

D R A F T

FOR APPROVAL

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
and
AMERICAN LAW INSTITUTE

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

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
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UNIFORM COMMERCIAL CODE ARTICLE 7, DOCUMENTS OF TITLE**

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UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE

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UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE

Prefatory Note

Article 7 is the last of the articles of the Uniform Commercial Code to be revised during the preceding decade. The genesis of this project is twofold: to provide a framework for the further development of electronic documents of title and to update the article for modern times in light of state, federal and international developments. Each section has been reviewed to determine its suitability given modern practice, the need for medium and gender neutrality, and modern statutory drafting.

To provide for electronic documents of title, several definitions in Article 1 were revised including “bearer,” “bill of lading,” “delivery,” “document of title,” “holder,” and “warehouse receipt.” The concept of an electronic document of title allows for commercial practice to determine what records issued by bailees are “in the regular course of business or financing” and are “treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers.” Rev. Section 1-201(b)(16). Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title. Conforming amendments to other Articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC. Conforming amendments to other Articles of the UCC are contained in Appendix I.

Key to the integration of the electronic document of title scheme is the concept of “control” defined in Section 7-106. This definition is adapted from the Uniform Electronic Transactions Act § 16 on Transferrable Records and from Uniform Commercial Code § 9-105 concerning control of electronic chattel paper. Control of an electronic document of title is the conceptual equivalent to possession and indorsement of a tangible document of title. Of equal importance is the acknowledgment that parties may desire to substitute an electronic document of title for an already-issued paper document and vice versa. Section 7-105 sets forth the minimum requirements that need to be fulfilled in order to give effect to the substitute document issued in the alternate medium. To the extent possible, the rules for electronic documents of title are the same or as similar as possible to the rules for tangible documents of title. If a rule is meant to be limited to one medium or the other, that is clearly stated. Rules that reference documents of title, warehouse receipts, or bills of lading without a designation to “electronic” or “tangible” apply to documents of title in either medium. As with tangible negotiable documents of title, electronic negotiable documents of title may be negotiated and duly negotiated. Section 7-501.

Other changes that have been made are:

1. New definitions of “carrier,” “good faith,” “record,” “sign” and “shipper” in Section 7-102.
2. Deletion of references to tariffs or filed classifications given the deregulation of the affected industries. See e.g. section 7-103 and 7-309,
3. Clarifying the rules regarding when a document is nonnegotiable. Section 7-104.

1 4. Making clear when rules apply just to warehouse receipts or bills of lading, thus
2 eliminating the need for former section 7-105.

3 5. Clarifying that particular terms need not be included in order to have a valid warehouse
4 receipt. Section 7-202.

5 6. Broadening the ability of the warehouse to make an effective limitation of liability in its
6 warehouse receipt or storage agreement in accord with commercial practice. Section 7-204.

7 7. Allowing a warehouse to have a lien on goods covered by a storage agreement and
8 clarifying the priority rules regarding the claim of a warehouse lien as against other interests.
9 Section 7-209.

10 8. Conforming language usage to modern shipping practice. Sections 7-301 and 7-302.

11 9. Clarifying the extent of the carrier's lien. Section 7-307.

12 10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504, 7-
13 509.

14 11. Clarifying that the warranty made by negotiation or delivery of a document of title
15 should apply only in the case of a voluntary transfer of possession or control of the document.
16 Section 7-507.

17 12. Providing greater flexibility to a court regarding adequate protection against loss when
18 ordering delivery of the goods or issuance of a substitute document. Section 7-601.

19 13. Providing conforming amendments to the other Articles of the Uniform Commercial
20 Code to accommodate electronic documents of title.

21
22 *Legislative Note: All cross-references in this draft to Article 1 are to Revised Article 1 (2001).*
23 *In the event a state has not enacted Revised Article 1, the cross-references should be changed to*
24 *refer to the relevant sections in former Article 1.*

1 **UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE**

2
3 **PART 1**

4 **GENERAL**

5
6 **SECTION 7-101. SHORT TITLE.** This article may be cited as Uniform Commercial

7 Code-Documents of Title.

8 **Preliminary Comments**

9
10 **Prior Uniform Statutory Provision:** Former Section 7-101.

11
12 **Changes:** Revised for style only.

13
14 This Article is a revision of the 1962 Official Text with Comments as amended since 1962.
15 The 1962 Official Text was a consolidation and revision of the Uniform Warehouse Receipts Act
16 and the Uniform Bills of Lading Act, and embraced the provisions of the Uniform Sales Act
17 relating to negotiation of documents of title.

18 This Article does not contain the substantive criminal provisions found in the Uniform
19 Warehouse Receipts and Bills of Lading Acts. These criminal provisions are inappropriate to a
20 Commercial Code, and for the most part duplicate portions of the ordinary criminal law relating
21 to frauds. This revision deletes the former Section 7-105 that provided that courts could apply a
22 rule from Parts 2 and 3 by analogy to a situation not explicitly covered in the provisions on
23 warehouse receipts or bills of lading when it was appropriate. This is, of course, an
24 unexceptional proposition and need not be stated explicitly in the statute. Thus former Section 7-
25 105 has been deleted. Whether applying a rule by analogy to a situation is appropriate depends
26 upon the facts of each case.

27 The Article does not attempt to define the tort liability of bailees, except to hold certain
28 classes of bailees to a minimum standard of reasonable care. For important classes of bailees,
29 liabilities in case of loss, damages or destruction, as well as other legal questions associated with
30 particular documents of title, are governed by federal statutes, international treaties, and in some
31 cases regulatory state laws, which supersede the provisions of this Article in case of
32 inconsistency. See Section 7-103.

33
34
35 **SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

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

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

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

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

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

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

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

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or

pursuant to instructions in a record under, a nonnegotiable document of title.

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

(11) “Sign” means, with present intent to authenticate or adopt a record:

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

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

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

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

(1) “Contract for sale”, Section 2-106.

(2) “Lessee in ordinary course”, Section 2A-103.

(3) “‘Receipt’ of goods”, Section 2-103.

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

Legislative Note: If the state has enacted Revised Article 1, the definitions of “good faith” in subsection (a)(6) and “record” in (a)(10) need not be enacted in this section as they are contained in Article 1, Section 1-201. These subsections should be marked as “reserved” in order to provide for uniform numbering of subsections.

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-102.

Changes: New definitions of “carrier,” “good faith,” “record,” “sign,” and “shipper.” Other definitions revised to accommodate electronic mediums.

Purposes:

1. "Bailee" is used in this Article as a blanket term to designate carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when it does not have possession, the bailee is bound by sections of this Article which declare the "bailee's" obligations. (See definition of "Issuer" in this section and Sections 7-203 and 7-301 on liability in case of non-receipt.) A “carrier” is one type of bailee and is defined as a person that issues a bill of lading. A “shipper” is a person who enters into the contract of transportation with the carrier. The definitions of “bailee,” “consignee,” “consignor,” “goods”, and “issuer”, are unchanged in substance from prior law. “Document of title” is defined in Article 1.

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1-201) does not require that the issuing warehouse be "lawfully engaged" in business or for profit. The warehouse's compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this Article. Certainly the issuer's violations of law should not diminish its responsibility on documents the issuer has put in commercial circulation. But it is still essential that the business be storing goods "for hire" (Section 1-201 and this section). A person does not become a warehouse by storing its own goods.

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of “document of title” in Section 1-201.

4. The obligation of good faith imposed by this Article and by Article 1, Section 1-304 includes the observance of reasonable commercial standards of fair dealing.

5. The definitions of “record” and “sign” are included to facilitate electronic mediums. See comment 9 to Section 9-102 discussing “record” and comment ____ to amended Section 2-103 discussing “sign.”

6. “Person entitled under the document” is moved from former Section 7-403.

7. These definitions apply in this Article unless the context otherwise requires. The “context” is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. The definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. See comment to Section 1-201.

Cross References:

Point 1: Sections 7-203 and 7-301.

Point 2: Sections 1-201 and 7-203.

Point 3: Section 1-201.
Point 4: Section 1-304.
Point 5: Section 9-102 and 2-103.
See general comment to document of title in Section 1-201.

Definitional Cross References:

"Bill of lading". Section 1-201.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Person". Section 1-201.
"Purchase". Section 1-201.
"Receipt of goods". Section 2-103.
"Right". Section 1-201.
"Warehouse receipt". Section 1-201.

SECTION 7-103. RELATION OF ARTICLE TO TREATY OR STATUTE.

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

(b) This article does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this article. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Sections 7-103 and 10-104.

Changes: Deletion of references to tariffs and classifications; incorporation of former Section 10-104 into subsection (b).

Purposes:

1. To make clear what would of course be true without the Section, that applicable Federal law is paramount.

2. To make clear also that regulatory state statutes (such as those fixing or authorizing a commission to fix rates and prescribe services, authorizing different charges for goods of different values, and limiting liability for loss to the declared value on which the charge was based) are not affected by the Article and are controlling on the matters which they cover unless preempted by federal law. The reference in former Section 7-103 to tariffs, classifications, and regulations filed or issued pursuant to regulatory state statutes has been deleted as inappropriate in the modern era of diminished regulation of carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that tariff or classification would be given effect via the state regulatory scheme that this Article recognizes as controlling. Permissive tariffs or classifications would not displace the provisions of this act, pursuant to this section, but may be given effect through the ability of parties to incorporate those terms by reference into their agreement.

3. The document of title provisions of this act supplement the federal law and regulatory state law governing bailees. This Article focuses on the commercial importance and usage of documents of title. See *State ex. rel Public Service Commission v. Gunkelman & Sons, Inc.*, 219 N.W.2d 853 (N.D. 1974).

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article. Section 102 of the federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of the federal act. See the comments to Revised Article 1, Section 1-108.

5. Subsection (d) makes clear that once this article is in effect, its provisions regarding electronic commerce and regarding electronic documents of title control in the event there is a conflict with the provisions of the Uniform Electronic Transactions Act.

Cross References:

Sections 1-108, 7-201, 7-202, 7-204, 7-206, 7-309, 7-401, 7-403.

Definitional Cross Reference:

"Bill of lading". Section 1-201.

1
2 **SECTION 7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.**

3 (a) A document of title is negotiable if by its terms the goods are to be delivered to bearer
4 or to the order of a named person.

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

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

11
12 **Proposed Comment**

13
14 **Prior Uniform Statutory Provision:** Former Section 7-104.

15
16 **Changes:** Subsection (a) is revised to reflect modern style and trade practice. Subsection (b) is
17 revised for style and medium neutrality. Subsection (c) is new.

18
19 **Purposes:**

20 1. This Article deals with a class of commercial paper representing commodities in storage or
21 transportation. This "commodity paper" is to be distinguished from what might be called "money
22 paper" dealt with in the Article of this Act on Commercial Paper (Article 3) and "investment
23 paper" dealt with in the Article of this Act on Investment Securities (Article 8). The class of
24 "commodity paper" is designated "document of title" following the terminology of the Uniform
25 Sales Act Section 76. Section 1-201. The distinctions between negotiable and nonnegotiable
26 documents in this section makes the most important subclassification employed in the Article, in
27 that the holder of negotiable documents may acquire more rights than its transferor had (See
28 Section 7-502). The former Section 7-104, which provided that a document of title was
29 negotiable if it runs to a named person or assigns if such designation was recognized in overseas
30 trade, has been deleted as not necessary in light of current commercial practice.

31 A document of title is negotiable only if it satisfies this section. "Deliverable on proper
32 indorsement and surrender of this receipt" will not render a document negotiable. Bailees often
33 include such provisions as a means of insuring return of nonnegotiable receipts for record
34 purposes. Such language may be regarded as insistence by the bailee upon a particular kind of

1 receipt in connection with delivery of the goods. Subsection (a) makes it clear that a document is
2 not negotiable which provides for delivery to order or bearer only if written instructions to that
3 effect are given by a named person. Either tangible or electronic documents of title may be
4 negotiable if the document meets the requirement of this section.

5 2. Prior to issuance, an issuer may stamp or otherwise provide by a notation on the document
6 of title that it is nonnegotiable even if the document would otherwise comply with the
7 requirement of subsection (a). Subsection (c). Subsection (c) is derived from Section 3-104(d).
8 Once issued as a negotiable document of title, the document cannot be changed from a negotiable
9 document to a nonnegotiable document. However, one can fail to negotiate a negotiable
10 document of title by due negotiation. See Section 7-501(5). A document of title that is
11 nonnegotiable cannot be made negotiable by stamping or providing a notation that the document
12 is negotiable. The only way to make a document of title negotiable is to comply with subsection
13 (a).
14

15 **Cross Reference:** Sections 7-501 and 7-502.
16

17 **Definitional Cross References:**

18 "Bearer". Section 1-201.

19 "Bill of lading". Section 1-201.

20 "Delivery". Section 1-201.

21 "Document of title". Section 1-201.

22 "Person". Section 1-201.

23 "Sign". Section 7-102

24 "Warehouse receipt". Section 1-201.
25
26
27

28 **SECTION 7-105. REISSUANCE IN ALTERNATIVE MEDIUM.**

29 (a) Upon request of a person entitled under an electronic document of title, the issuer of
30 the electronic document may issue a tangible document of title as a substitute for the electronic
31 document if:

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

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

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

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

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

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

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

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

15 (d) Upon issuance of the electronic document of title in substitution for a tangible
16 document of title in accordance with subsection (c):

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

18 (2) the person that procured issuance of the electronic document warrants to all
19 subsequent persons entitled under the electronic document that the warrantor was a person
20 entitled under the tangible document when the warrantor surrendered possession of the tangible
21 document to the issuer.

Preliminary Comments

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Draft Instrument on Transport Law.

Purpose:

1. This section allows for documents of title issued in one medium to be reissued in another medium. This section applies to both negotiable and nonnegotiable documents. This section sets forth minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternative medium and if the issuer chooses to do so, it may impose additional requirements. Because a document of title imposes obligations on the issuer of the document, it is imperative for the issuer to be the one who issues the substitute document in order for the substitute document to be effective and valid.

2. The request must be made to the issuer by the person entitled to enforce the document of title (Section 7-102(a)(9)) and that person must surrender possession or control of the original document to the issuer. The reissued document must have a notation that it has been issued as a substitute for the original document. These minimum requirements must be met in order to give the substitute document effect and validity. If these minimum requirements are not met for issuance of a substitute document of title, the original document of title continues to be effective and valid. However, if the minimum requirements imposed by this section are met, in addition to any other requirements that the issuer may impose, the substitute document will be the document that is effective and valid.

3. To protect parties who subsequently take the substitute document of title, the person who procured issuance of the substitute document warrants that it was a person entitled under the original document at the time it surrendered possession or control of the original document to the issuer. This warranty is modeled after the warranty found in Section 4-209.

Cross Reference: Sections 7-106 and 7-601.

Definitional Cross Reference: “Person entitled to enforce,” Section 7-102.

SECTION 7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.

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

(b) A system satisfies subsection (a), and a person is deemed to have control of an

1 electronic document of title, if the document is created, stored, and assigned in such a manner
2 that:

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

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

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

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

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

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

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

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

17 Preliminary Comments

18
19 **Prior Uniform Statutory Provision:** Uniform Electronic Transactions Act Section 16.

20 21 **Purpose:**

22
23 1. The section defines “control” for electronic documents of title and derives its rules from
24 the Uniform Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16,
25 however, a document of title may be reissued in an alternative medium pursuant to Section 7-
26 105. At any point in time in which a document of title is in electronic form, the control concept
27 of this section is relevant. As under UETA § 16, the control concept embodied in this section

1 provides the legal framework for developing systems for electronic documents of title.

2 2. Control of an electronic document of title substitutes for the concept of indorsement and
3 possession in the tangible document of title context. See Section 7-501. A person with a tangible
4 document of title delivers the document by voluntarily transferring possession and a person with
5 an electronic document of title delivers the document by voluntarily transferring control.
6 (Delivery is defined in Section 1-201).

7 3. Subsection (a) sets forth the general rule that the “system employed for evidencing the
8 transfer of interests in the electronic document reliably establishes that person as the person to
9 which the electronic document was issued or transferred.” The key to having a system that
10 satisfies this test is that identity of *the* person to which the document was issued or transferred
11 must be reliably established. Of great importance to the functioning of the control concept is to
12 be able to demonstrate, at any point in time, *the one person* entitled under the electronic
13 document. For example, a carrier may issue an electronic bill of lading by having the required
14 information in a database that is encrypted and accessible by virtue of a password. If the
15 computer system in which the required information is maintained identifies the person as *the*
16 person to which the electronic bill of lading was issued or transferred, that person has control of
17 the electronic document of title. That identification may be by virtue of passwords or other
18 encryption methods. Registry systems may satisfy this test. This Article leaves to the market
19 place the development of sufficient technologies and business practices that will meet the test.

20 An electronic document of title is evidenced by a record consisting of information stored in
21 an electronic medium. Section 1-201. For example, a record in a computer database could be an
22 electronic document of title assuming that it otherwise meets the definition of document of title.
23 To the extent that third parties wish to deal in paper mediums, Section 7-105 provides a
24 mechanism for exiting the electronic environment by having the issuer reissue the document of
25 title in a tangible medium. Thus if a person entitled to enforce an electronic document of title
26 causes the information in the record to be printed onto paper without the issuer’s involvement in
27 issuing the document of title pursuant to Section 7-105, that paper is not a document of title.

28 4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe
29 harbor test that if satisfied, results in control under the general test in subsection (a). The test in
30 subsection (b) is also used in Section 9-105 although Section 9-105 does not include the general
31 test of subsection (a). Under subsection (b), at any point in time, a party should be able to
32 identify the single authoritative copy which is unique and identifiable as the authoritative copy.
33 This does not mean that once created that the authoritative copy need be static and never moved
34 or copied from its original location. To the extent that backup systems exist which result in
35 multiple copies, the key to this idea is that at any point in time, the one authoritative copy needs
36 to be unique and identifiable.

37 Parties may not by contract provide that control exists. The test for control is a factual test
38 that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is
39 satisfied.

40 5. Article 7 has historically provided for rights under documents of title and rights of
41 transferees of documents of title as those rights relate to the goods covered by the document.
42 Third parties may possess or have control of documents of title. While misfeasance or
43 negligence in failure to transfer or misdelivery of the **document** by those third parties may create

1 serious issues, this Article has never dealt with those issues as it relates to tangible documents of
2 title, preferring to leave those issues to the law of contracts, agency and tort law. In the
3 electronic document of title regime, third party registry systems are just beginning to develop. It
4 is very difficult to write rules regulating those third parties without some definitive sense of how
5 the third party registry systems will be structured. Systems that are evolving to date tend to be
6 “closed” systems in which all participants must sign on to the master agreement which provides
7 for rights as against the registry system as well as rights among the members. In those closed
8 systems, the document of title never leaves the system so the parties rely upon the master
9 agreement as to rights against the registry in its failures in dealing with the document. This
10 article contemplates that those “closed” systems will continue to evolve and that the control
11 mechanism in this statute provides a method for the participants in the closed system to achieve
12 the benefits of obtaining control allowed by this article.

13 This article also contemplates that parties will evolve open systems where parties need not be
14 subject to a master agreement. In an open system a party that is expecting to obtain rights
15 through an electronic document may not be a party to the master agreement. To the extent that
16 open systems evolve by use of the control concept contained in this section, the law of contracts,
17 agency, and torts as it applies to the registry’s misfeasance or negligence concerning the transfer
18 of control of the electronic document will allocate the risks and liabilities of the parties as that
19 other law now does so for third parties who hold tangible documents and fail to deliver the
20 documents.

21
22 **Cross Reference:** Section 7-105.
23

1 **PART 2**

2 **WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

3
4 **SECTION 7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT;**
5 **STORAGE UNDER BOND.**

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

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

11 **Preliminary Comments**

12
13 **Prior Uniform Statutory Provision:** Former Section 7-201.

14
15 **Changes:** Update for style only.

16
17 **Purposes:**

18 It is not intended by re-enactment of subsection (a) to repeal any provisions of special
19 licensing or other statutes regulating who may become a warehouse. Limitations on the transfer
20 of the receipts and criminal sanctions for violation of such limitations are not impaired. Section
21 7-103. Compare Section 7-401(4) on the liability of the issuer in such cases. Subsection (b)
22 covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses
23 under such statutes as 26 U.S.C. Chapter 51.

24
25 **Cross References:** Sections 7-103, 7-401.

26
27 **Definitional Cross References:**

28 "Warehouse receipt". Section 1-201.

29 "Warehouse". Section 7-102.
30
31
32

1 **SECTION 7-202. FORM OF WAREHOUSE RECEIPT.**

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

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

5 (1) the location of the warehouse facility where the goods are stored;

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

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

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

10 (5) the rate of storage and handling charges, but if goods are stored under a field
11 warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;

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

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

14 (8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or
15 in common with others, the fact of that ownership; and

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

21 (c) A warehouse may insert in its receipt any terms that are not contrary to [the Uniform
22 Commercial Code] and do not impair its obligation of delivery under Section 7-403 or its duty of

care under Section 7-204. Any contrary provisions are ineffective.

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-202.

Changes: Language is updated to accommodate electronic commerce and to reflect modern style.

Purposes:

1. This section does not displace any particular legislation that requires other terms in a warehouse receipt or that may require a particular form of a warehouse receipt. This section does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long as the receipt falls within the definition of “warehouse receipt” in Article 1. The only consequence of a warehouse receipt not containing any term listed in subsection (b) is that a person injured by a term’s omission has a right as against the warehouse for harm caused by the omission.

2. The unique identification code referred to in subsection (b)(3) can include any combination of letters, number, signs, and/or symbols that provide a unique identification. Whether an electronic or tangible warehouse receipt contains a signature will be resolved with the definition of sign in Section 7-102.

Cross References: Sections 7-103 and 7-401.

Definitional Cross References:

"Bearer". Section 1-201.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Security interest". Section 1-201.

“Sign”. Section 7-102.

"Term". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

SECTION 7-203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION. A party to

or purchaser for value in good faith of a document of title, other than a bill of lading, that relies

upon the description of the goods in the document may recover from the issuer damages caused

by the nonreceipt or misdescription of the goods, except to the extent that:

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-203.

Changes: Changes to this section are for style only.

Purpose:

This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor. The issuer is liable on documents issued by an agent, contrary to instructions of its principal, without receiving goods. No disclaimer of the latter liability is permitted.

Cross Reference: Section 7-301.

Definitional Cross References:

"Conspicuous". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Good Faith". Section 1-201. [7-102]

"Issuer". Section 7-102.

"Notice". Section 1-202.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt of goods". Section 2-103.

"Value". Section 1-204.

SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY.

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

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on 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, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

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

(d) This section does not impair or repeal [Insert reference to any statute that imposes a higher responsibility upon the warehouse or invalidates contractual limitations that would be permissible under this Article.]

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-204.

Changes: Updated to reflect modern, standard commercial practices.

Purposes of Changes:

1. Subsection (a) continues the rule from former Section 7-204 on the warehouse's obligation to exercise reasonable care without change.

2. Former Section 7-204(2) required that the term limiting damages do so by setting forth a specific liability per article or item or of a value per unit of weight. This requirement has been deleted as out of step with modern industry practice. Under subsection (b) a warehouse may limit its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or storage agreement. The parties cannot disclaim by contract the warehouse's obligation of care. Section 1-302.

3. Former Section 7-204(2) also provided that an increased rate can not be charged if contrary to a tariff. That language has been deleted. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section allowing an increased rate. The provisions of a non-mandatory tariff may be incorporated by reference in the parties' agreement. See Comment 2 to Section 7-103. Subsection (c) deletes the reference to tariffs for the same reason that the reference has been omitted in subsection (b).

4. As under former Section 7-204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse's own use. Conversion to its own use has a specialized meaning in the case law that is narrower than the idea of conversion generally.

5. Storage agreements commonly establish the contractual relationship between warehouses and depositors who have an on-going relationship. The storage agreement may allow for the movement into and out of a warehouse without the necessity of issuing or amending a warehouse receipt upon each entry or exit of goods from the warehouse.

Cross References: Sections 1-302, 7-103, 7-309 and 7-403.

Definitional Cross References:

"Goods". Section 7-102.

"Reasonable time". Section 1-204.

"Sign". Section 7-102.

"Term". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN

CERTAIN CASES. A buyer in ordinary course of business of fungible goods sold and

delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-205.

Changes: Changes for style only.

Purposes:

1. The typical case covered by this section is that of the warehouse-dealer in grain, and the substantive question at issue is whether in case the warehouse becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces the purchaser completely to the status of general creditor in a situation where there was very little the purchaser could do to guard against the loss. Compare 15 U.S.C. Section 714p enacted in 1955.

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in 7-501. The definition of "buyer in ordinary course" is in Article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. See amended Section 2-103. This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

Cross References: Sections 2-403 and 9-320.

Definitional Cross References:

"Buyer in ordinary course of business". Section 1-201.

"Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible" goods. Section 1-201.

"Goods". Section 7-102.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

1 "Warehouse". Section 7-102.

2
3
4 **SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION.**

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

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

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

22 (d) A warehouse shall deliver the goods to any person entitled to them under this article
23 upon due demand made at any time before sale or other disposition under this section.

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-206.

Changes: Changes for style.

Purposes:

1. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse's power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of "any charges", but does not depend on the existence of unpaid charges.

2. In permitting expeditious disposition of perishable and hazardous goods the pre-Code Uniform Warehouse Receipts Act, Section 34, made no distinction between cases where the warehouse knowingly undertook to store such goods and cases where the goods were discovered to be of that character subsequent to storage. The former situation presents no such emergency as justifies the summary power of removal and sale. Subsections (b) and (c) distinguish between the two situations.

3. Protection of its lien is the only interest which the warehouse has to justify summary sale of perishable goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouse's security.

4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of some states forbidding warehouses from discriminating among customers. Nor does the section relieve the warehouse of any obligation under the state laws to secure the approval of a public official before disposing of deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Section 7-103.

Cross References: Sections 7-103 and 7-403.

Definitional Cross References:

"Delivery". Section 1-201.

"Document of title". Section 1-102.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Notice". Section 1-202.
"Notification". Section 1-202.
"Person". Section 1-201.
"Reasonable time". Section 1-205.
"Value". Section 1-204.
"Warehouse". Section 7-102.

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-207.

Changes: Changes for style only.

Purposes:

No change of substance is made from former Section 7-207. Holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional Cross References:

"Delivery". Section 1-201.
"Duly negotiate". Section 7-501.
"Fungible goods". Section 1-201.

"Goods". Section 7-102.
"Holder". Section 1-201.
"Person". Section 1-201.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

SECTION 7-208. ALTERED WAREHOUSE RECEIPTS. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-208.

Changes: To accommodate electronic documents of title.

Purpose:

1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence which is a limited exception to the general rule in the second sentence. Electronic document of title systems should have protection against unauthorized access and unauthorized changes. Thus the protection of the first sentence is not necessary in the context of electronic documents.

2. Under the second sentence of this section, an unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouse. This rule applies to both tangible and electronic warehouse receipts.

Definitional Cross References:

"Good faith". Section 1-201 [7-102].
"Issuer". Section 7-102.
"Notice". Section 1-202.
"Purchaser". Section 1-201.
"Value". Section 1-204.

1 "Warehouse receipt". Section 1-201.

2
3
4 **SECTION 7-209. LIEN OF WAREHOUSE.**

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

19 (b) The warehouse may also reserve a security interest under Article 9 against the bailor
20 for the maximum amount specified on the receipt for charges other than those specified in
21 subsection (a), such as for money advanced and interest. A security interest is governed by
22 Article 9.

23 (c) A warehouse's lien for charges and expenses under subsection (a) or a security interest

1 under subsection (b) is also effective against any person that so entrusted the bailor with
2 possession of the goods that a pledge of them by the bailor to a good faith purchaser for value
3 would have been valid. However, the lien or security interest is not effective against a person
4 that before issuance of a document of title had a legal interest or a perfected security interest in
5 the goods and that did not:

6 (1) deliver or entrust the goods or any document covering the goods to the bailor or
7 the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to
8 obtain delivery under Section 7-403; or with power of disposition under Sections 2-403, 2A-
9 304(2), 2A-305(2) or 9-320 or other statute or rule of law; or

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

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

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

17 Preliminary Comments

18
19 **Prior Uniform Statutory Provision:** Former Sections 7-209 and 7-503.

20
21 **Changes:** Expanded to recognize warehouse lien when a warehouse receipt is not issued but
22 goods are covered by a storage agreement.

23 Purposes:

24
25 1. Subsection (a) defines the warehouse's statutory lien. Other than allowing a warehouse to
26 claim a lien under this section when there is a storage agreement and not a warehouse receipt,
27

1 this section remains unchanged in substance from former Section 7-209(1). Under the first
2 sentence, a specific lien attaches automatically without express notation on the receipt or storage
3 agreement with regard to goods stored under the receipt or the storage agreement. That lien is
4 limited to the usual charges arising out of a storage transaction.

5 Example 1: Bailor stored goods with a warehouse and the warehouse issued a warehouse
6 receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the
7 charges for storage and the other expenses of those goods. The warehouse may enforce its lien
8 under Section 7-210 as against the bailor. Whether the warehouse receipt is negotiable or
9 nonnegotiable is not important to the warehouse's rights as against the bailor.

10 Under the second sentence, by notation on the receipt or storage agreement, the lien can be
11 made a general lien extending to like charges in relation to other goods. Both the specific lien
12 and general lien are as to goods in the possession of the warehouse and extend to proceeds from
13 the goods as long as the proceeds are in the possession of the warehouse. The same rules apply
14 whether the receipt is negotiable or non-negotiable.

15 Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a
16 warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will
17 also have a lien on goods covered by the warehouse receipt for storage charges and the other
18 expenses for any other goods that are stored with the warehouse by the bailor. The statement
19 about the lien on other goods does not specify an amount or a rate. Bailor then stored other
20 goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien
21 on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second
22 sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other
23 expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless
24 of whether the receipt is negotiable or nonnegotiable.

25 Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of
26 that receipt by due negotiation is limited to the amount or rate specified on the receipt for the
27 specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the
28 specific goods covered by the receipt for storage after the date of the receipt.

29 Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable and has
30 been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of
31 subsection (a), the warehouse may enforce its lien against the bailor's goods stored in the
32 warehouse as against the person to whom the negotiable warehouse receipt has been duly
33 negotiated. Section 7-502. That lien is limited to the charges or rates specified in the receipt or a
34 reasonable charge for storage as stated in the last sentence of subsection (a).

35 Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has
36 been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of
37 subsection (a), the lien on lot A goods for the storage charges and the other expenses arising from
38 storage of lot B goods is not enforceable as against the person to whom the receipt has been duly
39 negotiated. Without a statement of a specified amount or rate for the general lien, the
40 warehouse's general lien is not enforceable as against the person to whom the negotiable
41 document has been duly negotiated. However, the warehouse lien for charges and expenses
42 related to storage of lot A goods is still enforceable as against the person to whom the receipt was
43 duly negotiated.

1 Example 5. Same facts as Examples 2 and 4 except the warehouse had stated on the
2 negotiable warehouse receipt a specified amount or rate for the general lien on other goods (lot
3 B). Under the last sentence of subsection (a), the general lien on lot A goods for the storage
4 charges and the other expenses arising from storage of lot B goods is enforceable as against the
5 person to whom the receipt has been duly negotiated.

6 2. Subsection (b) provides for a security interest based upon agreement. Such a security
7 interest arises out of relations between the parties other than bailment for storage or
8 transportation, as where the bailee assumes the role of financier or performs a manufacturing
9 operation, extending credit in reliance upon the goods covered by the receipt. Such a security
10 interest is not a statutory lien. Compare Sections 9-109 and 9-333. It is governed in all respects
11 by Article 9, except that subsection (b) requires that the receipt specify a maximum amount and
12 limits the security interest to the amount specified. A warehouse could also take a security
13 interest to secure its charges for storage and the other expenses listed in subsection (a) to protect
14 these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses
15 possession of the goods as provided in subsection (e).

16 Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse
17 receipt that states that the warehouse is taking a security interest in the bailed goods for charges
18 of storage, expenses, for money advanced, for manufacturing services rendered, and all other
19 obligations that the bailor may owe the warehouse. That is a security interest covered in all
20 respects by Article 9. Subsection (b). As allowed by this section, a warehouse may rely upon its
21 statutory possessory lien to protect its charges for storage and the other expenses related to
22 storage. For those storage charges covered by the statutory possessory lien, the warehouse is not
23 required to use a security interest under subsection (b).

24 3. Subsections (a) and (b) validate the lien and security interest "against the bailor." Under
25 basic principles of derivative rights as provided in Section 7-504, the warehouse lien is also valid
26 as against parties who obtain their rights from the bailor except as otherwise provided in
27 subsection (a), third sentence, or subsection (c).

28 Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable
29 warehouse receipt that also claims a general lien in other goods stored with the warehouse. A
30 lien on the bailed goods for the charges for storage and the other expenses arises under
31 subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the
32 bailee acknowledges that fact to the Buyer. Section 2-503. The warehouse lien for storage of
33 those goods is effective against Buyer for both the specific lien and the general lien. Section 7-
34 504.

35 Example 8: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable
36 warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses
37 arises under subsection (a). Bailor grants a security interest in the goods while the goods are in
38 the warehouse's possession to Secured Party (SP) who properly perfects a security interest in the
39 goods. See Revised 9-312(d). The warehouse lien is superior in priority over SP's security
40 interest. See Revised 9-203(b)(2) (debtor can grant a security interest to the extent of debtor's
41 rights in the collateral).

42 Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable
43 warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses

1 arises under subsection (a). Bailor grants a security interest in the negotiable document to SP.
2 SP properly perfects its interest in the negotiable document by taking possession through a 'due
3 negotiation.' Revised 9-312(c). SP's security interest is subordinate to the warehouse lien.
4 Section 7-209(a), third sentence. Given that bailor's rights are subject to the warehouse lien, the
5 bailor cannot grant to the SP greater rights than the bailor has under Section 9-203(b)(2),
6 perfection of the security interest in the negotiable document and the goods covered by the
7 document through SP's filing of a financing statement should not give a different result.

8 As against third parties who have interests in the goods prior to the storage with the
9 warehouse, subsection (c) continues the rule under the prior uniform statutory provision that to
10 validate the lien or security interest of the warehouse, the owner must have entrusted the goods to
11 the depositor, and that the circumstances must be such that a pledge by the depositor to a good
12 faith purchaser for value would have been valid. Thus the owner's interest will not be subjected
13 to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be
14 protected because of the actual, implied or apparent authority of the depositor, because of a
15 Factor's Act, or because of other circumstances which would protect a bona fide pledgee, unless
16 those circumstances are denied effect under the second sentence of subsection (c). The language
17 of Section 7-503 is brought into subsection (c) for purposes of clarity. The comments to Section
18 7-503 are helpful in interpreting delivery, entrustment or acquiescence.

19 Where the third party is the holder of a security interest, obtained prior to the issuance of a
20 negotiable warehouse receipt, the rights of the warehouse depend on the priority given to a
21 hypothetical bona fide pledgee by Article 9, particularly Section 9-322. Thus the special priority
22 granted to statutory liens by Section 9-333 does not apply to liens under subsection (a) of this
23 section, since subsection (c), second sentence, "expressly provides otherwise" within the meaning
24 of Section 9-333.

25 As to household goods, however, subsection (d) makes the warehouse's lien "for charges and
26 expenses in relation to the goods" effective against all persons if the depositor was the legal
27 possessor. The purpose of the exception is to permit the warehouse to accept household goods
28 for storage in sole reliance on the value of the goods themselves, especially in situations of
29 family emergency.

30 Example 10: Bailor grants a perfected security interest in the goods to SP prior to storage of
31 the goods with the warehouse. Bailor then stores goods with the warehouse and the warehouse
32 issues a warehouse receipt for the goods. A warehouse lien on the bailed goods for the charges
33 for storage or other expenses arises under subsection (a). The warehouse lien is not effective as
34 against SP unless SP entrusted the goods to the bailor with actual or apparent authority to ship
35 store, or sell the goods or with power of disposition under subsection (c)(1) or acquiesced in the
36 bailor's procurement of a document of title under subsection (c)(2). This result obtains whether
37 the receipt is negotiable or nonnegotiable.

38 Example 11: Sheriff who had lawfully repossessed household goods in an eviction action
39 stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The
40 lien is effective as against the owner of the goods. Subsection (d).

41 4. As under previous law, this section creates a statutory possessory lien in favor of the
42 warehouse on the goods stored with the warehouse or on the proceeds of the goods. The
43 warehouse loses its lien if it loses possession of the goods or the proceeds. Subsection (e).

1 5. Where goods have been stored under a non-negotiable warehouse receipt and are sold by
2 the person to whom the receipt has been issued, frequently the goods are not withdrawn by the
3 new owner. The obligations of the seller of the goods in this situation are set forth in Section
4 2-503(4) on tender of delivery and include procurement of an acknowledgment by the bailee of
5 the buyer's right to possession of the goods. If a new receipt is requested, such an
6 acknowledgment can be withheld until storage charges have been paid or provided for. The
7 statutory lien for charges on the goods sold, granted by the first sentence of subsection (a),
8 continues valid unless the bailee gives it up. See Section 7-403. But once a new receipt is issued
9 to the buyer, the buyer becomes "the person on whose account the goods are held" under the
10 second sentence of subsection (a); unless the buyer undertakes liability for charges in relation to
11 other goods stored by the seller, there is no general lien against the buyer for such charges. Of
12 course, the bailee may preserve the general lien in such a case either by an arrangement by which
13 the buyer "is liable for" such charges, or by reserving a security interest under subsection (b).

14 6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the
15 bailment have a storage agreement or a warehouse receipt is issued. In the modern warehouse,
16 the bailor and the bailee may enter into a master contract governing the bailment with the bailee
17 and bailor keeping track of the goods stored pursuant to the master contract by notation on their
18 respective books and records and the parties send notification via electronic communication as to
19 what goods are covered by the master contract. Warehouse receipts are not issued. See
20 Comment 4 to Section 7-204. There is no particular form for a warehouse receipt and failure to
21 contain any of the terms listed in Section 7-202 does not deprive the warehouse of its lien that
22 arises under subsection (a).

23 **Cross References:**

24 Point 1: Sections 7-501 and 7-502.

25 Point 2: Sections 9-109 and 9-333.

26 Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312, and 9-322 .

27 Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, 9-401.

28 Point 5: Sections 2-503 and 7-403.

29 Point 6: Sections 7-202 and 7-204.

30 **Definitional Cross References:**

31 "Deliver". Section 1-201.

32 "Document of Title". Section 1-201

33 "Goods". Section 7-102.

34 "Money". Section 1-201.

35 "Person". Section 1-201.

36 "Purchaser". Section 1-201.

37 "Right". Section 1-201.

38 "Security interest". Section 1-201.

39 "Value". Section 1-204.

40 "Warehouse receipt". Section 1-201.

41 "Warehouse". Section 7-102.

1
2 **SECTION 7-210. ENFORCEMENT OF WAREHOUSE'S LIEN.**

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

16 (b) A warehouse's lien on goods, other than goods stored by a merchant in the course of
17 its business, may be enforced only if the following requirements are satisfied:

- 18 (1) All persons known to claim an interest in the goods must be notified.
- 19 (2) The notification must include an itemized statement of the claim, a description of
20 the goods subject to the lien, a demand for payment within a specified time not less than 10 days
21 after receipt of the notification, and a conspicuous statement that unless the claim is paid within
22 that time the goods will be advertised for sale and sold by auction at a specified time and place.

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

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

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

12 (c) Before any sale pursuant to this section, any person claiming a right in the goods may
13 pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying
14 with this section. In that event, the goods may not be sold but must be retained by the warehouse
15 subject to the terms of the receipt and this article.

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

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

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

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-210.

Changes: Update to accommodate electronic commerce and for style.

Purposes:

1. Subsection (a) makes "commercial reasonableness" the standard for foreclosure proceedings in all cases except non-commercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale are retained in subsection (b) with one change. The requirement in former Section 7-210(2)(b) that the notification must be sent in person or by registered or certified mail has been deleted. Notification may be sent by any reasonable means as provided in Section 1-202. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Compare seller's power of resale on breach by buyer under the provisions of the Article on Sales (Section 2-706). Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

2. The provisions of subsections (d) and (e) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices and remain unchanged from former Section 7-210.

3. A warehouses may have recourse to an interpleader action in appropriate circumstances. See Section 7-603.

4. If a warehouse has both a warehouse lien and a security interest, the warehouse may enforce both the lien and the security interest simultaneously by using the procedures of Article 9. Section 7-210 adopts as its touchstone "commercial reasonableness" for the enforcement of a warehouse lien. Following the procedures of Article 9 satisfies "commercial reasonableness."

Cross Reference: Sections 2-706, 7-403, 7-603 and Part 6 of Article 9.

Definitional Cross References:

"Bill of lading". Section 1-201.
"Conspicuous". Section 1-201.
"Creditor". Section 1-201.
"Delivery". Section 1-201.
"Document of Title". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Notification". Section 1-202.
"Notifies". Section 1-202.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.
"Warehouse". Section 7-102.

1 **PART 3**

2 **BILLS OF LADING: SPECIAL PROVISIONS**

3
4 **SECTION 7-301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID**
5 **TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.**

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

15 (b) If goods are loaded by the issuer of the bill of lading, the issuer shall count the
16 packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk
17 and words such as "shipper's weight, load and count," or words of similar import indicating that
18 the description was made by the shipper are ineffective except as to goods concealed by
19 packages.

20 (c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of
21 lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and
22 quantity within a reasonable time after receiving the shipper's request in a record to do so. In

1 that case, "shipper's weight" or words of similar import are ineffective.

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

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

12 Preliminary Comments

13
14 **Prior Uniform Statutory Provision:** Former Section 7-301.

15
16 **Changes:** Changes for clarity, style and to recognize deregulation in the transportation industry.

17 18 **Purposes:**

19 1. This section continues the rules from former Section 7-301 with one substantive change.
20 The obligations of the issuer of the bill of lading under former subsections (2) and (3) were
21 limited to issuers who were common carriers. Subsections (b) and (c) apply the same rules to all
22 issuers not just common carriers. This section is compatible with the policies stated in the
23 federal Bills of Lading Act, 49 U.S.C. § 80113 (2000).

24 2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier is
25 ordinarily liable for damage caused by improper loading, but may relieve itself of liability by
26 disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that
27 the carrier is not liable for losses caused by act or default of the shipper, which would include
28 improper loading. There was some question whether under pre-Code law a carrier was liable
29 even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading
30 in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper's
31 loading, liability to a good faith purchaser. There is no implication that decisions such as
32 *Modern Tool Corp. v. Pennsylvania R. Co.*, 100 F.Supp. 595 (D.N.J.1951), are disapproved.

1 3. This section is a restatement of existing law as to the method by which a bailee may avoid
2 responsibility for the accuracy of descriptions which are made by or in reliance upon information
3 furnished by the depositor or shipper. The wording in this section – “contents or condition of
4 contents of packages unknown” or “shipper’s weight, load and count” – to indicate that the
5 shipper loaded the goods or that the carrier does not know the description, condition, or contents
6 of the loaded packages continues to be appropriate as commonly understood in the transportation
7 industry. The reasons for this wording are as important in 2002 as when the prior section initially
8 was approved. The issuer is liable on documents issued by an agent, contrary to instructions of
9 his principal, without receiving goods. No disclaimer of this liability is permitted since it is not a
10 matter either of the care of the goods or their description.

11 4. The shipper's erroneous report to the carrier concerning the goods may cause damage to the
12 carrier. Subsection (e) therefore provides appropriate indemnity.

13 5. The word “freight” in the former Section 7-301 has been changed to “goods” to conform
14 to international and domestic land transport usage in which “freight” means the price paid for
15 carriage of the goods and not the goods themselves. Hence, changing the word “freight” to the
16 word “goods” is a clarifying change that fits both international and domestic practice.
17

18 **Cross References:** Sections 7-203, 7-309 and 7-501.
19

20 **Definitional Cross References:**

21 "Bill of lading". Section 1-201.

22 "Consignee". Section 7-102.

23 “Document of Title”. Section 1-201.

24 "Duly negotiate". Section 7-501.

25 "Good faith". Section 1-201.

26 "Goods". Section 7-102.

27 "Holder". Section 1-201.

28 "Issuer". Section 7-102.

29 "Notice". Section 1-202.

30 "Party". Section 1-201.

31 "Purchaser." Section 1-201.

32 "Receipt of Goods". Section 2-103.

33 "Value". Section 1-204.
34
35

36 **SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF**
37 **TITLE.**

38 (a) The issuer of a through bill of lading or other document of title embodying an
39 undertaking to be performed in part by a person acting as its agent or by a performing carrier is

1 liable to any person entitled to recover on the document for any breach by the other person or the
2 performing carrier of its obligation under the document. However, to the extent that the bill
3 covers an undertaking to be performed overseas or in territory not contiguous to the continental
4 United States or an undertaking including matters other than transportation, this liability for
5 breach by the other person or the performing carrier may be varied by agreement of the parties.

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

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

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

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

20 Preliminary Comments

21
22 **Prior Uniform Statutory Provision:** Former Section 7-302.

23
24 **Changes:** To conform to current terminology and for style.

1
2 **Purposes:**

3 1. This section continues the rules from former Section 7-302 without substantive change.
4 The term “performing carrier” is substituted for the term “connecting carrier” to conform the
5 terminology of this section with terminology used in recent UNCITRAL and OAS proposals
6 concerning transportation and through bills of lading. This change in terminology is not
7 substantive. This section is compatible with liability on carriers under federal law. See 49
8 U.S.C. § 14706.

9 The purpose of this section is to subject the initial carrier under a through bill to suit for
10 breach of the contract of carriage by any performing carrier and to make it clear that any such
11 performing carrier holds the goods on terms which are defined by the document of title even
12 though such performing carrier did not issue the document. Since the performing carrier does
13 hold the goods on the terms of the document, it must honor a proper demand for delivery or a
14 diversion order just as the original bailee would have to. Similarly it has the benefits of the
15 excuses for non-delivery and limitations of liability provided for the original bailee who issued
16 the bill. Unlike the original bailee-issuer, the performing carrier's responsibility is limited to the
17 period while the goods are in its possession. The section does not impose any obligation to issue
18 through bills.

19 2. The reference to documents other than through bills looks to the possibility that
20 multi-purpose documents may come into use, e.g., combination warehouse receipts and bills of
21 lading. As electronic documents of title come into common usage, storage documents (e.g.
22 warehouse receipts) and transportation documents (e.g. bills of lading) may merge seamlessly
23 into one electronic document that can serve both the storage and transportation segments of the
24 movement of goods.

25 3. Under subsection (a) the issuer of a through bill of lading may become liable for the fault
26 of another person. Subsection (c) gives the issuer appropriate rights of recourse.

27 4. Despite the broad language of subsection (a), Section 7-302 is subject to preemption by
28 federal laws and treaties. Section 7-103. The precise scope of federal preemption in the
29 transportation sector is a question determined under federal law.
30

31 **Cross reference:** Section 7-103
32

33 **Definitional Cross References:**

34 "Agreement". Section 1-201.

35 "Bailee". Section 7-102.

36 "Bill of lading". Section 1-201.

37 "Delivery". Section 1-201.

38 “Document of title”. Section 1-201.

39 "Goods". Section 7-102.

40 "Issuer". Section 7-102.

41 "Party". Section 1-201.

42 "Person". Section 1-201.
43

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

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

(1) the holder of a negotiable bill;

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

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-303.

Changes: To accommodate electronic documents and for style.

Purposes:

1. Diversion is a very common commercial practice which defeats delivery to the consignee originally named in a bill of lading. This section continues former Section 7-303's safe harbor rules for carriers in situations involving diversion and adapts those rules to electronic documents

1 of title. This section works compatibly with Section 2-705. Carriers may as a business matter be
2 willing to accept instructions from consignees in which case the carrier will be liable for
3 misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods
4 under subsection (a)(4). The section imposes no duty on carriers to undertake diversion. The
5 carrier is of course subject to the provisions of mandatory filed tariffs as provided in Section
6 7-103.

7 2. It should be noted that the section provides only an immunity for carriers against liability
8 for "misdelivery." It does not, for example, defeat the title to the goods which the
9 consignee-buyer may have acquired from the consignor-seller upon delivery of the goods to the
10 carrier under a non- negotiable bill of lading. Thus if the carrier, upon instructions from the
11 consignor, returns the goods to the consignor, the consignee may recover the goods from the
12 consignor or the consignor's insolvent estate. However, under certain circumstances, the
13 consignee's title may be defeated by diversion of the goods in transit to a different consignee.
14 The rights that arise between the consignor-seller and the consignee-buyer out of a contract for
15 the sale of goods are governed by Article 2.

16
17 **Cross References:**

18 Point 1: Sections 2-705 and 7-103.

19 Point 2: Article 2, Sections 7-403 and 7-504(3).

20
21 **Definitional Cross References:**

22 "Bailee". Section 7-102.

23 "Bill of lading". Section 1-201.

24 "Carrier". Section 7-102

25 "Consignee". Section 7-102.

26 "Consignor". Section 7-102.

27 "Delivery". Section 1-201.

28 "Goods". Section 7-102.

29 "Holder". Section 1-201.

30 "Notice". Section 1-202.

31 "Person". Section 1-201.

32 "Purchaser". Section 1-201.

33 "Term". Section 1-201.

34
35
36 **SECTION 7-304. TANGIBLE BILLS OF LADING IN A SET.**

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

39 (b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains

an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

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

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

(e) The bailee is obliged to deliver in accordance with Part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-304.

Changes: To limit bills in a set to tangible bills of lading and to use terminology more consistent with modern usage.

Purposes:

1. 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 Article 7. The statement of the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are recognized by this Article. Tangible bills of lading in a set are prohibited in domestic trade.

2. Electronic bills of lading in domestic or international trade will not be issued in a set given the requirements of control necessary to deliver the bill to another person. An electronic bill of lading will be a single, authoritative copy. Section 7-106. Hence, this section differentiates

1 between electronic bills of lading and tangible bills of lading. This section does not prohibit
2 electronic data messages about goods in transit because these electronic data messages are not the
3 issued bill of lading. Electronic data messages contain information for the carrier's management
4 and handling of the cargo but this information for the carrier's use is not the issued bill of lading.
5

6 **Cross Reference:** Section 7-103, 7-303 and 7-106.
7

8 **Definitional Cross References:**

9 "Bailee". Section 7-102.

10 "Bill of lading". Section 1-201.

11 "Delivery". Section 1-201.

12 "Document of title". Section 1-201.

13 "Duly negotiate". Section 7-501.

14 "Good faith". Section 1-201.

15 "Goods". Section 7-102.

16 "Holder". Section 1-201.

17 "Issuer". Section 7-102.

18 "Person". Section 1-201.

19 "Receipt of goods". Section 2-103.
20
21

22 **SECTION 7-305. DESTINATION BILLS.**

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

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

30 **Preliminary Comments**
31

32 **Prior Uniform Statutory Provision:** Former Section 7-305.
33

34 **Changes:** To accommodate electronic bills of lading and for style.

1
2 **Purposes:**
3

4 1. Subsection (a) continues the rules of former Section 7-305(1) without substantive change.
5 This proposal is designed to facilitate the use of order bills in connection with fast shipments.
6 Use of order bills on high speed shipments is impeded by the fact that the goods may arrive at
7 destination before the documents, so that no one is ready to take delivery from the carrier. This
8 is especially inconvenient for carriers by truck and air, who do not have terminal facilities where
9 shipments can be held to await the consignee's appearance. Order bills would be useful to take
10 advantage of bank collection. This may be preferable to C.O.D. shipment in which the carrier,
11 e.g. a truck driver, is the collecting and remitting agent. Financing of shipments under this plan
12 would be handled as follows: seller at San Francisco delivers the goods to an airline with
13 instructions to issue a bill in New York to a named bank. Seller receives a receipt embodying
14 this undertaking to issue a destination bill. Airline wires its New York freight agent to issue the
15 bill as instructed by the seller. Seller wires the New York bank a draft on buyer. New York bank
16 indorses the bill to buyer when the buyer honors the draft. Normally seller would act through its
17 own bank in San Francisco, which would extend credit in reliance on the airline's contract to
18 deliver a bill to the order of its New York correspondent. This section is entirely permissive; it
19 imposes no duty to issue such bills. Whether a performing carrier will act as issuing agent is left
20 to agreement between carriers.

21 2. Subsection (b) continues the rule from former Section 7-305(2) with accommodation for
22 electronic bills of lading. If the substitute bill changes from an electronic to a tangible medium
23 or vice versa, the issuance of the substitute bill must comply with Section 7-105 to give the
24 substitute bill validity and effect.
25

26 **Cross Reference:** Section 7-105.
27

28 **Definitional Cross References:**

29 "Bill of lading". Section 1-201.

30 "Consignor". Section 7-102.

31 "Goods". Section 7-102.

32 "Issuer". Section 7-102.

33 "Receipt of goods". Section 2-103.
34
35
36

37 **SECTION 7-306. ALTERED BILLS OF LADING.** An unauthorized alteration or filling
38 in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

39 **Preliminary Comments**
40

41 **Prior Uniform Statutory Provision:** Former Section 7-306.

Changes: None

Purposes:

An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not relieve the issuer of his liability on the document as originally executed. This section applies to both tangible and electronic bills of lading, applying the same rule to both types of bills of lading. The control concept of Section 7-106 requires that any changes to the electronic document of title be readily identifiable as authorized or unauthorized. Section 7-306 should be compared to Section 7-208 where a different rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.

Cross Reference: Sections 7-106 and 7-208.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Issuer". Section 7-102.

SECTION 7-307. LIEN OF CARRIER.

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

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

1 the consignor and any person that permitted the bailor to have control or possession of the goods
2 unless the carrier had notice that the bailor lacked authority.

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

5 Preliminary Comments

6
7 **Prior Uniform Statutory Provision:** Former Section 7-307.

8
9 **Changes:** Expanded to cover proceeds of the goods transported.

10 **Purposes:**

11
12
13 1. The section is intended to give carriers a specific statutory lien for charges and expenses
14 similar to that given to warehouses by the first sentence of Section 7-209(a) and extends that lien
15 to the proceeds of the goods as long as the carrier has possession of the proceeds. But because
16 carriers do not commonly claim a lien for charges in relation to other goods or lend money on the
17 security of goods in their hands, provisions for a general lien or a security interest similar to those
18 in Section 7-209(a) and (b) are omitted. Carriers may utilize Article 9 to obtain a security
19 interest and become a secured party or a carrier may agree to limit its lien rights in a
20 transportation agreement with the shipper. As the lien given by this section is specific, and the
21 storage or transportation often preserves or increases the value of the goods, subsection (b)
22 validates the lien against anyone who permitted the bailor to have possession of the goods.
23 Where the carrier is required to receive the goods for transportation, the owner's interest may be
24 subjected to charges and expenses arising out of deposit of his goods by a thief. The crucial
25 mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If
26 the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has
27 a lien under this section against any person so long as the conditions of subsection (b) are
28 satisfied. In light of the crucial mental element, Sections 7-307 and 9-333 combine to give
29 priority to a carrier's lien over security interests in the goods. In this regard, the judicial decision
30 in *In re Sharon Steel Corp.*, 25 U.C.C. Rep.2d 503, 176 B.R. 384 (W.D. Pa. 1995) is correct and
31 is the controlling precedent.

32 2. The reference to charges in this section means charges relating to the bailment relationship
33 for transportation. Charges does not mean that the bill of lading must state a specific rate or a
34 specific amount. However, failure to state a specific rate or a specific amount has legal
35 consequences under the second sentence of subsection (a).

36 3. The carrier's specific lien under this section is a possessory lien. See subsection (c). Part
37 3 of Article 7 does not require any particular form for a bill of lading. The carrier's lien arises
38 when the carrier has issued a bill of lading.
39

1 **Cross References:**

2 Point 1: Sections 7-209, 9-109 and 9-333.

3 Point 3. Section 7-202 and 7-209.

5 **Definitional Cross References:**

6 "Bill of lading". Section 1-201.

7 "Carrier". Section 7-102.

8 "Consignor". Section 7-102.

9 "Delivery". Section 1-201.

10 "Goods". Section 7-102.

11 "Person". Section 1-201.

12 "Purchaser". Section 1-201.

13 "Value". Section 1-204.

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

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

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

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

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

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

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-308.

Changes: To conform language to modern usage and for style.

Purposes:

This section is intended to give the carrier an enforcement procedure of its lien coextensive

1 with that given the warehouse in cases other than those covering noncommercial storage by the
2 warehouse. See Section 7-210 and comments.

3
4 **Cross Reference:** Section 7-210.

5
6 **Definitional Cross References:**

7 "Bill of lading". Section 1-201.

8 "Carrier". Section 7-102.

9 "Creditor". Section 1-201.

10 "Delivery". Section 1-201.

11 "Good faith". Section 1-201. [7-102]

12 "Goods". Section 7-102.

13 "Notification". Section 1-202.

14 "Notifies". Section 1-202.

15 "Person". Section 1-201.

16 "Purchaser". Section 1-201.

17 "Rights". Section 1-201.

18 "Term". Section 1-201.

19
20
21 **SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF**

22 **CARRIER'S LIABILITY.**

23 (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall
24 exercise the degree of care in relation to the goods which a reasonably careful person would
25 exercise under similar circumstances. This subsection does not affect any statute, regulation, or
26 rule of law that imposes liability upon a common carrier for damages not caused by its
27 negligence.

28 (b) Damages may be limited by a term in the bill of lading or in a transportation
29 agreement that the carrier's liability may not exceed a value stated in the bill or transportation
30 agreement if the carrier's rates are dependent upon value and the consignor is afforded an
31 opportunity to declare a higher value and the consignor is advised of the opportunity. However,
32 such a limitation is not effective with respect to the carrier's liability for conversion to its own

1 use.

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

5 Preliminary Comments

6 **Prior Uniform Statutory Provision:** Former Section 7-309.

7
8 **Changes:** References to tariffs eliminated because of deregulation, adding reference to
9 transportation agreements, and for style.

10 **Purposes:**

11
12
13 1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties
14 in their contract should be able to limit the amount of damages for breach of that contract
15 including breach of the duty to take reasonable care of the goods. The parties cannot disclaim by
16 contract the carrier's obligation of care. Section 1-302.

17 Federal statutes and treaties for air, maritime and rail transport may alter the standard of care.
18 These federal statutes and treaties preempt this section when applicable. Section 7-103.
19 Subsection (a) does not impair any rule of law imposing the liability of an insurer on a common
20 carrier in intrastate commerce. Subsection (b), however, applies to the common carrier's
21 liability as an insurer as well as to liability based on negligence. Subsection (b) allows the term
22 limiting damages to appear either in the bill of lading or in the parties' transportation agreement.
23 Compare 7-204(b). Subsection (c) allows the parties to agree to provisions regarding time and
24 manner of presenting claims or commencing actions if the provisions are either in the bill of
25 lading or the transportation agreement. Compare 7-204(c). Transportation agreements are
26 commonly used to establish agreed terms between carriers and shippers that have an on-going
27 relationship.

28 2. References to public tariffs in former Section 7-309(2) and (3) have been deleted in light
29 of the modern era of deregulation. See Comment 2 to Section 7-103. If a tariff is required under
30 state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this
31 section. As governed by contract law, parties may incorporate by reference the limits on the
32 amount of damages or the reasonable provisions as to the time and manner of presenting claims
33 set forth in applicable tariffs, e.g. a maximum unit value beyond which goods are not taken or a
34 disclaimer of responsibility for undeclared articles of extraordinary value.

35 3. As under former Section 7-309(2), subsection (b) provides that a limitation of damages is
36 ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the
37 goods is not conversion to the carrier's own use. Conversion to its own use has a specialized
38 meaning in the case law that is narrower than the idea of conversion generally.

1 4. As used in this section, damages may include damages arising from delay in delivery.
2 Delivery dates and times are often specified in the parties' contract. See Section 7-403.
3

4 **Cross Reference:** Sections 1-302, 7-103, 7-204, 7-403.
5

6 **Definitional Cross References:**

7 "Action". Section 1-201.

8 "Bill of lading". Section 1-201.

9 "Carrier". Section 7-102.

10 "Consignor". Section 7-102.

11 "Document of Title". Section 1-102.

12 "Goods". Section 7-102.

13 "Value". Section 1-204.
14
15

1 **PART 4**

2 **WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS**

3
4 **SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR**

5 **CONDUCT OF ISSUER.** The obligations imposed by this article on an issuer apply to a
6 document of title even if:

7 (1) the document does not comply with the requirements of this article or of any other
8 statute, rule, or regulation regarding its issue, form, or content;

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

10 (3) the goods covered by the document were owned by the bailee when the document was
11 issued; or

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

14 **Preliminary Comments**

15
16 **Prior Uniform Statutory Provision:** Former Section 7-401.

17
18 **Changes:** Changes for style only.

19
20 **Purposes:**

21
22 The bailee's liability on its document despite non-receipt or misdescription of the goods is
23 affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that
24 regardless of irregularities a document which falls within the definition of document of title
25 imposes on the issuer the obligations stated in this Article. For example, a bailee will not be
26 permitted to avoid its obligation to deliver the goods (Section 7-403) or its obligation of due care
27 with respect to them (Sections 7-204 and 7-309) by taking the position that no valid "document"
28 was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose
29 the place of storage in the document. Sanctions against violations of statutory or administrative
30 duties with respect to documents should be limited to revocation of license or other measures

prescribed by the regulation imposing the duty. See Section 7-103.

Cross References: Sections 7-103, 7-203, 7-204, 7-301, 7-309.

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

SECTION 7-402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE. A duplicate

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-402.

Changes: Changes to accommodate electronic documents.

Purposes:

1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. But parts of a tangible bill lawfully issued in a set of parts are not "overissue" (Section 7-304). Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the issuer is not liable for preparing and delivering such a duplicate copy.

1 Section 7-105 allows documents of title to be reissued in another medium. Re-issuance of a
2 document in an alternative medium under Section 7-105 requires that the original document be
3 surrendered to the issuer in order to make the substitute document the effective document. If the
4 substitute document is not issued in compliance with section 7-105, then the document should be
5 treated as a duplicate under this section.

6 2. The section applies to nonnegotiable documents to the extent of providing an action for
7 damages for one who acquires an unmarked duplicate from a transferor who knew the facts and
8 would therefore have had no cause of action against the issuer of the duplicate. Ordinarily the
9 transferee of a nonnegotiable document acquires only the rights of its transferor.

10 3. Overissue is defined so as to exclude the common situation where two valid documents of
11 different issuers are outstanding for the same goods at the same time. Thus freight forwarders
12 commonly issue bills of lading to their customers for small shipments to be combined into
13 carload shipments for which the railroad will issue a bill of lading to the forwarder. So also a
14 warehouse receipt may be outstanding against goods, and the holder of the receipt may issue
15 delivery orders against the same goods. In these cases dealings with the subsequently issued
16 documents may be effective to transfer title; e.g. negotiation of a delivery order will effectively
17 transfer title in the ordinary case where no dishonesty has occurred and the goods are available to
18 satisfy the orders. Section 7-503 provides for cases of conflict between documents of different
19 issuers.

21 **Cross References:**

22 Point 1: Sections 7-105, 7-207, 7-304, and 7-601.

23 Point 3: Section 7-503.

25 **Definitional Cross References:**

26 "Bill of lading". Section 1-201.

27 "Conspicuous". Section 1-201.

28 "Document of title". Section 1-201.

29 "Fungible goods." Section 1-201.

30 "Goods". Section 7-102.

31 "Issuer". Section 7-102.

32 "Right". Section 1-201.

35 **SECTION 7-403. OBLIGATION OF WAREHOUSE OR CARRIER TO DELIVER;** 36 **EXCUSE.**

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

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

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

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

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

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

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

(7) any other lawful excuse.

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

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-403.

Changes: Definition in former Section 7-403(4) moved to Section 7-102; bracketed language in former Section 7-403(1)(b) deleted; added cross reference to Section 2A-526; changes for style.

Purposes:

1. The present section, following former Section 7-403, is constructed on the basis of stating what previous deliveries or other circumstances operate to excuse the bailee's normal obligation on the document. Accordingly, "justified" deliveries under the pre-Code uniform acts now find their place as "excuse" under subsection (a).

2. The principal case covered by subsection (a)(1) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse facility and takes a negotiable receipt, the warehouse is not liable on the receipt if it has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See Section 7-503(a). However, if the owner entrusted the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner receiving delivery would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the bailee a defense against such a holder. See Sections 7-502(a)(2), 7-503(a)(1).

3. Subsection (a)(2) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this Act. Much of the applicable law as to responsibility of bailees for the preservation of the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by Section 7-103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Sections 7-204 and 7-309 of this Article.

The bracketed language found in former Section 7-403(1)(b) has been deleted thereby leaving the allocations of the burden of going forward with the evidence and the burden of proof to the procedural law of the various states.

Subsection (a)(4) contains a cross reference to both the seller's and the lessor's rights to stop delivery under Article 2 and Article 2A respectively.

4. As under former Section 7-403, there is no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the bailee must request payment of the amount of its lien when asked to deliver, and only in case this request is refused is it justified in declining to deliver because of nonpayment of charges. Where delivery without payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction with the priorities given to the

1 warehouse lien and the carrier lien under Section 7-209 and 7-307, respectively. If the parties are
2 in dispute about whether the request for payment of the lien is legally proper, the bailee may have
3 recourse to interpleader. See Section 7-603.

4 5. Subsection (c) states the obvious duty of a bailee to take up a negotiable document or note
5 partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only
6 one exception, that stated in subsection (a)(1) of this section and in Section 7-503(a). Subsection
7 (c) is limited to cases of delivery to a claimant; it has no application, for example, where goods
8 held under a negotiable document are lawfully sold to enforce the bailee's lien.

9 6. When courts are considering subsection (a)(7), "any other lawful excuse," among others,
10 refers to compliance with court orders under Sections 7-601, 7-602 and 7-603.

11 12 **Cross References:**

13 Point 2: Sections 7-502 and 7-503.

14 Point 3: Sections 2-705, 2A-526, 7-103, 7-204, and 7-309 and 10-103.

15 Point 4: Sections 7-209, 7-307 and 7-603.

16 Point 5: Section 7-503(1).

17 Point 6: Sections 7-601, 7-602, and 7-603.

18 19 **Definitional Cross References:**

20 "Bailee". Section 7-102.

21 "Conspicuous". Section 1-201.

22 "Delivery". Section 1-201.

23 "Document of title". Section 1-201.

24 "Duly negotiate". Section 7-501.

25 "Goods". Section 7-102.

26 "Lessor". Section 2A-103.

27 "Person". Section 1-201.

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

29 "Right". Section 1-201.

30 "Terms". Section 1-201.

31 "Warehouse". Section 7-102.

32 33 34 **SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO**

35 **DOCUMENT OF TITLE.** A bailee that in good faith has received goods and delivered or
36 otherwise disposed of the goods according to the terms of a document of title or pursuant to this
37 article is not liable for the goods even if:

38 (1) the person from which the bailee received the goods did not have authority to procure

1 the document or to dispose of the goods; or

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

4 Preliminary Comments

5
6
7 **Prior Uniform Statutory Provision:** Former Section 7-404.

8
9 **Changes:** Changes reflect the definition of good faith in Section 1-201 [7-102] and for style .

10 11 **Purposes:**

12 This section uses the test of good faith, as defined in Section 1-201 [7-102], to continue the
13 policy of former Section 7-404. Good faith now means “honesty in fact and the observance of
14 reasonable commercial standards of fair dealing.” The section states explicitly that the common
15 law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is
16 inapplicable to the operations of commercial carriers and warehousemen that in good faith
17 perform obligations that they have assumed and that generally they are under a legal compulsion
18 to assume. The section applies to delivery to a fraudulent holder of a valid document as well as
19 to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a
20 bailee may use interpleader or other dispute resolution process. See Section 7-603.

21
22 **Cross Reference:** Section 7-603.

23 24 **Definitional Cross References:**

25 "Bailee". Section 7-102.

26 "Delivery". Section 1-201.

27 "Document of title". Section 1-201.

28 "Good faith". Section 1-201 [7-102].

29 "Goods". Section 7-102.

30 "Person". Section 1-201.

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

32 "Term". Section 1-201.

1
2 **PART 5**

3 **WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND**
4 **TRANSFER**

5
6 **SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE**
7 **NEGOTIATION.**

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

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

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

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

15 (4) Negotiation of the document after it has been indorsed to a named person requires
16 indorsement by the named person as well as delivery.

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

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

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

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

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

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

14 (d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the
15 goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of
16 any interest of that person in the goods.

17 Preliminary Comments

18
19 **Prior Uniform Statutory Provision:** Former Section 7-501.

20
21 **Changes:** To accommodate negotiable electronic documents of title.

22
23 **Purpose:**

24
25 1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise
26 remains unchanged in substance from the rules in former Section 7-501. Subsection (b) is new
27 and applies to negotiable electronic documents of title. Delivery of a negotiable electronic

document is through voluntary transfer of control. Section 1-201 definition of "delivery." The control concept as applied to negotiable electronic documents of title is the substitute for both possession and indorsement as applied to negotiable tangible documents of title. Section 7-106.

As under former Section 7-501, in order to effect a "due negotiation" the negotiation must be in the "regular course of business or financing" in order to transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away rights which are not its own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.

There are two aspects to the usual and normal course of mercantile dealings, namely, the person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose possession or control appears, commercially, to be in order is almost invariably a person in the trade. No commercial purpose is served by allowing a tramp or a professor to "duly negotiate" an order bill of lading for hides or cotton not their own, and since such a transfer is obviously not in the regular course of business, it is excluded from the scope of the protection of subsections (a)(5) or (b)(3).

The second question posed by the "regular course" qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor itself may not have such rights to pass, and even though the transferor may be acting in breach of duty? In raising this question the "regular course" criterion has the further advantage of limiting, the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: it is also clearly outside the range of regular course.

Any notice on the document sufficient to put a merchant on inquiry as to the "regular course" quality of the transaction will frustrate a "due negotiation". Thus irregularity of the document or unexplained staleness of a bill of lading may appropriately be recognized as negating a negotiation in "regular" course.

A pre-existing claim constitutes value, and "due negotiation" does not require "new value." A usual and ordinary transaction in which documents are received as security for credit previously extended may be in "regular" course, even though there is a demand for additional collateral because the creditor "deems himself insecure." But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is "paid" in commodity paper, any question of "regular" course disappears, as the case is explicitly excepted from "due negotiation".

2. Negotiation under this section may be made by any holder no matter how the holder acquired possession or control of the document.

3. Subsections (a)(3) and (b)(2) make explicit a matter upon which the intent of the pre-Code law was clear but the language somewhat obscure: a negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation; it may very well be in "regular

1 course."

2 4. This Article does not contain any provision creating a presumption of due negotiation to,
3 and full rights in, a holder of a document of title akin to that created by Uniform Commercial
4 Code Article 3. But the reason of the provisions of this Act (Section 1-307) on the prima facie
5 authenticity and accuracy of third party documents, joins with the reason of the present section to
6 work such a presumption in favor of any person who has power to make a due negotiation. It
7 would not make sense for this Act to authorize a purchaser to indulge the presumption of
8 regularity if the courts were not also called upon to do so.

9 5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible and
10 electronic documents of title.

11
12 **Cross References:** Sections 1-307, 7-502 and 7-503.

13
14 **Definitional Cross References:**

15 "Bearer". Section 1-201.

16 "Control". Section 7-106.

17 "Delivery". Section 1-201.

18 "Document of title". Section 1-201.

19 "Good faith". Section 1-201 [7-102].

20 "Holder". Section 1-201.

21 "Notice". Section 1-202.

22 "Person". Section 1-201.

23 "Purchase". Section 1-201.

24 "Rights". Section 1-201.

25 "Term". Section 1-201.

26 "Value". Section 1-204.

27
28
29 **SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.**

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

32 (1) title to the document;

33 (2) title to the goods;

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

36 (4) the direct obligation of the issuer to hold or deliver the goods according to the

1 terms of the document free of any defense or claim by the issuer except those arising under the
2 terms of the document or under this article. In the case of a delivery order, the bailee's obligation
3 accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the
4 holder is that the issuer and any indorser will procure the acceptance of the bailee.

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

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

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

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

14 **Proposed Comment**

15
16 **Prior Uniform Statutory Provision:** Former Section 7-502.

17
18 **Changes:** To accommodate electronic documents of title and for style.

19 **Purpose:**

20
21
22 1. This section applies to both tangible and electronic documents of title. Due negotiation is
23 defined in Section 7-501. The several necessary qualifications of the broad principle that the
24 holder of a document acquired in a due negotiation is the owner of the document and the goods
25 have been brought together in the next section.

26 2. Subsection (a)(3) covers the case of "feeding" of a duly negotiated document by
27 subsequent delivery to the bailee of such goods as the document falsely purported to cover; the
28 bailee in such case is estopped as against the holder of the document.

29 3. The explicit statement in subsection (a)(4) of the bailee's direct obligation to the holder
30 precludes the defense that the document in question was "spent" after the carrier had delivered

1 the goods to a previous holder. But the holder is subject to such defenses as non-negligent
2 destruction even though not apparent on the document. The sentence on delivery orders applies
3 only to delivery orders in negotiable form which have been duly negotiated. On delivery orders,
4 see also Section 7-503(b) and Comment.

5 4. Subsection (b) continues the law which gave full effect to the issuance or due negotiation
6 of a negotiable document. The subsection adds nothing to the effect of the rules stated in
7 subsection (a), but it has been included since such explicit reference was provided under former
8 Section 7-502 to preserve the right of a purchaser by due negotiation. The listing is not
9 exhaustive. The language "any stoppage" is included lest an inference be drawn that a stoppage
10 of the goods before or after transit might cut off or otherwise impair the purchaser's rights.

11
12 **Cross References:** Sections 7-103, 7-205, 7-403, 7-501, and 7-503.

13
14 **Definitional Cross References:**

15 "Bailee". Section 7-102.

16 "Control". Section 7-106.

17 "Delivery". Section 1-201.

18 "Delivery order". Section 7-102.

19 "Document of title". Section 1-201.

20 "Duly negotiate". Section 7-501.

21 "Fungible". Section 1-201.

22 "Goods". Section 7-102.

23 "Holder". Section 1-201.

24 "Issuer". Section 7-102.

25 "Person". Section 1-201.

26 "Rights". Section 1-201.

27 "Term". Section 1-201.

28 "Warehouse receipt". Section 1-201.

29
30
31 **SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN**

32 **CASES.**

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

35 (1) deliver or entrust the goods or any document covering the goods to the bailor or
36 the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain
37 delivery under Section 7-403; or with power of disposition under Section 2-403, 2A-304(2), 2A-

305(2), or 9-320 or other statute or rule of law; or

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-503.

Changes: Changes to cross-reference to Article 2A and for style.

Purposes:

1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief's own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, "acquiescence" by the landlord or mortgagee does not require active consent under subsection (a)(2) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat the landlord's or the mortgagee's rights as against one who takes by due negotiation of a negotiable document.

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in its duty to sell for cash, the goods are "entrusted" to the factor "with actual . . . authority . . . to sell" under subsection (a)(1), and if the factor procures a

1 negotiable document of title it can transfer the owner's interest to a purchaser by due negotiation.
2 Further, where the factor is in the business of selling, goods entrusted to it simply for safekeeping
3 or storage may be entrusted under circumstances which give the factor "apparent authority to
4 ship, store or sell" under subsection (a)(1), or power of disposition under Section 2-403, 2A-
5 304(2), 2A-305(2), 7-205, or 9-320, or under a statute such as the earlier Factors Acts, or under a
6 rule of law giving effect to apparent ownership. See Section 1-103.

7 Persons having an interest in goods also frequently deliver or entrust them to agents or
8 servants other than factors for the purpose of shipping or warehousing or under circumstances
9 reasonably contemplating such action. This Act is clear that such persons assume full risk that
10 the agent to whom the goods are so delivered may ship or store in breach of duty, take a
11 document to the agent's own order and then proceed to misappropriate the negotiable document
12 of title that embodies the goods. This Act makes no distinction between possession or mere
13 custody in such situations and finds no exception in the case of larceny by a bailee or the like.
14 The safeguard in such situations lies in the requirement that a due negotiation can occur only "in
15 the regular course of business or financing" and that the purchase be in good faith and without
16 notice. See Section 7-501. Documents of title have no market among the commercially
17 inexperienced and the commercially experienced do not take them without inquiry from persons
18 known to be truck drivers or petty clerks even though such persons purport to be operating in
19 their own names.

20 Again, where the seller allows a buyer to receive goods under a contract for sale, though as a
21 "conditional delivery" or under "cash sale" terms and on explicit agreement for immediate
22 payment, the buyer thereby acquires power to defeat the seller's interest by transfer of the goods
23 to certain good faith purchasers. See Section 2-403. Both in policy and under the language of
24 subsection (a)(1) that same power must be extended to accomplish the same result if the buyer
25 procures a negotiable document of title to the goods and duly negotiates it.

26 2. Under subsection (a) a delivery order issued by a person having no right in or power over
27 the goods is ineffective unless the owner acts as provided in subsection (a)(1) or (2). Thus the
28 rights of a transferee of a non-negotiable warehouse receipt can be defeated by a delivery order
29 subsequently issued by the transferor only if the transferee "delivers or entrusts" to the "person
30 procuring" the delivery order or "acquiesces" in that person's procurement. Similarly, a second
31 delivery order issued by the same issuer for the same goods will ordinarily be subject to the first,
32 both under this section and under Section 7-402. After a delivery order is validly issued but
33 before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way
34 that the rights of a transferee may be defeated under Section 7-504. For example, a buyer in
35 ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the
36 bailee receives notification of the buyer's rights before notification of the holder's rights. Section
37 7-504(b)(2). But an accepted delivery order has the same effect as a document issued by the
38 bailee.

39 3. Under subsection (c) a bill of lading issued to a freight forwarder is subordinated to the
40 freight forwarder's document of title, since the bill on its face gives notice of the fact that a
41 freight forwarder is in the picture and the freight forwarder has in all probability issued a
42 document of title. But the carrier is protected in following the terms of its own bill of lading.
43

1 **Cross References:**

2 Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-501, 9-320, and 9-331.

3 Point 2: Sections 7-402 and 7-504.

4 Point 3: Sections 7-402, 7-403 and 7-404.

6 **Definitional Cross References:**

7 "Bill of lading". Section 1-201.

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

9 "Delivery". Section 1-201.

10 "Delivery order". Section 7-102.

11 "Document of title". Section 1-201.

12 "Duly negotiate". Section 7-501.

13 "Goods". Section 7-102.

14 "Person". Section 1-201.

15 "Right". Section 1-201.

16 "Warehouse receipt". Section 1-201.

19 **SECTION 7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION;
20 EFFECT OF DIVERSION; STOPPAGE OF DELIVERY.**

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

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

26 (1) by those creditors of the transferor that could treat the transfer as void under
27 Section 2-402 or 2A-308 ;

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

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

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

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-504.

Changes: To include cross-references to Article 2A and for style.

Purposes:

1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than the transferor has, even when the negotiation is formally perfect. This section recognizes the transferor's power to transfer rights which the transferor has or has "actual authority to convey." Thus, where a negotiable document of title is being transferred the operation of the principle of estoppel is not recognized, as contrasted with situations involving the transfer of the goods themselves. (Compare Section 2-403 on good faith purchase of goods.) This section applies to both tangible and electronic documents of title.

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if the purchaser had purchased the goods themselves. True, the purchaser's rights are not subject to defeat by attachment of the goods or surrender of them to the purchaser's transferor (contrast subsection (b)); but on the other hand, the purchaser cannot

1 acquire enforceable rights to control or receive the goods over the bailee's objection merely by
2 giving notice to the bailee. Similarly, a consignee who makes payment to its consignor against a
3 straight bill of lading can thereby acquire the position of a good faith purchaser of goods under
4 provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment made in
5 good faith against an unendorsed order bill would not have such effect. The appropriate remedy
6 of a purchaser in such a situation is to regularize its status by compelling indorsement of the
7 document (see Section 7-506).

8 2. As in the case of transfer--as opposed to "due negotiation"--of negotiable documents,
9 subsection (a) empowers the transferor of a nonnegotiable document to transfer only such rights
10 as the transferor has or has "actual authority" to convey. In contrast to situations involving the
11 goods themselves the operation of estoppel or agency principles is not here recognized to enable
12 the transferor to convey greater rights than the transferor actually has. Subsection (b) makes it
13 clear, however, that the transferee of a nonnegotiable document may acquire rights greater in
14 some respects than those of his transferor by giving notice of the transfer to the bailee. New
15 subsection (b)(3) provides for the rights of a lessee in the ordinary course.

16 3. Subsection (c) is in part a reiteration of the carrier's immunity from liability if it honors
17 instructions of the consignor to divert, but there is added a provision protecting the title of the
18 substituted consignee if the latter is a buyer in ordinary course of business. A typical situation
19 would be where a manufacturer, having shipped a lot of standardized goods to A on
20 nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under pre-
21 Code passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no
22 consideration of commercial policy supports this involvement of an innocent third party in the
23 default of the manufacturer on his contract to A; and the common commercial practice of
24 diverting goods in transit suggests a trade understanding in accordance with this subsection. The
25 same result should obtain if the substituted consignee is a lessee in ordinary course. The extent
26 of the lessee's interest in the goods is less than a buyer's interest in the goods. However, as
27 against the first consignee and the lessee in ordinary course as the substituted consignee, the
28 lessee's rights in the goods as granted under the lease are superior to the first consignee's rights.

29 4. Subsection (d) gives the carrier an express right to indemnity where the carrier honors a
30 seller's request to stop delivery.

31 5. Section 1-202 gives the bailee protection, if due diligence is exercised where the bailee's
32 organization has not had time to act on a notification.

33 34 **Cross References:**

35
36 Point 1: Sections 2-403 and 7-506.

37 Point 2: Sections 2-403 and 2A-304.

38 Point 3: Sections 7-303, 7-403(a)(5) and 7-404.

39 Point 4: Sections 2-705 and 7-403(a)(4).

40 Point 5: Section 1-202.

41 42 **Definitional Cross References:**

43 "Bailee". Section 7-102.

1 "Bill of lading". Section 1-201.
2 "Buyer in ordinary course of business". Section 1-201.
3 "Consignee". Section 7-102.
4 "Consignor". Section 7-102.
5 "Creditor". Section 1-201.
6 "Delivery". Section 1-201.
7 "Document of Title". Section 1-201.
8 "Duly negotiate". Section 7-501.
9 "Good faith". Section 1-201. [7-102].
10 "Goods". Section 7-102.
11 "Honor". Section 1-201.
12 "Lessee in ordinary course". Section 2A-103.
13 "Notification" Section 1-202.
14 "Purchaser". Section 1-201.
15 "Rights". Section 1-201.
16
17

18 **SECTION 7-505. INDORSER NOT GUARANTOR FOR OTHER PARTIES.** The

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

21 **Preliminary Comments**

22
23 **Prior Uniform Statutory Provision:** Former Section 7-505.

24
25 **Changes:** Limited to tangible documents of title.

26
27 **Purposes:**

28
29 This section is limited to tangible documents of title as the concept of indorsement is
30 irrelevant to electronic documents of title. Electronic documents of title will be transferred by
31 delivery of control. Section 7-106. The indorsement of a tangible document of title is generally
32 understood to be directed towards perfecting the transferee's rights rather than towards assuming
33 additional obligations. The language of the present section, however, does not preclude the one
34 case in which an indorsement given for value guarantees future action, namely, that in which the
35 bailee has not yet become liable upon the document at the time of the indorsement. Under such
36 circumstances the indorser, of course, engages that appropriate honor of the document by the
37 bailee will occur. See Section 7-502(a)(4) as to negotiable delivery orders. However, even in
38 such a case, once the bailee attorns to the transferee, the indorser's obligation has been fulfilled
39 and the policy of this section excludes any continuing obligation on the part of the indorser for
40 the bailee's ultimate actual performance.

Cross Reference: Sections 7-106 and 7-502.

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Party". Section 1-201.

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-506.

Changes: Limited to tangible documents of title.

Purposes:

1. This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized its position until such indorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this Article (Section 7-501(a)(5)) on "due negotiation". Similarly, despite the transfer to the transferee of the transferor's title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See Section 7-403(c).

Cross References:

Point 1: Sections 7-106 and 7-505.

Point 2: Sections 7-501(4) and 7-403(2).

1 **Definitional Cross References:**

2 "Document of title". Section 1-201.

3 "Rights". Section 1-201.

6 **SECTION 7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF**

7 **DOCUMENT OF TITLE.** If a person negotiates or delivers a document of title for value,

8 otherwise than as a mere intermediary under Section 7-508, unless otherwise agreed, the

9 transferor warrants to its immediate purchaser only in addition to any warranty made in selling or

10 leasing the goods that:

11 (1) the document is genuine;

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

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

16 **Preliminary Comments**

17
18 **Prior Uniform Statutory Provision:** Former Section 7-507.

19
20 **Changes:** Substitution of the word "delivery" for the word "transfer," reference leasing
21 transactions and style.

22
23 **Purposes:**

24 1. Delivery of goods by use of a document of title does not limit or displace the ordinary
25 obligations of a seller or lessor as to any warranties regarding the goods that arises under other
26 law. If the transfer of documents attends or follows the making of a contract for the sale or lease
27 of goods, the general obligations on warranties as to the goods (Sections 2-312 through 2-318
28 and Sections 2A-210 through 2A-316) are brought to bear as well as the special warranties under
29 this section.

30 2. The limited warranties of a delivering or collecting intermediary, including a collecting
31 bank, are stated in Section 7-508.

32
33 **Cross References:**

Point 1: Sections 2-312 through 2-318 and 2A-310-through 2A-316.

Point 2: Section 7-508.

Definitional Cross References:

“Delivery”. Section 1-201.

"Document of title". Section 1-201.

"Genuine". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-204.

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

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

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-508.

Changes: Changes for style only.

Purposes:

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See Section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7-507.

3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5. On the meaning of draft, see Section 4-104 and Section 5-103, comment 11.

Cross References:

Sections 4-104, 4-203, 4-501 through 4-504, 5-103, and 7-507.

Definitional Cross References:

"Collecting bank". Section 4-105.
"Delivery". Section 1-201.
"Document of title". Section 1-102.
"Documentary draft". Section 4-104.
"Intermediary bank". Section 4-105.
"Good faith". Section 1-201 [7-102.]

SECTION 7-509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5.

Preliminary Comments

Prior Uniform Statutory Provision: Former Section 7-509.

Changes: To reference Article 2A.

Purposes:

To cross-refer to the Articles of this Act which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

Cross References: Articles 2, 2A and 5.

Definitional Cross References:

"Contract for sale". Section 2-106.
"Document of title". Section 1-201.
"Lease". Section 2A-103.

1 **PART 6**

2 **WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS**

3 **PROVISIONS**

4
5 **SECTION 7-601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE.**

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

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

20 **Preliminary Comments**

21
22 **Prior Uniform Statutory Provision:** Former Section 7-601.

23
24 **Changes:** To accommodate electronic documents; to provide flexibility to courts similar to the

flexibility in Section 3-309; to update to the modern era of deregulation; and for style.

Purposes:

1. Subsection (a) authorizes courts to order compulsory delivery of the goods or compulsory issuance of a substitute document. Compare Section 7-402. Using language similar to that found in Section 3-309, courts are given discretion as to what is adequate protection when the lost, stolen or destroyed document was negotiable or whether security should be required when the lost, stolen or destroyed document was nonnegotiable. In determining whether a party is adequately protected against loss in the case of a negotiable document, the court should consider the likelihood that the party will suffer a loss. The court is also given discretion as to the bailee's costs and attorney fees. The rights and obligations of a bailee under this section depend upon whether the document of title is lost, stolen or destroyed and is in addition to the ability of the bailee to bring an action for interpleader. See Section 7-603.

2. Courts have the authority under this section to order a substitute document for either tangible or electronic documents. If the substitute document will be in a different medium than the original document, the court should fashion its order in light of the requirements of Section 7-105.

3. Subsection (b) follows prior Section 7-601 in recognizing the legality of the well established commercial practice of bailees making delivery in good faith when they are satisfied that the claimant is the person entitled under a missing (i.e. lost, stolen, or destroyed) negotiable document. Acting without a court order, the bailee remains liable on the original negotiable document and, to avoid conversion liability, the bailee may insist that the claimant provide an indemnity bond. Cf. Section 7-403.

4. Claimants on non-negotiable instruments are permitted to avail themselves of the subsection (a) procedure because straight (non-negotiable) bills of lading sometimes contain provisions that the goods shall not be delivered except upon production of the bill. If the carrier should choose to insist upon production of the bill, the consignee should have some means of compelling delivery on satisfactory proof of entitlement. Without a court order, a bailee may deliver, subject to Section 7-403, to a person claiming goods under a non-negotiable document that the same person claims is lost, stolen, or destroyed.

5. The bailee's lien should be protected when a court orders delivery of the goods pursuant to this section.

Cross References:

Point 1: Sections 3-309, 7-402 and 7-603.

Point 2: Section 7-105.

Point 3: Section 7-403.

Point 4: Section 7-403.

Point 5: Sections 7-209 and 7-307.

Definitional Cross References:

"Bailee". Section 7-102.

"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Person". Section 1-201.

SECTION 7-602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE

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

Preliminary Comments

Prior Uniform Statutory Provisions: Former Section 7-602.

Changes: Changes to accommodate electronic documents of title and for style.

Purposes:

1. The purpose of the section is to protect the bailee from conflicting claims of the document of title holder and the judgment creditors of the person who deposited the goods. The rights of the former prevail unless, in effect, the judgment creditors immobilize the negotiable document of title through the surrender of possession of a tangible document or control of an electronic document. However, if the document of title was issued upon deposit of the goods by a person who had no power to dispose of the goods so that the document is ineffective to pass title, judgment liens are valid to the extent of the debtor's interest in the goods.

2. The last sentence covers the possibility that the holder of a document who has been enjoined from negotiating it will violate the injunction by negotiating to an innocent purchaser for value. In such case the lien will be defeated.

1 **Cross Reference:**

2 Sections 7-106 and 7-503.

4 **Definitional Cross References:**

5 "Bailee". Section 7-102.

6 "Delivery". Section 1-201.

7 "Document of title". Section 1-201.

8 "Goods". Section 7-102.

9 "Notice". Section 1-202.

10 "Person". Section 1-201.

11 "Purchase". Section 1-201.

12 "Value". Section 1-204.

15 **SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.** If more than one

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

20 **Preliminary Comments**

22 **Prior Uniform Statutory Provisions:** Former Section 7-603.

24 **Changes:** Changes for style only.

26 **Purposes:**

27 1. The section enables a bailee faced with conflicting claims to the goods to compel the
28 claimants to litigate their claims with each other rather than with the bailee. The bailee is
29 protected from legal liability when the bailee complies with court orders from the interpleader.
30 *See e.g.* Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc., 162 Ga.App. 741,
31 293 S.E.2d 30 (1982).

32 2. This section allows the bailee to bring an interpleader action but does not provide an
33 exclusive basis for allowing interpleader. If either state or federal procedural rules allow an
34 interpleader in other situations, the bailee may commence an interpleader under those rules.
35 Even in an interpleader to which this section applies, the state or federal process of interpleader
36 applies to the bailee's action for interpleader. For example, state or federal interpleader statutes
37 or rules may permit a bailee to protect its lien or to seek attorney's fees and costs in the
38 interpleader action.

1 **Cross reference:**

2 Point 1: Section 7-403.

4 **Definitional Cross References:**

5 "Action". Section 1-201.

6 "Bailor". Section 7-102.

7 "Delivery". Section 1-201.

8 "Goods". Section 7-102.

9 "Person". Section 1-201.

10 "Reasonable time". Section 1-205.

11 *LEGISLATIVE NOTE: The following provisions should be used to apply to both the Article 7*
12 *provisions and the conforming amendments to other articles of the Uniform Commercial Code*
13 *attached as Appendix I.*

1 **PART 7**

2 **MISCELLANEOUS PROVISIONS**

3
4 **SECTION 7-701. EFFECTIVE DATE.** This [Act] takes effect on _____, 20 ____.

5
6 **SECTION 7-702. REPEALS.** [Existing Article 7] and [Section 10-104 of the Uniform
7 Commercial Code] are repealed.

8 **Preliminary Comments**

9
10 A state should repeal its prior version of Uniform Commercial Code Article 7 on documents
11 of title and Uniform Commercial Code section 10-204. The substance of Section 10-104 has
12 been incorporated into Section 7-103(b).
13

14 **SECTION 7-703. APPLICABILITY.** This [Act] applies to a document of title that is
15 issued or a bailment that arises on or after the effective date of this [Act]. This [Act] does not
16 apply to a document of title that is issued or a bailment that arises before the effective date of this
17 [Act] even if the document of title or bailment would be subject to this [Act] if the document of
18 title had been issued or bailment had arisen after the effective date of this [Act]. This [Act] does
19 not apply to a right of action that has accrued before the effective date of this [Act].

20 **Preliminary Comments**

21
22 This Act will apply prospectively only to documents of title issued or bailments that arise
23 after the effective date of the Act.
24
25
26
27

28 **SECTION 7-704. SAVINGS CLAUSE.** A document of title issued or a bailment that

1 arises before the effective date of this [Act] and the rights, obligations, and interests flowing from
2 that document or bailment are governed by any statute or other rule amended or repealed by this
3 [Act] as if amendment or repeal had not occurred and may be terminated, completed,
4 consummated, or enforced under that statute or other rule.

5 **Preliminary Comments**

6
7 This Act will apply prospectively only to documents of title issued or bailments that arise
8 after the effective date of the Act. To the extent that issues arise based upon documents of title
9 or rights or obligations that arise prior to the effective date of this Act, prior law will apply to
10 resolve those issues.
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Legislative Note: These amendments should be adopted in the event a state has not yet adopted Revised Article 1 as approved in 2001.

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

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

* * * *

84

1 term is “conspicuous”. Whether a term or clause is “conspicuous” or not is for decision by the
2 court.

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

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

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

11 * * * *

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

15 (15) “Document of title” ~~includes bill of lading, dock warrant, dock receipt, warehouse~~
16 ~~receipt or order for the delivery of goods, and also any other~~ means a record (i) that document
17 ~~which~~ in the regular course of business or financing is treated as adequately evidencing that the
18 person in possession or control of the record it is entitled to receive, control, hold, and dispose of
19 the record document and the goods it the record covers and (ii) that purports to be issued by or
20 addressed to a bailee and to cover goods in the bailee’s possession which are either identified or
21 are fungible portions of an identified mass. The term includes a bill of lading, transport
22 document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. To be

1 ~~a document of title, a document must purport to be issued by or addressed to a bailee and purport~~
2 ~~to cover goods in the bailee's possession which are either identified or are fungible portions of an~~
3 ~~identified mass. An electronic document of title is evidenced by a record consisting of~~
4 ~~information stored in an electronic medium. A tangible document of title is evidenced by a~~
5 ~~record consisting of information that is inscribed on a tangible medium.~~

6 * * * *

7 (20) ~~“Holder,” with respect to a negotiable instrument, means the person in possession if the~~
8 ~~instrument is payable to bearer or, in the case of an instrument payable to an identified person, if~~
9 ~~the identified person is in possession. “Holder” with respect to a document of title means the~~
10 ~~person in possession if the goods are deliverable to bearer or to the order of the person in~~
11 ~~possession.~~

12 “Holder” means:

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

15 (B) the person in possession of a negotiable tangible document of title if the goods are
16 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 * * * *

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

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

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

22 (c) from all the facts and circumstances known to ~~him~~ the person at the time in question,

1 ~~he~~ has reason to know that it exists.

2 A person “knows” or has “knowledge” of a fact when the person ~~he~~ has actual knowledge of it.

3 “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to
4 reason to know. The time and circumstances under which a notice or notification may cease to
5 be effective are not determined by this Act.

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

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

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

14 (27) Notice, knowledge, or a notice or notification received by an organization is effective for
15 a particular transaction from the time when it is brought to the attention of the individual
16 conducting that transaction, and in any event, from the time when it would have been brought to
17 the individual’s ~~his~~ attention if the organization had exercised due diligence. An organization
18 exercises due diligence if it maintains reasonable routines for communicating significant
19 information to the person conducting the transaction and there is reasonable compliance with the
20 routines. Due diligence does not require an individual acting for the organization to
21 communicate information unless such communication is part of the individual’s ~~his~~ regular
22 duties or the individual ~~unless he~~ has reason to know of the transaction and that the transaction

1 would be materially affected by the information.

2 * * * *

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

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

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

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

16 * * * *

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

19 **OFFICIAL COMMENT**

20 * * * *

21 5. "Bearer". From Section 191, Uniform Negotiable Instruments Law. The prior definition has been broadened.
22 The term bearer applies to negotiable documents of title and has been broadened to include a person in control of an
23 electronic negotiable document of title. Control in the context of an electronic document of title is defined in Article
24 7 (Section 7-106).

25 6. "Bill of Lading". See similar definitions in Section 1, Uniform Bills of Lading Act. The definition has been
26 enlarged to include freight forwarders' bills and bills issued by contract carriers as well as those issued by common
27 carriers. ~~The definition of airbill is new.~~ A bill of lading is one type of document of title as defined in subsection

1 (15). This definition should be read in conjunction with the definition of carrier in Article 7 (Section 7-102).

2 * * * *

3 10. "Conspicuous". ~~New. This is intended to indicate some of the methods of making a term attention-calling.~~
4 ~~But the test is whether attention can reasonably be expected to be called to it. This definition states the general~~
5 ~~standard that to be conspicuous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is~~
6 ~~an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term conspicuous. Requiring~~
7 ~~that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving~~
8 ~~guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs~~
9 ~~indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be~~
10 ~~expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with~~
11 ~~that test.~~

12 * * * *

13 14. "Delivery". Section 76, Uniform Sales Act, Section 191, Uniform Negotiable Instruments Law, Section 58,
14 Uniform Warehouse Receipts Act and Section 53, Uniform Bills of Lading Act. The definition has been revised to
15 accommodate electronic documents of title. Control in the context of an electronic document of title is defined in
16 Article 7 (Section 7-106).

17 15. "Document of title". From Section 76, Uniform Sales Act, ~~but rephrased to eliminate certain ambiguities.~~
18 ~~This definition makes explicit Thus, by making it explicit that the obligation or designation of a third party as~~
19 ~~"bailee" is essential to a document, this definition and clearly rejects any such result as obtained in Hixson v. Ward,~~
20 ~~254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left~~
21 ~~open so that new types of documents may be included, including documents which gain commercial recognition in~~
22 ~~the international arena. See UNCITRAL Draft Instrument on Transport Law. It is unforeseeable what documents~~
23 ~~may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has~~
24 ~~already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can~~
25 ~~move through banking channels faster than the goods themselves can reach their destination. There lie ahead air~~
26 ~~transport and such probabilities as teletype transmission of what may some day be regarded commercially as~~
27 ~~"Documents of Title". The definition is stated in terms of the function of the documents with the intention that any~~
28 ~~document which gains commercial recognition as accomplishing the desired result shall be included within its scope.~~
29 ~~Fungible goods are adequately identified within the language of the definition by identification of the mass of which~~
30 ~~they are a part.~~

31 Dock warrants were within the Sales Act definition of document of title apparently for the purpose of
32 recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a
33 kind of interim certificate issued by steamship shipping companies upon delivery of the goods at the dock, entitling a
34 designated person ~~to have issued to him at the company's office to be issued~~ a bill of lading. The receipt itself is
35 invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a
36 document is not within the general compass of the definition, although trade usage may in some cases entitle such
37 paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by
38 the shipping company, then it is a warehouse receipt within this Section regardless of the name given to the
39 instrument.

40 The goods must be "described", but the description may be by marks or labels and may be qualified in such a
41 way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel
42 checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token
43 are not covered by this Article. The definition is broad enough to include an airway bill.

44 A document of title may be either tangible or electronic. Tangible documents of title should be construed to
45 mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic
46 medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include
47 electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to
48 reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control for electronic
49 documents of title is defined in Article 7 (Section 7-106).

50 * * * *

51 19. "Good faith". See Section 76(2), Uniform Sales Act; Section 58(2), Uniform Warehouse Receipts Act;
52 Section 53(2), Uniform Bills of Lading Act; Section 22(2), Uniform Stock Transfer Act. "Good faith", whenever it

1 is used in the Code, means at least what is here stated. In certain Articles, by specific provision, additional
2 requirements are made applicable. See, e.g., Secs. 2-103(1)(b), ~~7-404~~. To illustrate, in the Article on Sales, Section
3 2-103, good faith is expressly defined as including in the case of a merchant observance of reasonable commercial
4 standards of fair dealing in the trade, so that throughout that Article wherever a merchant appears in the case an
5 inquiry into his observance of such standards is necessary to determine his good faith.

6 20. "Holder". See similar definitions in Section 191, Uniform Negotiable Instruments Law; Section 58,
7 Uniform Warehouse Receipts Act; Section 53, Uniform Bills of Lading Act. The definition has been amended to
8 provide for electronic negotiable documents of title.

9 * * * *

10 25. "Notice". ~~New. Compare N.I.L. Sec. 56. Under the definition a person has notice when he has received a~~
11 ~~notification of the fact in question. But by the last sentence the act leaves open the time and circumstances under~~
12 ~~which notice or notification may cease to be effective. Therefore such cases as Graham v. White-Phillips Co., 296~~
13 ~~U.S. 27, 56 S.Ct. 21, 80 L.Ed. 20 (1935), are not overruled.~~

14 ~~—26. "Notifies". New. This is the word used when the essential fact is the proper dispatch of the notice, not its~~
15 ~~receipt. Compare "Send". When the essential fact is the other party's receipt of the notice, that is stated. The second~~
16 ~~sentence states when a notification is received:~~

17 ~~—27. New. This makes clear that reason to know, knowledge, or a notification, although "received" for instance~~
18 ~~by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from~~
19 ~~the time when it was or should have been communicated to the individual conducting that transaction.~~

20 A person has notice of a fact when, inter alia, the person has received a notification of the fact in question. The
21 word "notifies" is used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "send."
22 When the essential fact is the other party's receipt of the notice, that is stated. Subsection (26) states when a
23 notification is received. Subsection (27) makes clear that notice, knowledge, or a notification, although "received,"
24 for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B
25 only from the time when it was or should have been communicated to the individual conducting that transaction.

26 * * * *

27 38. "Send". New. Compare "notifies". The definition of send has been modified to allow for electronic
28 dispatch.

29 * * * *

30 45. "Warehouse receipt". See Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act.
31 Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are
32 different persons. The definition makes clear that the receipt must qualify as a document of title under subsection
33 (15).

34 **ALTERNATIVE B**

35 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is enacting*
36 *at the same time as this Act the provisions of Revised Article 1 as approved in 2001 .*
37

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

39 * * *

40
41 (b) Subject to definitions contained in other articles of [the Uniform Commercial Code] that
42 apply to particular articles or parts thereof:

43 * * *

44 (5) "Bearer" means a person in control of a negotiable electronic document of title or a

1 person in possession of a negotiable instrument, a negotiable tangible document of title, or a
2 certificated security that is payable to bearer or indorsed in blank.

3 (6) “Bill of lading” means a document of title evidencing the receipt of goods for
4 shipment issued by a person engaged in the business of directly or indirectly transporting or
5 forwarding goods. The term does not include a warehouse receipt.

6 * * *

7 (15) “Delivery”, with respect to an electronic document of title means voluntary transfer
8 of control and with respect to an instrument, a tangible document of title, or chattel paper, means
9 voluntary transfer of possession.

10 (16) “Document of title” ~~includes bill of lading, dock warrant, dock receipt, warehouse~~
11 ~~receipt or order for the delivery of goods, and also any other~~ means a record (i) that document
12 ~~which~~ in the regular course of business or financing is treated as adequately evidencing that the
13 person in possession or control of the record it is entitled to receive, control, hold, and dispose of
14 the record document and the goods ~~it~~ the record covers and (ii) that purports to be issued by or
15 addressed to a bailee and to cover goods in the bailee’s possession which are either identified or
16 are fungible portions of an identified mass. The term includes a bill of lading, transport
17 document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. To be
18 ~~a document of title, a document must purport to be issued by or addressed to a bailee and purport~~
19 ~~to cover goods in the bailee’s possession which are either identified or are fungible portions of an~~
20 ~~identified mass.~~ An electronic document of title is evidenced by a record consisting of
21 information stored in an electronic medium. A tangible document of title is evidenced by a
22 record consisting of information that is inscribed on a tangible medium.

1 * * *

2 (21) "Holder" means:

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

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

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

8 * * *

9 (42) "Warehouse receipt" means a document of title ~~receipt~~ issued by a person engaged in
10 the business of storing goods for hire.

11 **OFFICIAL COMMENT**

12 5. "Bearer". Unchanged, except in one respect, from former section 1-201, which was derived from Section 191,
13 Uniform Negotiable Instruments Law. The term bearer applies to negotiable documents of title and has been
14 broadened to include a person in control of an electronic negotiable document of title. Control in the context of an
15 electronic document of title is defined in Article 7 (Section 7-106).

16 6. "Bill of Lading". Derived from former Section 1-201. The reference to, and definition of, an "airbill" has
17 been deleted as no longer necessary. A bill of lading is one type of document of title as defined in subsection (16).
18 This definition should be read in conjunction with the definition of carrier in Article 7 (Section 7-102).

19 * * * *

20 15. "Delivery". Derived from former Section 1-201. The reference to certificated securities has been deleted in
21 light of the more specific treatment of the matter in Section 8-301. The definition has been revised to accommodate
22 electronic documents of title. Control in the context of an electronic document of title is defined in Article 7
23 (Section 7-106).

24 16. "Document of title". ~~Unchanged~~ Derived from former Section 1-201, which was derived from Section 76,
25 Uniform Sales Act. This definition makes explicit ~~Thus, by making it explicit~~ that the obligation or designation of a
26 third party as "bailee" is essential to a document of title; ~~this definition and~~ clearly rejects any such result as obtained
27 in Hixson v. Ward, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also
28 the definition is left open so that new types of documents may be included, including documents which gain
29 commercial recognition in the international arena. See UNCITRAL Draft Instrument on Transport Law. It is
30 unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of
31 lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the
32 assumption that a draft can move through banking channels faster than the goods themselves can reach their
33 destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be
34 regarded commercially as "Documents of Title". The definition is stated in terms of the function of the documents
35 with the intention that any document which gains commercial recognition as accomplishing the desired result shall be
36 included within its scope. Fungible goods are adequately identified within the language of the definition by
37 identification of the mass of which they are a part.

38 Dock warrants were within the Sales Act definition of document of title apparently for the purpose of

recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by ~~steamship~~ shipping companies upon delivery of the goods at the dock, entitling a designated person to have issued to him at the company's office to be issued a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this Section regardless of the name given to the instrument.

The goods must be "described", but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this Article. The definition is broad enough to include an airway bill.

A document of title may be either tangible or electronic. Tangible documents of title should be construed to mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control for electronic documents of title is defined in Article 7 (Section 7-106).

* * * *

21. "Holder". Derived from former Section 1-201. The definition has been reorganized for clarity and amended to provide for electronic negotiable documents of title.

* * * *

42. "Warehouse receipt". ~~Unchanged~~ Derived from former Section 1-201, which was derived from Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons. The definition makes clear that the receipt must qualify as a document of title under subsection (16).

Amendments to Uniform Commercial Code Article 2

ALTERNATIVE A

Legislative Note: These amendments should be adopted in the event a state has not yet adopted Amended Article 2 as approved in 2003.

SECTION 2-103. DEFINITIONS AND INDEX OF DEFINITIONS.

* * * *

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3-104.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Consumer Goods". Section 9-102.

"Control". Section 7-106.

"Dishonor". Section 3-507.

"Draft". Section 3-104.

OFFICIAL COMMENT

* * * *

2. "Receipt" must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to "deliver" even though the buyer may never "receive" the goods. Delivery with

1 respect to documents of title is defined in Article 1 and requires transfer of physical delivery of a tangible document
2 of title and transfer of control of an electronic document of title. Otherwise the many divergent incidents of delivery
3 are handled incident by incident.
4

5
6 **SECTION 2-104. DEFINITIONS: “MERCHANT”; “BETWEEN MERCHANTS”;**
7 **“FINANCING AGENCY”.**

8 * * * *

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

17 * * * *

18 **SECTION 2-308. ABSENCE OF SPECIFIED PLACE FOR DELIVERY.**

19 **OFFICIAL COMMENT**

20 3. Where "customary banking channels" call only for due notification by the banker that the documents are
21 available on hand, leaving the buyer himself to see to the physical receipt of the goods, tender at the buyer's address
22 is not required under paragraph (c). But that paragraph merely eliminates the possibility of a default by the seller if
23 "customary banking channels" have been properly used in giving notice to the buyer. Where the bank has purchased
24 a draft accompanied by or associated with documents or has undertaken its collection on behalf of the seller, Part 5
25 of Article 4 spells out its duties and relations to its customer. Where the documents move forward under a letter of
26 credit the Article on Letters of Credit spells out the duties and relations between the bank, the seller and the buyer.
27 Delivery in relationship to either tangible or electronic documents of title is defined in Article 1, Section 1-201.

28 **SECTION 2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT;**
29 **AUTHORITY TO SHIP UNDER RESERVATION.**

30 Unless otherwise agreed

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

3 (b) if the seller is authorized to send the goods he may ship them under reservation, and may
4 tender the documents of title, but the buyer may inspect the goods after their arrival before
5 payment is due unless such inspection is inconsistent with the terms of the contract (Section
6 2-513); and

7 (c) if delivery is authorized and made by way of documents of title otherwise than by
8 subsection (b) then payment is due regardless of where the goods are to be received (i) at the time
9 and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time
10 the buyer is to receive delivery of the electronic documents and at the seller's place of business or
11 if none, the seller's residence ~~regardless of where the goods are to be received~~; and

12 (d) where the seller is required or authorized to ship the goods on credit the credit period runs
13 from the time of shipment but post-dating the invoice or delaying its dispatch will
14 correspondingly delay the starting of the credit period .

15 **OFFICIAL COMMENT**

16 * * * *

17 2. Paragraph (b) while providing for inspection by the buyer before he pays, protects the seller. He is not
18 required to give up possession of the goods until he has received payment, where no credit has been contemplated by
19 the parties. The seller may collect through a bank by a sight draft against an order bill of lading "hold until arrival;
20 inspection allowed." The obligations of the bank under such a provision are set forth in Part 5 of Article 4. Under
21 subsection (c), in the absence of a credit term, the seller is permitted to ship under reservation and if he does payment
22 is then due where and when the buyer is to receive delivery of the tangible documents of title. In the case of an
23 electronic document of title, payment is due when the buyer is to receive delivery of the electronic document and at
24 the seller's place of business, or if none, the seller's residence. Delivery as to documents of title is stated in Article
25 1, Section 1-201.

26 3. Unless otherwise agreed, the place for the ~~receipt~~ delivery of the documents and payment is the buyer's city
27 but the time for payment is only after arrival of the goods, since under paragraph (b), and Sections 2-512 and 2-513
28 the buyer is under no duty to pay prior to inspection. Tender of a document of title requires that the seller be ready,
29 willing and able to transfer possession of a tangible document of title or control of an electronic document of title to
30 the buyer.

31 * * * *

1 **SECTION 2-320. C.I.F. AND C. & F. TERMS.**

2 **OFFICIAL COMMENT**

3 * * * *

4 5. The seller is given the option of paying or providing for the payment of freight. He has no option to ship
5 "freight collect" unless the agreement so provides. The rule of the common law that the buyer need not pay the
6 freight if the goods do not arrive is preserved.

7 Unless the shipment has been sent "freight collect" the buyer is entitled to receive documentary evidence that he
8 is not obligated to pay the freight; the seller is therefore required to obtain a receipt "showing that the freight has
9 been paid or provided for." The usual notation ~~in the appropriate space~~ on the bill of lading that the freight has been
10 prepaid is a sufficient receipt, as at common law. The phrase "provided for" is intended to cover the frequent
11 situation in which the carrier extends credit to a shipper for the freight on successive shipments and receives
12 periodical payments of the accrued freight charges from him.

13 * * * *

14 11. The buyer needs all of the documents required under a C.I.F. contract, in due form and if a tangible
15 document of title, with necessary endorsements, so that before the goods arrive he may deal with them by negotiating
16 the documents or may obtain prompt possession of the goods after their arrival. If the goods are lost or damaged in
17 transit the documents are necessary to enable him promptly to assert his remedy against the carrier or insurer. The
18 seller is therefore obligated to do what is mercantilely reasonable in the circumstances and should make every
19 reasonable exertion to send forward the documents as soon as possible after the shipment. The requirement that the
20 documents be forwarded with "commercial promptness" expresses a more urgent need for action than that suggested
21 by the phrase "reasonable time".

22 * * * *

23 **SECTION 2-323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS**
24 **SHIPMENT; "OVERSEAS".**

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

29 (2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of
30 parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may
31 demand tender of the full set; otherwise only one part of the bill of lading need be tendered.

32 Even if the agreement expressly requires a full set

33 (a) due tender of a single part is acceptable within the provisions of this Article on cure of

1 improper delivery (subsection (1) of Section 2-508); and

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

5 * * * *

6 **OFFICIAL COMMENT**

7 * * * *

8 2. Subsection (2) deals with the problem of bills of lading covering deep water shipments, issued not as a single
9 bill of lading but in a set of parts, each part referring to the other parts and the entire set constituting in commercial
10 practice and at law a single bill of lading. Commercial practice in international commerce is to accept and pay
11 against presentation of the first part of a set if the part is sent from overseas even though the contract of the buyer
12 requires presentation of a full set of bills of lading provided adequate indemnity for the missing parts is forthcoming.
13 In accord with the amendment to Section 7-304, bills of lading in a set are limited to tangible bills.

14 * * * *

15 **SECTION 2-401. PASSING OF TITLE; RESERVATION FOR SECURITY;**

16 **LIMITED APPLICATION OF THIS SECTION.** Each provision of this Article with regard
17 to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties
18 applies irrespective of title to the goods except where the provision refers to such title. Insofar as
19 situations are not covered by the other provisions of this Article and matters concerning title
20 become material the following rules apply:

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

1 manner and on any conditions explicitly agreed on by the parties.

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

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

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

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

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

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

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

21 **OFFICIAL COMMENT**

22 * * * *

23 4. The factual situations in subsections (2) and (3) upon which passage of title turn actually base the test upon

the time when the seller has finally committed himself in regard to specific goods. Thus in a "shipment" contract he commits himself by the act of making the shipment. If shipment is not contemplated subsection (3) turns on the seller's final commitment, i.e. the delivery of documents or the making of the contract. As to delivery of an electronic document of title, see definition of delivery in Article 1, Section 1-201. This Article does not state a rule as to the place of title passage as to goods covered by an electronic document of title.

SECTIONS 2-403. POWER TO TRANSFER; GOOD FAITH PURCHASE OF GOODS; “ENTRUSTING”.

OFFICIAL COMMENT

* * * *

2. The many particular situations in which a buyer in ordinary course of business from a dealer has been protected against reservation of property or other hidden interest are gathered by subsections (2)-(4) into a single principle protecting persons who buy in ordinary course out of inventory. Consignors have no reason to complain, nor have lenders who hold a security interest in the inventory, since the very purpose of goods in inventory is to be turned into cash by sale. The principle is extended in subsection (3) to fit with the abolition of the old law of "cash sale" by subsection (1)(c). It is also freed from any technicalities depending on the extended law of larceny; such extension of the concept of theft to include trick, particular types of fraud, and the like is for the purpose of helping conviction of the offender; it has no proper application to the long-standing policy of civil protection of buyers from persons guilty of such trick or fraud. Finally, the policy is extended, in the interest of simplicity and sense, to any entrusting by a bailor; this is in consonance with the explicit provisions of Section 7-205 on the powers of a warehouseman who is also in the business of buying and selling fungible goods of the kind he ~~warehouses~~ stores. As to entrusting by a secured party, subsection (2) is limited by the more specific provisions of Section 9-320, which deny protection to a person buying farm products from a person engaged in farming operations.

* * * *

SECTION 2-503. MANNER OF SELLER'S TENDER OF DELIVERY.

* * * *

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

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

(b) tender to the buyer of a non-negotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and

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

7 (5) Where the contract requires the seller to deliver documents

8 (a) he must tender all such documents in correct form, except as provided in this Article
9 with respect to bills of lading in a set (subsection (2) of Section 2-323); and

10 (b) tender through customary banking channels is sufficient and dishonor of a draft
11 accompanying or associated with the documents constitutes non-acceptance or rejection.

12 **OFFICIAL COMMENT**

13 1. The major general rules governing the manner of proper or due tender of delivery are gathered in this section.
14 The term "tender" is used in this Article in two different senses. In one sense it refers to "due tender" which
15 contemplates an offer coupled with a present ability to fulfill all the conditions resting on the tendering party and
16 must be followed by actual performance if the other party shows himself ready to proceed. Unless the context
17 unmistakably indicates otherwise this is the meaning of "tender" in this Article and the occasional addition of the
18 word "due" is only for clarity and emphasis. At other times it is used to refer to an offer of goods or documents
19 under a contract as if in fulfillment of its conditions even though there is a defect when measured against the contract
20 obligation. Used in either sense, however, "tender" connotes such performance by the tendering party as puts the
21 other party in default if he fails to proceed in some manner. These concepts of tender would apply to tender of either
22 tangible or electronic documents of title.

23 * * * *

24 7. Under subsection (5) documents are never "required" except where there is an express contract term or it is
25 plainly implicit in the peculiar circumstances of the case or in a usage of trade. Documents may, of course, be
26 "authorized" although not required, but such cases are not within the scope of this subsection. When documents are
27 required, there are three main requirements of this subsection: (1) "All": each required document is essential to a
28 proper tender; (2) "Such": the documents must be the ones actually required by the contract in terms of source and
29 substance; (3) "Correct form": All documents must be in correct form. These requirements apply to both tangible
30 and electronic documents of title. When tender is made through customary banking channels, a draft may
31 accompany or be associated with a document of title. The language has been broadened to allow for drafts to be
32 associated with an electronic document of title. Compare Section 2-104(2) definition of financing agency.

33 When a prescribed document cannot be procured, a question of fact arises under the provision of this Article on
34 substituted performance as to whether the agreed manner of delivery is actually commercially impracticable and
35 whether the substitute is commercially reasonable.

1 **SECTION 2-505. SELLER'S SHIPMENT UNDER RESERVATION.**

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

3 (a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in
4 him a security interest in the goods. His procurement of the bill to the order of a financing
5 agency or of the buyer indicates in addition only the seller's expectation of transferring that
6 interest to the person named.

7 (b) a non-negotiable bill of lading to himself or his nominee reserves possession of the
8 goods as security but except in a case of conditional delivery (subsection (2) of Section 2-507) a
9 non-negotiable bill of lading naming the buyer as consignee reserves no security interest even
10 though the seller retains possession or control of the bill of lading.

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

15 **OFFICIAL COMMENT**

16 * * * *

17 5. Under subsection (2) an improper reservation by the seller which would constitute a breach in no way impairs
18 such of the buyer's rights as result from identification of the goods. The security title reserved by the seller under
19 subsection (1) does not protect his ~~holding~~ retaining possession or control of the document or the goods for the
20 purpose of exacting more than is due him under the contract.

21
22
23 **SECTION 2-506. RIGHTS OF FINANCING AGENCY.**

24 * * * *

25 (2) The right to reimbursement of a financing agency which has in good faith honored or
26 purchased the draft under commitment to or authority from the buyer is not impaired by

1 subsequent discovery of defects with reference to any relevant document which was apparently
2 regular ~~on its face~~.

3 OFFICIAL COMMENT

4 * * * *

5 5. The deletion of the language "on its face" from subsection (2) is designed to accommodate electronic
6 documents of title without changing the requirement of regularity of the document.

7
8 **SECTION 2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.**

9 * * * *

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

12 (a) on his receipt of possession or control of a negotiable document of title covering the
13 goods; or

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

15 (c) after his receipt of possession or control of a non-negotiable document of title or other
16 ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

17 * * * *

18 OFFICIAL COMMENT

19 * * * *

20 4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal from
21 the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer of
22 risk. Due delivery of a negotiable document of title covering the goods or acknowledgment by the bailee that he
23 holds for the buyer completes the "delivery" and passes the risk. See definition of delivery in Article 1, Section 1-
24 201 and the definition of control in Article 7, Section 7-106.

25 * * * *

26 **SECTION 2-513. BUYER'S RIGHT TO INSPECTION OF THE GOODS.**

27 OFFICIAL COMMENT

1 * * * *

2 5. In the case of payment against documents, subsection (3) requires payment before inspection, since shipping
3 documents against which payment is to be made will commonly ~~arrive and~~ be tendered while the goods are still in
4 transit. This Article recognizes no exception in any peculiar case in which the goods happen to arrive before the
5 documents are tendered. However, where by the agreement payment is to await the arrival of the goods, inspection
6 before payment becomes proper since the goods are then "available for inspection."

7 Where by the agreement the documents are ~~to be held to be tendered after~~ until arrival of the goods, the buyer is
8 entitled to inspect before payment since the goods are then "available for inspection". Proof of usage is not
9 necessary to establish this right, but if inspection before payment is disputed the contrary must be established by
10 usage or by an explicit contract term to that effect.

11 For the same reason, that the goods are available for inspection, a term calling for payment against storage
12 documents or a delivery order does not normally bar the buyer's right to inspection before payment under subsection
13 (3)(b). This result is reinforced by the buyer's right under subsection (1) to inspect goods which have been
14 appropriated with notice to him.

15 * * * *

16
17 **SECTION 2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO**
18 **PARTICULARIZE.**

19 * * * *

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

22 **OFFICIAL COMMENT**

23 * * * *

24 4. Subsection (2) applies to the particular case of documents the same principle which the section on effects of
25 acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" of objections
26 rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods
27 and partly because defects in documents which are not taken as grounds for rejection are generally minor ones. The
28 only defects concerned in the present subsection are defects in the documents which are apparent. ~~on their face~~. This
29 rule applies to both tangible and electronic documents of title. Where payment is required against the documents
30 they must be inspected before payment, and the payment then constitutes acceptance of the documents. Under the
31 section dealing with this problem, such acceptance of the documents does not constitute an acceptance of the goods
32 or impair any options or remedies of the buyer for their improper delivery. Where the documents are delivered
33 without requiring such contemporary action as payment from the buyer, the reason of the next section on what
34 constitutes acceptance of goods, applies. Their acceptance by non-objection is therefore postponed until after a
35 reasonable time for their inspection. In either situation, however, the buyer "waives" only ~~what is~~ the defects
36 apparent ~~on the face of~~ in the documents.

37
38 **SECTION 2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR**
39 **OTHERWISE.**

* * * *

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

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

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

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

or

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

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

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

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

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

OFFICIAL COMMENT

* * * *

3. A diversion of a shipment is not a "reshipment" under subsection (2)(c) when it is merely an incident to the original contract of transportation. Nor is the procurement of "exchange bills" of lading which change only the name of the consignee to that of the buyer's local agent but do not alter the destination of a reshipment.

Acknowledgment by the carrier as a "warehouseman" within the meaning of this Article requires a contract of a truly different character from the original shipment, a contract not in extension of transit but as a warehouseman.

4. Subsection (3)(c) makes the bailee's obedience of a notification to stop conditional upon the surrender of possession or control of any outstanding negotiable document.

* * * *

1 **ALTERNATIVE B**

2 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is enacting*
3 *at the same time as this Act the provisions of Amended Article 2 as approved in 2003 . [Note to*
4 *readers—Proposed amendments to comments are not yet completed as the comments to Amended*
5 *Article 2 are not yet complete. The proposed amendments to the Article 2 comments will parallel*
6 *the proposed amendments to comments given in Alternative A.]*

7
8 **SECTION 2-103. DEFINITIONS AND INDEX OF DEFINITIONS.**

9 * * * *

10 (3) The following definitions in other Articles apply to this Article:

11 "Check". Section 3–104(f).

12 "Consumer goods". Section 9-102(a)(23).

13 "Control". Section 7-106.

14 "Dishonor". Section 3–502.

15 "Draft". Section 3–104(e).

16 "Injunction against honor". Section 5-109(b).

17 "Letter of credit". Section 5-102(a)(10).

18 * * * *

19 **SECTION 2–104. DEFINITIONS: “MERCHANT”; “BETWEEN MERCHANTS”;**
20 **“FINANCING AGENCY”.**

21 * * * *

22 (2) "Financing agency" means a bank, finance company or other person that in the

1 ordinary course of business makes advances against goods or documents of title or that by
2 arrangement with either the seller or the buyer intervenes in ordinary course to make or collect
3 payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft
4 or making advances against it or by merely taking it for collection whether or not documents of
5 title accompany or are associated with the draft. "Financing agency" includes also a bank or
6 other person that similarly intervenes between persons that are in the position of seller and buyer
7 in respect to the goods (Section 2-707).

8 * * * *

9 **SECTION 2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT**
10 **AUTHORITY TO SHIP UNDER RESERVATION.**

11 Unless otherwise agreed

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

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

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

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

**SECTION 2-401. PASSING OF TITLE; RESERVATION FOR SECURITY;
LIMITED APPLICATION OF THIS SECTION.**

* * * *

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

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

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

* * * *

SECTION 2-503. MANNER OF SELLER'S TENDER OF DELIVERY.

* * * *

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

(a) the seller must tender all such documents in correct form; and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

1 **SECTION 2-505. SELLER'S SHIPMENT UNDER RESERVATION.**

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

3 (a) the seller's procurement of a negotiable bill of lading to the seller's own order or
4 otherwise reserves in the seller a security interest in the goods. The seller's procurement of the
5 bill to the order of a financing agency or of the buyer indicates in addition only the seller's
6 expectation of transferring that interest to the person named.

7 (b) a non-negotiable bill of lading to the seller or the seller's nominee reserves possession
8 of the goods as security but except in a case when a seller has a right to reclaim the goods under
9 subsection (2) of Section 2-507 a non-negotiable bill of lading naming the buyer as consignee
10 reserves no security interest even though the seller retains possession or control of the bill of
11 lading.

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

16
17 **SECTION 2-506. RIGHTS OF FINANCING AGENCY.**

18 * * * *

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

1 **SECTION 2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.**

2 * * * *

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

5 (a) on the buyer's receipt of possession or control of a negotiable document of title
6 covering the goods; or

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

9 (c) after the buyer's receipt of possession or control of a non-negotiable document of title
10 or other direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

11 * * * *

12 **SECTION 2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO**
13 **PARTICULARIZE.**

14 * * * *

15 (2) A buyer's payment against documents tendered to the buyer made without reservation of
16 rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

17
18 **SECTION 2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR**
19 **OTHERWISE.**

20 * * * *

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

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

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

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

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

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

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

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

(d) A carrier that has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Amendments to Uniform Commercial Code Article 2A

ALTERNATIVE A

Legislative Note: These amendments should be used if the jurisdiction has not yet adopted Amended Article 2A as approved in 2003.

SECTION 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.

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

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him [or her] is in violation of the ownership rights or security interest

1 or leasehold interest of a third party in the goods, buys in ordinary course from a person in the
2 business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for
3 cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~
4 acquiring goods or documents of title under a pre-existing contract for sale but does not include
5 a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

6 * * * *

7 (o) "Lessee in ordinary course of business" means a person who in good faith and
8 without knowledge that the lease to him [or her] is in violation of the ownership rights or security
9 interest or leasehold interest of a third party in the goods leases in ordinary course from a person
10 in the business of selling or leasing goods of that kind but does not include a pawnbroker.
11 "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and
12 includes ~~receiving~~ acquiring goods or documents of title under a pre-existing lease contract but
13 does not include a transfer in bulk or as security for or in total or partial satisfaction of a money
14 debt.

15 * * * *

16 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

17 * * * *

18 (2) A lessee's failure to reserve rights when paying rent or other consideration against
19 documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the
20 documents.
21
22

1 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR**
2 **OTHERWISE.**

3 * * * *

4 (2) In pursuing its remedies under subsection (1), the lessor may stop delivery until
5 (a) receipt of the goods by the lessee;
6 (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the
7 bailee holds the goods for the lessee; or
8 (c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouseman.

9 * * * *

10 **ALTERNATIVE B**

11 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is*
12 *enacting at the same time as this Act the provisions of Amended Article 2A as approved in 2003.*

13
14 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

15 * * * *

16 (2) A lessee's failure to reserve rights when paying rent or other consideration against
17 documents precludes recovery of the payment for defects ~~apparent on the face of~~ in the
18 documents.

19
20 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR**
21 **OTHERWISE.**

22 * * * *

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

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouseman.

* * * *

Amendments to Uniform Commercial Code Article 4

SECTION 4-104. DEFINITIONS AND INDEX OF DEFINITIONS.

* * * *

(c) The following definitions in other Articles apply to this Article:

"Acceptance"	Section 3-409
"Alteration"	Section 3-407
"Cashier's check"	Section 3-104
"Certificate of deposit"	Section 3-104
"Certified check"	Section 3-409
"Check"	Section 3-104
<u>"Control"</u>	<u>Section 7-106</u>
"Good faith"	Section 3-103
"Holder in due course"	Section 3-302
"Instrument"	Section 3-104
"Notice of dishonor"	Section 3-503

1	"Order"	Section 3-103
2	"Ordinary care"	Section 3-103
3	"Person entitled to enforce"	Section 3-301
4	"Presentment"	Section 3-501
5	"Promise"	Section 3-103
6	"Prove"	Section 3-103
7	"Teller's check"	Section 3-104
8	"Unauthorized signature"	Section 3-403

9 **OFFICIAL COMMENT**

10 * * * *

11 5. Paragraph (a)(6): "Documentary draft" applies even though the documents do not accompany the draft but
12 are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be either
13 in electronic or tangible form. See Article 5, Section 5-102, Comment 2 and Article 1, Section 1-201 (definition of
14 "document of title").

15 * * * *

16 **SECTION 4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,**
17 **ACCOMPANYING DOCUMENTS AND PROCEEDS.**

18 (a) A collecting bank has a security interest in an item and any accompanying documents or
19 the proceeds of either:

20 (1) in case of an item deposited in an account, to the extent to which credit given for the
21 item has been withdrawn or applied;

22 (2) in case of an item for which it has given credit available for withdrawal as of right, to
23 the extent of the credit given, whether or not the credit is drawn upon or there is a right of
24 charge-back; or

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

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

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

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

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

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

SECTION 4-501. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

* * * *

OFFICIAL COMMENT

This section states the duty of a bank handling a documentary draft for a customer. "Documentary draft" is defined in Section 4-104. The duty stated exists even if the bank has bought the draft. This is because to the customer the draft normally represents an underlying commercial transaction, and if that is not going through as planned the customer should know it promptly. An electronic document of title may be presented through allowing access to the document or delivery of the document. Article 1, Section 1-201 (definition of "delivery").

SECTION 4-503. RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS

1 **AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF**
2 **NEED.**

3 * * * *

4 **OFFICIAL COMMENT**

5 1. This section states the rules governing, in the absence of instructions, the duty of the presenting bank in case
6 either of honor or of dishonor of a documentary draft. The section should be read in connection with Section 2-514
7 on when documents are deliverable on acceptance, when on payment. In the case of a dishonor of the draft, the
8 bank, subject to Section 4-504, must return possession or control of the documents to its principal.

9 2. If the draft is drawn under a letter of credit, Article 5 controls. See Sections 5-109 through 5-114.

10
11 **Amendments to Uniform Commercial Code Article 5**

12 **SECTION 5-102. DEFINITIONS.**

13 * * * *

14 **OFFICIAL COMMENT**

15 * * * *

16 2. The definition of "document" contemplates and facilitates the growing recognition of electronic and other
17 nonpaper media as "documents," however, for the time being, data in those media constitute documents only in
18 certain circumstances. For example, a facsimile received by an issuer would be a document only if the letter of
19 credit explicitly permitted it, if the standard practice authorized it and the letter did not prohibit it, or the agreement
20 of the issuer and beneficiary permitted it. The fact that data transmitted in a nonpaper (unwritten) medium can be
21 recorded on paper by a recipient's computer printer, facsimile machine, or the like does not under current practice
22 render the data so transmitted a "document." A facsimile or S.W.I.F.T. message received directly by the issuer is in
23 an electronic medium when it crosses the boundary of the issuer's place of business. One wishing to make a
24 presentation by facsimile (an electronic medium) will have to procure the explicit agreement of the issuer (assuming
25 that the standard practice does not authorize it). Article 5 contemplates that electronic documents may be presented
26 under a letter of credit and the provisions of this Article should be read to apply to electronic documents as well as
27 tangible documents. An electronic document of title is delivered through the voluntary transfer of control. Article 1,
28 Section 1-201 (definition of "delivery"). See Article 7, Section 7-106 on control of an electronic document. Where
29 electronic transmissions are authorized neither by the letter of credit nor by the practice, the beneficiary may transmit
30 the data electronically to its agent who may be able to put it in written form and make a conforming presentation. Cf.
31 Article 7, Section 7-105 on reissuing an electronic document in a tangible medium.

32 * * * *

33 **SECTION 5-108. ISSUER'S RIGHTS AND OBLIGATIONS.**

34 * * * *

35 **OFFICIAL COMMENT**

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2. Section 5-108(a) balances the need of the issuer for time to examine the documents against the possibility that the examiner (at the urging of the applicant or for fear that it will not be reimbursed) will take excessive time to search for defects. What is a "reasonable time" is not extended to accommodate an issuer's procuring a waiver from the applicant. See Article 14c of the UCP.

Under both the UCC and the UCP the issuer has a reasonable time to honor or give notice. The outside limit of that time is measured in business days under the UCC and in banking days under the UCP, a difference that will rarely be significant. Neither business nor banking days are defined in Article 5, but a court may find useful analogies in Regulation CC, 12 CFR 229.2, in state law outside of the Uniform Commercial Code, and in Article 4.

Examiners must note that the seven-day period is not a safe harbor. The time within which the issuer must give notice is the lesser of a reasonable time or seven business days. Where there are few documents (as, for example, with the mine run standby letter of credit), the reasonable time would be less than seven days. If more than a reasonable time is consumed in examination, no timely notice is possible. What is a "reasonable time" is to be determined by examining the behavior of those in the business of examining documents, mostly banks. Absent prior agreement of the issuer, one could not expect a bank issuer to examine documents while the beneficiary waited in the lobby if the normal practice was to give the documents to a person who had the opportunity to examine those together with many others in an orderly process. That the applicant has not yet paid the issuer or that the applicant's account with the issuer is insufficient to cover the amount of the draft is not a basis for extension of the time period.

This section does not preclude the issuer from contacting the applicant during its examination; however, the decision to honor rests with the issuer, and it has no duty to seek a waiver from the applicant or to notify the applicant of receipt of the documents. If the issuer dishonors a conforming presentation, the beneficiary will be entitled to the remedies under Section 5-111, irrespective of the applicant's views.

Even though the person to whom presentation is made cannot conduct a reasonable examination of documents within the time after presentation and before the expiration date, presentation establishes the parties' rights. The beneficiary's right to honor or the issuer's right to dishonor arises upon presentation at the place provided in the letter of credit even though it might take the person to whom presentation has been made several days to determine whether honor or dishonor is the proper course. The issuer's time for honor or giving notice of dishonor may be extended or shortened by a term in the letter of credit. The time for the issuer's performance may be otherwise modified or waived in accordance with Section 5-106.

The issuer's time to inspect runs from the time of its "receipt of documents." Documents are considered to be received only when they are received at the place specified for presentation by the issuer or other party to whom presentation is made. "Receipt of documents" when documents of title are presented must be read in light of the definition of "delivery" in Article 1, Section 1-201 and the definition of "presentment" in Section 5-102(a)(12).

Failure of the issuer to act within the time permitted by subsection (b) constitutes dishonor. Because of the preclusion in subsection (c) and the liability that the issuer may incur under Section 5-111 for wrongful dishonor, the effect of such a silent dishonor may ultimately be the same as though the issuer had honored, i.e., it may owe damages in the amount drawn but unpaid under the letter of credit.

* * * *

13. The last clause of Section 5-108(i)(5) deals with a special case in which the fraud is not committed by the beneficiary, but is committed by a stranger to the transaction who forges the beneficiary's signature. If the issuer pays against documents on which a required signature of the beneficiary is forged, it remains liable to the true beneficiary. This principal is applicable to both electronic and tangible documents.

* * * *

SECTION 5-113. TRANSFER BY OPERATION OF LAW.

* * * *

OFFICIAL COMMENT

This section affirms the result in *Pastor v. Nat. Republic Bank of Chicago*, 76 Ill.2d 139, 390 N.E.2d 894 (Ill. 1979) and *Federal Deposit Insurance Co. v. Bank of Boulder*, 911 F.2d 1466 (10th Cir. 1990). Both electronic and

1 tangible documents may be signed.

2 An issuer's requirements for recognition of a successor's status might include presentation of a certificate of
3 merger, a court order appointing a bankruptcy trustee or receiver, a certificate of appointment as bankruptcy trustee,
4 or the like. The issuer is entitled to rely upon such documents which on their face demonstrate that presentation is
5 made by a successor of a beneficiary. It is not obliged to make an independent investigation to determine the fact of
6 succession.

7 8 **Amendments to Uniform Commercial Code Article 8**

9 **SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS** 10 **AND INTERESTS ARE SECURITIES OF FINANCIAL ASSETS.**

11 * * * *

12 (g) A document of title, as defined in Section 1-201 (15) [16], is not a financial asset unless
13 Section 8-102(a)(9)(iii) applies.

14 **OFFICIAL COMMENT**

15 * * * *

16 8. Subsection (g) allows a document of title to be a financial asset and thus subject to the indirect holding system
17 rules of Part 5 only to the extent that the intermediary and the person entitled under the document agree to do so. This
18 is to prevent the inadvertent application of the Part 5 rules to intermediaries who may hold either electronic or tangible
19 documents of title.

20 21 **Amendments to Uniform Commercial Code Article 9**

22 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

23 (a) [Article 9 definitions.] In this article:

24 * * * *

25 (30) “Document” means a document of title or a receipt of the type described in Section 7-
26 ~~201(2)~~ 7-201(b).

27 * * * *

(b) [Definitions in other articles.] The following definitions in other articles apply to this article:

"Applicant". Section 5-102.

"Beneficiary". Section 5-102.

"Broker". Section 8-102.

"Certificated security". Section 8-102.

"Check". Section 3-104.

"Clearing corporation". Section 8-102.

"Contract for sale". Section 2-106.

"Control" (with respect to a document of title) Section 7-106.

"Customer". Section 4-104.

"Entitlement holder". Section 8-102.

"Financial asset". Section 8-102.

"Holder in due course". Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right). Section 5-102.

"Issuer" (with respect to a security). Section 8-201.

"Lease". Section 2A-103.

"Lease agreement". Section 2A-103.

"Lease contract". Section 2A-103.

"Leasehold interest". Section 2A-103.

"Lessee". Section 2A-103.

"Lessee in ordinary course of business". Section 2A-103.

"Lessor". Section 2A-103.

1 "Lessor's residual interest". Section 2A-103.

2 "Letter of credit". Section 5-102.

3 "Merchant". Section 2-104.

4 "Negotiable instrument". Section 3-104.

5 "Nominated person". Section 5-102.

6 "Note". Section 3-104.

7 "Proceeds of a letter of credit". Section 5-114.

8 "Prove". Section 3-103.

9 "Sale". Section 2-106.

10 "Securities account". Section 8-501.

11 "Securities intermediary". Section 8-102.

12 "Security". Section 8-102.

13 "Security certificate". Section 8-102.

14 "Security entitlement". Section 8-102.

15 "Uncertificated security". Section 8-102.

16 **OFFICIAL COMMENT**

17 * * * *

18 16. "**Document.**" The definition of "document" ~~is unchanged in substance from the corresponding definitions in~~
19 ~~former Section 9-105; incorporates both tangible and electronic documents of title.~~ See Section 1-201(15)[16] and
20 Comment 15 [16].

21
22 **SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;**
23 **PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.**

24 * * * *

1 (b) **[Enforceability.]** Except as otherwise provided in subsections (c) through (i), a security
2 interest is enforceable against the debtor and third parties with respect to the collateral only if:

3 (1) value has been given;

4 (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a
5 secured party; and

6 (3) one of the following conditions is met:

7 (A) the debtor has authenticated a security agreement that provides a description of the
8 collateral and, if the security interest covers timber to be cut, a description of the land concerned;

9 (B) the collateral is not a certificated security and is in the possession of the secured party
10 under Section 9-313 pursuant to the debtor's security agreement;

11 (C) the collateral is a certificated security in registered form and the security certificate
12 has been delivered to the secured party under Section 8-301 pursuant to the debtor's security
13 agreement; or

14 (D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~
15 letter-of-credit rights, or electronic documents, and the secured party has control under Section 9-
16 104, 9-105, 9-106, ~~or 9-107~~, or 7-106 pursuant to the debtor's security agreement.

17 * * * *

18 **OFFICIAL COMMENT**

19 * * * *

20 **4. Possession, Delivery, or Control Pursuant to Security Agreement.** The other alternatives in subsection (b)(3)
21 dispense with the requirement of an authenticated security agreement and provide alternative evidentiary tests. Under
22 paragraph (3)(B), the secured party's possession substitutes for the debtor's authentication under paragraph (3)(A) if the
23 secured party's possession is "pursuant to the debtor's security agreement." That phrase refers to the debtor's agreement
24 to the secured party's possession for the purpose of creating a security interest. The phrase should not be confused with
25 the phrase "debtor has authenticated a security agreement," used in paragraph (3)(A), which contemplates the debtor's
26 authentication of a record. In the unlikely event that possession is obtained without the debtor's agreement, possession
27 would not suffice as a substitute for an authenticated security agreement. However, once the security interest has become

1 enforceable and has attached, it is not impaired by the fact that the secured party's possession is maintained without the
2 agreement of a subsequent debtor (e.g., a transferee). Possession as contemplated by Section 9-313 is possession for
3 purposes of subsection (b)(3)(B), even though it may not constitute possession "pursuant to the debtor's agreement" and
4 consequently might not serve as a substitute for an authenticated security agreement under subsection (b)(3)(A).
5 Subsection (b)(3)(C) provides that delivery of a certificated security to the secured party under Section 8-301 pursuant
6 to the debtor's security agreement is sufficient as a substitute for an authenticated security agreement. Similarly, under
7 subsection (b)(3)(D), control of investment property, a deposit account, electronic chattel paper, ~~or~~ a letter-of-credit right,
8 or electronic documents satisfies the evidentiary test if control is pursuant to the debtor's security agreement.

9 * * * *

10 **SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION**
11 **OR CONTROL OF COLLATERAL.**

12 * * * *

13 (c) **[Duties and rights when secured party in possession or control.]** Except as otherwise
14 provided in subsection (d), a secured party having possession of collateral or control of collateral
15 under Section 9-104, 9-105, 9-106, ~~or~~ 9- 107, or 7-106:

16 (1) may hold as additional security any proceeds, except money or funds, received from the
17 collateral;

18 (2) shall apply money or funds received from the collateral to reduce the secured obligation,
19 unless remitted to the debtor; and

20 (3) may create a security interest in the collateral.

21 * * * *

22 **SECTION 9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF**
23 **COLLATERAL.**

24 (a) **[Applicability of section.]** This section applies to cases in which there is no outstanding
25 secured obligation and the secured party is not committed to make advances, incur obligations, or
26 otherwise give value.

27 (b) **[Duties of secured party after receiving demand from debtor.]** Within 10 days after

1 receiving an authenticated demand by the debtor:

2 (1) a secured party having control of a deposit account under Section 9- 104(a)(2) shall send
3 to the bank with which the deposit account is maintained an authenticated statement that releases the
4 bank from any further obligation to comply with instructions originated by the secured party;

5 (2) a secured party having control of a deposit account under Section 9- 104(a)(3) shall:

6 (A) pay the debtor the balance on deposit in the deposit account; or

7 (B) transfer the balance on deposit into a deposit account in the debtor's name;

8 (3) a secured party, other than a buyer, having control of electronic chattel paper under
9 Section 9-105 shall:

10 (A) communicate the authoritative copy of the electronic chattel paper to the debtor or
11 its designated custodian;

12 (B) if the debtor designates a custodian that is the designated custodian with which the
13 authoritative copy of the electronic chattel paper is maintained for the secured party, communicate
14 to the custodian an authenticated record releasing the designated custodian from any further
15 obligation to comply with instructions originated by the secured party and instructing the custodian
16 to comply with instructions originated by the debtor; and

17 (C) take appropriate action to enable the debtor or its designated custodian to make copies
18 of or revisions to the authoritative copy which add or change an identified assignee of the
19 authoritative copy without the consent of the secured party;

20 (4) a secured party having control of investment property under Section 8- 106(d)(2) or 9-
21 106(b) shall send to the securities intermediary or commodity intermediary with which the security
22 entitlement or commodity contract is maintained an authenticated record that releases the securities

intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

OFFICIAL COMMENT

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2. **Scope and Purpose.** This section imposes duties on a secured party who has control of a deposit account, electronic chattel paper, investment property, ~~or~~ a letter-of-credit right, or electronic documents of title. The duty to terminate the secured party's control is analogous to the duty to file a termination statement, imposed by Section 9- 513. Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not committed to give value. The requirements of this section can be varied by agreement under Section 1-102(3). For example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured party with control to make an early withdrawal of the funds (assuming that were possible) in order to pay them over to the debtor or put them in an account in the debtor's name.

* * * *

1 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY**
2 **INTERESTS.**

3 Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the
4 law governing perfection, the effect of perfection or nonperfection, and the priority of a security
5 interest in collateral:

6 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the
7 local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the
8 priority of a security interest in collateral.

9 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs
10 perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest
11 in that collateral.

12 (3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods,
13 instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that
14 jurisdiction governs:

15 (A) perfection of a security interest in the goods by filing a fixture filing;

16 (B) perfection of a security interest in timber to be cut; and

17 (C) the effect of perfection or nonperfection and the priority of a nonpossessory security
18 interest in the collateral.

19 (4) The local law of the jurisdiction in which the wellhead or minehead is located governs
20 perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-
21 extracted collateral.

22 **OFFICIAL COMMENT**

* * * *

5. **Law Governing Perfection: Exceptions.** The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

a. **Possessory Security Interests.** Paragraph (2) applies to possessory security interests and provides that perfection is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former Section 9-103(1)(b), except paragraph (2) eliminates the troublesome "last event" test of former law.

The distinction between nonpossessory and possessory security interests creates the potential for the same jurisdiction to apply two different choice-of-law rules to determine perfection in the same collateral. For example, were a secured party in possession of an instrument or a tangible document to relinquish possession in reliance on temporary perfection, the applicable law immediately would change from that of the location of the collateral to that of the location of the debtor. The applicability of two different choice-of-law rules for perfection is unlikely to lead to any material practical problems. The perfection rules of one Article 9 jurisdiction are likely to be identical to those of another. Moreover, under paragraph (3), the relative priority of competing security interests in tangible collateral is resolved by reference to the law of the jurisdiction in which the collateral is located, regardless of how the security interests are perfected.

* * * *

7. **Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable Documents, and Tangible Chattel Paper.** Under former Section 9-103, the law of a single jurisdiction governed both questions of perfection and those of priority. This Article generally adopts that approach. See paragraph (1). But the approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If the law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien on goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

To address this problem, paragraph (3)(C) divorces questions of perfection from questions of "the effect of perfection or nonperfection and the priority of a security interest." Under paragraph (3)(C), the rights of competing claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located. A similar bifurcation applied to security interests in investment property under former Section 9-103(6). See Section 9-305.

Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures), instruments, money, tangible negotiable documents, and tangible chattel paper. Compare former Section 9-103(1), which applied the law of the location of the collateral to documents, instruments, and "ordinary" (as opposed to "mobile") goods. This Article does not distinguish among types of goods. The ordinary/mobile goods distinction appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this distinction under the bifurcated approach.

Particularly serious confusion may arise when the choice-of-law rules of a given jurisdiction result in each of two competing security interests in the same collateral being governed by a different priority rule. The potential for this confusion existed under former Section 9-103(4) with respect to chattel paper: Perfection by possession was governed by the law of the location of the paper, whereas perfection by filing was governed by the law of the location of the debtor. Consider the mess that would have been created if the language or interpretation of former Section 9-308 were to differ in the two relevant States, or if one of the relevant jurisdictions (e.g., a foreign country) had not adopted Article 9. The potential for confusion could have been exacerbated when a secured party perfected both by taking possession in the State where the collateral is located (State A) and by filing in the State where the debtor is located (State B)--a common practice for some chattel paper financiers. By providing that the law of the jurisdiction in which the collateral is located governs priority, paragraph (3) substantially diminishes this problem.

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SECTION 9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS

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OFFICIAL COMMENT

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4. Continuous Perfection. The following example illustrates the operation of subsection (c):

If the successive stages of Bank's security interest succeed each other without an intervening gap, the security interest is "perfected continuously," and the date of perfection is when the security interest first became perfected (i.e., when Bank received possession of the tangible bill of lading). If, however, there is a gap between stages—for example, if Bank does not file until after the expiration of the 20-day period specified in Section 9-312(f) and leaves the collateral in the debtor's possession—then, the chain being broken, the perfection is no longer continuous. The date of perfection would now be the date of filing (after expiration of the 20-day period). Bank's security interest would be vulnerable to any interests arising during the gap period which under Section 9-317 take priority over an unperfected security interest.

* * * *

SECTION 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.

* * * *

(b) **[Exceptions: filing not necessary.]** The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under Section 9-308(d), (e), (f), or (g);
- (2) that is perfected under Section 9-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);
- (4) in goods in possession of a bailee which is perfected under Section 9-312(d)(1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under Section 9-312(e), (f), or (g);

1 (6) in collateral in the secured party's possession under Section 9-313;

2 (7) in a certificated security which is perfected by delivery of the security certificate to the
3 secured party under Section 9-313;

4 (8) in deposit accounts, electronic chattel paper, electronic documents, investment property,
5 or letter-of-credit rights which is perfected by control under Section 9-314;

6 (9) in proceeds which is perfected under Section 9-315; or

7 (10) that is perfected under Section 9-316.

8 * * * *

9 **SECTION 9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER,**
10 **DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS,**
11 **INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND**
12 **MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION**
13 **WITHOUT FILING OR TRANSFER OF POSSESSION.**

14 * * * *

15 (e) [Temporary perfection: new value.] A security interest in certificated securities, negotiable
16 documents, or instruments is perfected without filing or the taking of possession or control for a
17 period of 20 days from the time it attaches to the extent that it arises for new value given under an
18 authenticated security agreement.

19 * * * *

20 **OFFICIAL COMMENTS**

21 * * * *

22 3. **Chattel Paper; Negotiable Documents.** Subsection (a) further provides that filing is available as a method of
23 perfection for security interests in chattel paper and negotiable documents. Tangible chattel paper is sometimes delivered
24 to the assignee, and sometimes left in the hands of the assignor for collection. Subsection (a) allows the assignee to
25 perfect its security interest by filing in the latter case. Alternatively, the assignee may perfect by taking possession. See

1 Section 9-313(a). An assignee of electronic chattel paper may perfect by taking control. See Sections 9-314(a), 9-105.
2 The security interest of an assignee who takes possession or control may qualify for priority over a competing security
3 interest perfected by filing. See Section 9-330.

4 Negotiable documents may be, and usually are, delivered to the secured party. See Article 1, Section 1-201
5 (definition of "delivery"). The secured party's taking possession of a tangible document or control of an electronic
6 document will suffice as a perfection step. See Sections 9-313(a), 9-314 and 7-106.. However, as is the case with chattel
7 paper, a security interest in a negotiable document may be perfected by filing.

8 * * * *

9 **7. Goods Covered by Document of Title.** Subsection (c) applies to goods in the possession of a bailee who has
10 issued a negotiable document covering the goods. Subsection (d) applies to goods in the possession of a bailee who has
11 issued a nonnegotiable document of title, including a document of title that is "non-negotiable" under Section 7-104.
12 Section 9-313 governs perfection of a security interest in goods in the possession of a bailee who has not issued a
13 document of title.

14 Subsection (c) clarifies the perfection and priority rules in former Section 9-304(2). Consistently with the provisions
15 of Article 7, subsection (c) takes the position that, as long as a negotiable document covering goods is outstanding, title
16 to the goods is, so to say, locked up in the document. Accordingly, a security interest in goods covered by a negotiable
17 document may be perfected by perfecting a security interest in the document. The security interest also may be perfected
18 by another method, e.g., by filing. The priority rule in subsection (c) governs only priority between (i) a security interest
19 in goods which is perfected by perfecting in the document and (ii) a security interest in the goods which becomes
20 perfected by another method while the goods are covered by the document.

21 **Example 1:** While wheat is in a grain elevator and covered by a negotiable warehouse receipt, Debtor creates a
22 security interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects by filing a financing statement covering "wheat."
23 Thereafter, SP-2 perfects by filing a financing statement describing the warehouse receipt. Subsection (c)(1) provides
24 that SP-2's security interest is perfected. Subsection (c)(2) provides that SP-2's security interest is senior to SP-1's.

25 **Example 2:** The facts are as in Example 1, but SP-1's security interest attached and was perfected before the goods
26 were delivered to the grain elevator. Subsection (c)(2) does not apply, because SP-1's security interest did not become
27 perfected during the time that the wheat was in the possession of a bailee. Rather, the first-to-file-or-perfect priority rule
28 applies. See Sections 9-322 and 7-503.

29 A secured party may become "a holder to whom a negotiable document of title has been duly negotiated" under
30 Section 7-501. If so, the secured party acquires the rights specified by Article 7. Article 9 does not limit those rights,
31 which may include the right to priority over an earlier-perfected security interest. See Section 9-331(a).

32 Subsection (d) takes a different approach to the problem of goods covered by a nonnegotiable document. Here, title
33 to the goods is not looked on as being locked up in the document, and the secured party may perfect its security interest
34 directly in the goods by filing as to them. The subsection provides two other methods of perfection: issuance of the
35 document in the secured party's name (as consignee of a straight bill of lading or the person to whom delivery would be
36 made under a non-negotiable warehouse receipt) and receipt of notification of the secured party's interest by the bailee.
37 Perfection under subsection (d) occurs when the bailee receives notification of the secured party's interest in the goods,
38 regardless of who sends the notification. Receipt of notification is effective to perfect, regardless of whether the bailee
39 responds. Unlike former Section 9-304(3), from which it derives, subsection (d) does not apply to goods in the possession
40 of a bailee who has not issued a document of title. Section 9-313(c) covers that case and provides that perfection by
41 possession as to goods not covered by a document requires the bailee's acknowledgment.

42 **8. Temporary Perfection Without Having First Otherwise Perfected.** Subsection (e) follows former Section
43 9-304(4) in giving perfected status to security interests in certificated securities, instruments, and negotiable documents
44 for a short period (reduced from 21 to 20 days, which is the time period generally applicable in this Article), although
45 there has been no filing and the collateral is in the debtor's possession or control. The 20-day temporary perfection runs
46 from the date of attachment. There is no limitation on the purpose for which the debtor is in possession, but the secured
47 party must have given "new value" (defined in Section 9-102) under an authenticated security agreement.

48 **9. Maintaining Perfection After Surrendering Possession.** There are a variety of legitimate reasons—many of
49 them are described in subsections (f) and (g)—why certain types of collateral must be released temporarily to a debtor.
50 No useful purpose would be served by cluttering the files with records of such exceedingly short term transactions.

51 Subsection (f) affords the possibility of 20-day perfection in negotiable documents and goods in the possession of
52 a bailee but not covered by a negotiable document. Subsection (g) provides for 20-day perfection in certificated securities

1 and instruments. These subsections derive from former Section 9-305(5). However, the period of temporary perfection
2 has been reduced from 21 to 20 days, which is the time period generally applicable in this Article, and "enforcement"
3 has been added in subsection (g) as one of the special and limited purposes for which a secured party can release an
4 instrument or certificated security to the debtor and still remain perfected. The period of temporary perfection runs from
5 the date a secured party who already has a perfected security interest turns over the collateral to the debtor. There is no
6 new value requirement, but the turnover must be for one or more of the purposes stated in subsection (f) or (g). The 20-
7 day period may be extended by perfecting as to the collateral by another method before the period expires. However,
8 if the security interest is not perfected by another method until after the 20-day period expires, there will be a gap during
9 which the security interest is unperfected.

10 Temporary perfection extends only to the negotiable document or goods under subsection (f) and only to the
11 certificated security or instrument under subsection (g). It does not extend to proceeds. If the collateral is sold, the
12 security interest will continue in the proceeds for the period specified in Section 9-315.

13 Subsections (f) and (g) deal only with perfection. Other sections of this Article govern the priority of a security
14 interest in goods after surrender of possession or control of the document covering them. In the case of a purchase-money
15 security interest in inventory, priority may be conditioned upon giving notification to a prior inventory financier. See
16 Section 9-324.

17 18 **SECTION 9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY** 19 **PERFECTS SECURITY INTEREST WITHOUT FILING.**

20 (a) **[Perfection by possession or delivery.]** Except as otherwise provided in subsection (b), a
21 secured party may perfect a security interest in tangible negotiable documents, goods, instruments,
22 money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect
23 a security interest in certificated securities by taking delivery of the certificated securities under
24 Section 8-301.

25 * * * *

26 **OFFICIAL COMMENT**

27 * * * *

28 **2. Perfection by Possession.** As under the common law of pledge, no filing is required by this Article to perfect a
29 security interest if the secured party takes possession of the collateral. See Section 9-310(b)(6).

30 This section permits a security interest to be perfected by the taking of possession only when the collateral is goods,
31 instruments, tangible negotiable documents, money, or tangible chattel paper. Accounts, commercial tort claims, deposit
32 accounts, investment property, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction
33 are excluded. (But see Comment 6, below, regarding certificated securities.) A security interest in accounts and payment
34 intangibles--property not ordinarily represented by any writing whose delivery operates to transfer the right to payment--
35 may under this Article be perfected only by filing. This rule would not be affected by the fact that a security agreement
36 or other record described the assignment of such collateral as a "pledge." Section 9-309(2) exempts from filing certain
37 assignments of accounts or payment intangibles which are out of the ordinary course of financing. These exempted
38 assignments are perfected when they attach. Similarly, under Section 9-309(3), sales of payment intangibles are

1 automatically perfected.

2
3 **SECTION 9-314. PERFECTION BY CONTROL.**

4 (a) **[Perfection by control.]** A security interest in investment property, deposit accounts, letter-
5 of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of
6 the collateral under Section 9-104, 9-105, 9-106, ~~or~~ 9-107, or 7-106.

7 (b) **[Specified collateral: time of perfection by control; continuation of perfection.]** A
8 security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, or electronic
9 documents is perfected by control under Section 9-104, 9-105, ~~or~~ 9-107, or 7-106 when the secured
10 party obtains control and remains perfected by control only while the secured party retains control.

11 (c) **[Investment property: time of perfection by control; continuation of perfection.]** A
12 security interest in investment property is perfected by control under Section 9-106 from the time
13 the secured party obtains control and remains perfected by control until:

14 (1) the secured party does not have control; and

15 (2) one of the following occurs:

16 (A) if the collateral is a certificated security, the debtor has or acquires possession of the
17 security certificate;

18 (B) if the collateral is an uncertificated security, the issuer has registered or registers the
19 debtor as the registered owner; or

20 (C) if the collateral is a security entitlement, the debtor is or becomes the entitlement
21 holder.

22 **OFFICIAL COMMENT**

1 * * * *

2 2. **Control.** This section provides for perfection by control with respect to investment property, deposit accounts,
3 letter-of-credit rights, ~~and~~ electronic chattel paper, and electronic documents. For explanations of how a secured party
4 takes control of these types of collateral, see Sections 9-104 through 9-107 and Section 7-106. Subsection (b) explains
5 when a security interest is perfected by control and how long a security interest remains perfected by control. Like
6 Section 9-313(d) and for the same reasons, subsection (b) makes no reference to the doctrine of "relation back." See
7 Section 9-313, Comment 5. As to an electronic document that is reissued in a tangible medium, Section 7-105, a secured
8 party that is perfected by control in the electronic document should file as to the document before relinquishing control
9 in order to maintain continuous perfection in the document. See Section 9-308.

10
11 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF**
12 **SECURITY INTEREST OR AGRICULTURAL LIEN.**

13 * * * *

14 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer,
15 other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a
16 security certificate takes free of a security interest or agricultural lien if the buyer gives value and
17 receives delivery of the collateral without knowledge of the security interest or agricultural lien and
18 before it is perfected.

19 (c) **[Lessees that receive delivery.]** Except as otherwise provided in subsection (e), a lessee of
20 goods takes free of a security interest or agricultural lien if the lessee gives value and receives
21 delivery of the collateral without knowledge of the security interest or agricultural lien and before
22 it is perfected.

23 (d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a buyer,
24 other than a secured party, of accounts, electronic chattel paper, electronic documents, general
25 intangibles, or investment property other than a certificated security takes free of a security interest
26 if the licensee or buyer gives value without knowledge of the security interest and before it is
27 perfected.

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2 OFFICIAL COMMENT

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4 6. **Purchasers Other Than Secured Parties.** Subsections (b), (c), and (d) afford priority over an unperfected
5 security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-
6 301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests
7 are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of
8 subordination in this context is that the purchaser takes free of the security interest. To avoid any possible
9 misinterpretation, subsections (b) and (d) of this section use the phrase "takes free."

10 Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of
11 the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To
12 obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing
13 security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer
14 would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer.
15 Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of
16 business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

17 Normally, there will be no question when a buyer of tangible chattel paper, tangible documents, instruments, or
18 security certificates "receives delivery" of the property. See Section 1-201 (defining "delivery"). However, sometimes
19 a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly
20 at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections
21 (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent
22 to a potential lender to the seller or lessor that another person might have an interest in the goods.

23 The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no
24 representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with
25 respect to such intangibles (accounts, electronic chattel paper, electronic documents, general intangibles, and investment
26 property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge,
27 and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security
28 interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary
29 course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if
30 perfected. See Section 9-321.

31 Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts, chattel paper, payment
32 intangibles, or promissory notes is a "secured party" (defined in Section 9-102), and subsections (b) and (d) do not
33 determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing
34 security interests apply. See Section 9-322.

35 * * * *

36 SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND
37 AGRICULTURAL LIENS ON SAME COLLATERAL.

38 OFFICIAL COMMENT

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40 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a tangible
41 negotiable document in the debtor's possession under Section 9-312(e). On October 5, B files and thereby perfects a
42 security interest that previously had attached to the same document. On October 10, A files. A has priority, even after
43 the 20-day period expires, regardless of whether A knows of B's security interest when A files. A was the first to perfect
44 and maintained continuous perfection or filing since the start of the 20-day period. However, the perfection of A's
45 security interest extends only "to the extent it arises for new value given." To the extent A's security interest secures

advances made by A beyond the 20-day period, its security interest would be subordinate to B's, inasmuch as B was the first to file.

* * * *

8. Proceeds of Non-Filing Collateral: Non-Temporal Priority. Subsection (c)(2) provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured party has taken the steps required for non-temporal priority over a conflicting security interest in non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, ~~and~~ investment property, and in some cases, electronic negotiable documents, section 9-331). This rule determines priority in proceeds of non-filing collateral whether or not there exists an actual conflicting security interest in the original non-filing collateral. Under subsection (c)(2), the priority in the original collateral continues in proceeds if the security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds "of the same type" as the original collateral. As used in subsection (c)(2), "type" means a type of collateral defined in the Uniform Commercial Code and should be read broadly. For example, a security is "of the same type" as a security entitlement (i.e., investment property), and a promissory note is "of the same type" as a draft (i.e., an instrument).

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SECTION 9-323. FUTURE ADVANCES.

OFFICIAL COMMENT

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Example 2: On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a tangible negotiable document in the debtor's possession under Section 9-312(e) or (f). The security interest secures an advance made on that day as well as future advances. On October 5, B files and thereby perfects a security interest that previously had attached to the same document. On October 8, A makes an additional advance. On October 10, A files. Under Section 9-322(a)(1), because A was the first to perfect and maintained continuous perfection or filing since the start of the 20-day period, A has priority, even after the 20-day period expires. See Section 9-322, Comment 4, Example 3. However, under this section, for purposes of Section 9-322(a)(1), to the extent A's security interest secures the October 8 advance, the security interest was perfected on October 8. Inasmuch as B perfected on October 5, B has priority over the October 8 advance.

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SECTION 9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

1 (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or
2 agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the
3 purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods,
4 instruments, or a security certificate, receives delivery of the collateral.

5
6 **SECTION 9-601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR**
7 **OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR**
8 **PROMISSORY NOTES.**

9 * * * *

10 (b) **[Rights and duties of secured party in possession or control.]** A secured party in
11 possession of collateral or control of collateral under Section 9-104, 9-105, 9-106, ~~or 9-107,~~ or 7-106
12 has the rights and duties provided in Section 9-207.

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