

22 *Indorsement is a concept associated only with tangible negotiable documents.*
23

24 *DISCUSSION POINT: ALTHOUGH INDORSEMENT IS A CONCEPT ASSOCIATED ONLY WITH TANGIBLE*
25 *DOCUMENTS, THE COMMITTEE MAY DESIRE TO DISCUSS WHETHER A COMPARABLE CONCEPT FOR*
26 *ELECTRONIC DOCUMENTS SHOULD EXIST UNDER THIS SECTION AND THE PRECEDING SECTION 7-505.*
27
28

1 be required at the discretion of the court. The court may also in its discretion order payment of
2 the bailee's reasonable costs and counsel fees.

3 (2) A bailee who without court order delivers goods to a person claiming under a missing
4 negotiable document is liable to any person injured thereby, and if the delivery is not in good
5 faith INCLUDING THE OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING
6 becomes liable for conversion. Delivery in good faith INCLUDING THE OBSERVANCE OF
7 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING is not conversion ~~if made in accordance~~
8 ~~with a filed~~
9 ~~classification or tariff or, where no classification or tariff is filed,~~ if the claimant posts security
10 with the bailee in an amount at least double the value of the goods at the time of posting to
11 indemnify any person injured by the delivery who files a notice of claim within one year after the
12 delivery.

13
14 **SECTION 7-602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE**
15 **DOCUMENT.**

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

1 imposed by judicial process.

2
3 **SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.**

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

9 (2) If a court order resolves conflicting claims to a document of title or the goods covered
10 by it, a bailee may without liability to any person comply with such court order.

11 (3) When the bailee uses an interpleader, the bailee may protect the bailee's lien in the
12 pleadings.

13 ***Reporter's Note***

14 *SUBSECTION (1) IS REDRAFTED TO OVERRULE CASELAW HOLDING THAT THE BAILEE MAY NOT USE*
15 *SECTION 7-603 UNTIL MORE THAN ONE CLAIMANT HAS MADE CLAIMS DIRECTLY TO THE BAILEE.*

16
17 *SUBSECTION (2) IS NEW. IT IS DRAFTED TO PROTECT BAILEES WHO COMPLY WITH A COURT ORDER*
18 *FROM BEING SUED FOR MISDELIVERY OR REFUSAL TO DELIVER BY THE CLAIMANT WHO LOST THE*
19 *LAWSUIT. SUBSECTION (2) MAKES EXPLICIT WHAT IS LIKELY IMPLICIT IN SECTION 7-403(G).*

20
21 *SUBSECTION (3) IS NEW IN RESPONSE TO COMMITTEE DISCUSSION IN MARCH 2001.*
22

23
24 **Section from Article 10 Effective Date and Repealer that interrelates to Article 7**

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

26 [1] The Article on Documents of Title (Article 7) does not repeal or modify any laws

