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FOR DISCUSSION ONLY

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

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

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

WITH PREFATORY NOTE AND REPORTER'S NOTES

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ON UNIFORM STATE LAWS

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

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1 **PROPOSED REVISIONS TO**

2 **UNIFORM COMMERCIAL CODE, ARTICLE 7—DOCUMENTS OF TITLE**

3 **Prefatory Note**

4 This draft revises Article 7 in order to allow for electronic documents of title and to update
5 the Article 7 for modern times in light of federal and state developments as well as international
6 developments. Changes have been made throughout this article to allow for electronic
7 communications as well as electronic documents of title.
8

9 In allowing for electronic documents of title, the drafting committee has addressed the issue
10 of control of an electronic document in Section 7-106, conversion of a document from one
11 medium to another in Section 7-105, and negotiation of an electronic negotiable document of
12 title in Section 7-501. To the extent possible, the rules for an electronic document of title are the
13 same as, or as similar as possible to, the rules for tangible documents of title. Changes have been
14 made throughout the draft to make clear when rules are limited to only electronic documents of
15 title or to only tangible documents of title. If there is no specific designation but a general
16 reference to a document of title, the provision applies to both tangible and electronic documents.
17

18 Other notable changes are:

- 19 • adopting the broader definition of good faith that has been adopted in other articles of the
20 UCC as they have been revised;
21 • to eliminate as much as possible reference to tariffs or classifications that were the result of
22 regulation of warehouses or carriers given that much of the industry has been deregulated;
23 • to make clear in Section 7-202 that particular terms are not required in order for a warehouse
24 receipt to be a valid warehouse receipt;
25 • to make the statute in accord with industry practice regarding the ability of a warehouse to
26 make an effective limitation of damages pursuant to Section 7-204;
27 • broaden the ability of a warehouse to assert a statutory lien for storage charges by allowing a
28 lien to arise when there is a storage agreement, Section 7-209;
29 • to conform terminology to current international and domestic practice;
30 • to include references to Article 2A where appropriate.
31

PROPOSED REVISIONS TO

UNIFORM COMMERCIAL CODE, ARTICLE 7—DOCUMENTS OF TITLE

PART 1

GENERAL

SECTION 7-101. SHORT TITLE. This article may be cited as Uniform Commercial Code-Documents of Title.

Reporter's Note

This section has been revised to conform to the modern style of other UCC revisions.

SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(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.

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

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

5 (8) "Issuer" means a bailee that issues a document of title or, in the case of an
6 unaccepted delivery order, the person that orders the possessor of goods to deliver. The term
7 includes a person for which an agent or employee purports to act in issuing a document if the
8 agent or employee has real or apparent authority to issue documents, even if the issuer received
9 no goods, the goods were misdescribed, or in any other respect the agent or employee violated
10 the issuer's instructions.

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

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

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

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

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

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

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

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

“Control”, Section 7-106.

"Duly negotiate", Section 7-501.

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

“Contract for sale”, Section 2-106.

“Lessee in ordinary course of business”, Section 2A-103.

“Receipt” of goods, Section 2-103.

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

Reporter’s Note

The definitions have been revised to conform to modern styling conventions and to allow for electronic documents of title. The following definitions are in Article 1, and conforming amendments to UCC 1-201 are attached to this draft as Appendix I: “bearer”, “bill of lading”, “delivery”, “document of title”, “electronic document of title”, “tangible document of title”, “holder”, and “warehouse receipt.” The distinction between electronic and tangible documents of title follows the convention between electronic and tangible chattel paper used in Revised Article 9. See the Reporter’s Note following the conforming amendments to Article 1. The definition “Person entitled under the document ” is relocated from former 7-403. The following definitions are new: “Carrier”, “Record”, “Shipper”, and “Sign”. The definition of carrier relies on the definition of bill of lading in Article 1 as revised. See the Reporter’s Note to “bill of lading” in Appendix I. The definition of “record” is the definition used throughout the revisions to the UCC. The definition of “shipper” is adapted from the UNCITRAL draft on transport documents. The definition of sign is taken from the proposed amendments to Article 2.

Subsection (b) is retained in spite of the Style Committee’s suggestion to delete the subsection. The revisions to the UCC are inconsistent as to inclusion of a section that refers to other definitions within the same article. Compare Revised UCC 9-102 with UCC 4A-105 and 8-102.

Subsection (c) deletes the former cross reference to the definition of “overseas” in Article 2 as outdated for modern times and adds the crossreference to the definition of “lessee in ordinary

1 course of business” from Article 2A.

2
3
4 **SECTION 7-103. RELATION OF ARTICLE TO TREATY OR STATUTE.**

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

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

12 **Reporter’s Notes**

13 Subsection (a) is the same as former 7-103 except that the references to tariffs,
14 classifications, and regulations have been deleted as inappropriate in the modern era of less
15 regulation of carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to
16 issue a tariff or classification, that tariff or classification would be given effect via the regulatory
17 scheme. Permissive tariffs or classifications would not displace the provisions of this act
18 pursuant to this section but may be given effect through the ability of parties to incorporate those
19 terms by reference into their agreement.

20
21 Subsection (b) is from UCC 10-104 and has been styled for modern usage without changing
22 the substantive rules.

23
24 **SECTION 7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.**

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

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

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

7 **Reporter's Notes**

8 Subsection (a) is revised for modern style and to delete the reference to "overseas" trade as
9 out of step with modern practice. Subsection (b) is amended for style and medium neutrality.

10
11 Subsection (c) is new and allows the issuer to stamp or otherwise legend a document of title
12 as nonnegotiable regardless of having the language in subsection (a) in the document. Subsection
13 (c) is similar to UCC 3-104(d). Once issued as a negotiable document of title, the document
14 cannot be changed from a negotiable document to a nonnegotiable document. However, one can
15 fail to negotiate a negotiable document by due negotiation. A document that is nonnegotiable
16 cannot be made negotiable by stamping or marking the document as negotiable. The only way to
17 make a document negotiable is to comply with subsection (a).

18 19 **SECTION 7-105. REISSUANCE IN ALTERNATE MEDIUM.**

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

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

25 (2) the tangible document when issued contains a statement that it is issued in
26 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), the electronic document ceases to have any
3 effect or validity.

4 (c) Upon issuance of a tangible document of title in substitution for an electronic
5 document of title in accordance with subsection (a), the person that procured issuance of the
6 tangible document warrants to all subsequent persons entitled under the tangible document that
7 the warrantor was a person entitled under the electronic document when the warrantor
8 surrendered control of the electronic document to the issuer.

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

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

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

16 (e) Upon issuance of the electronic document of title in substitution for a tangible
17 document of title in accordance with subsection (d), the tangible document ceases to have any
18 effect or validity.

19 (f) Upon issuance of the electronic document of title in substitution for a tangible
20 document of title in accordance with subsection (d), the person that procured issuance of the
21 electronic document warrants to all subsequent persons entitled under the electronic document
22 that the warrantor was a person entitled under the tangible document when the warrantor

1 surrendered possession of the tangible document to the issuer.

2 **Reporter's Note**

3 This section is new. This section replaces the former section 7-105 which provided: "The
4 omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision
5 made in the other Part does not imply that a corresponding rule of law is not applicable." The
6 provisions of Parts 2 and 3 have been carefully considered as applied to warehouses and carriers
7 respectively and the former section 7-105 was considered unnecessary. The former section 7-105
8 had not been the subject of any litigation.

9 This new section follows the UNCITRAL draft on transport documents allowing for
10 conversion of documents from paper to electronic medium and visa versa. In any case of
11 conversion of a document of title from one medium to the other, this section provides the
12 minimum requirements for doing so.

13
14 An issuer is not required to issue a document in the alternative medium. The provisions of
15 this section are the minimum requirements that must be followed in order to give the substitute
16 document effect or validity, but an issuer may require other actions from the person requesting
17 the substitute issuance. Surrendering control or surrendering possession of the original document
18 is required as is a statement within the substitute document that it is issued in substitution for the
19 original document. The words "effect or validity" are not redundant in that validity means legal
20 enforceability and effect means having an influence on something else. These words follow the
21 UNCITRAL draft on transport documents and there is utility in having the same words used as a
22 matter of domestic law.

23
24 Unlike the UNCITRAL draft, however, this section provides for the same treatment for both
25 negotiable and nonnegotiable documents of title. The UNCITRAL draft is limited to negotiable
26 documents. The committee did not see any reason to so limit this section. Also unlike the
27 UNCITRAL draft, this section provides for a warranty to be given to the persons entitled under
28 the substitute document by the person who procured issuance of the substitute document. The
29 idea for this warranty stems from UCC 4-209 allowing for electronic presentment of an item
30 when the person making the presentment has a paper item.

31 32 **SECTION 7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.**

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

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

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

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

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

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

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

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

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

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

18 **Reporter's Note**

19 This section adopts the control concept for both negotiable and nonnegotiable electronic
20 documents of title. In doing so, it follows the model found in UETA § 16(b) and (c) with one
21 change. The word "revision" in UETA(c)(4) and (6) have been changed to "amendment" in
22 subsection (b)(4) and (6). The comments to this section will be consistent with the comments to
23 UETA.

24
25 The control concept for an electronic document of title substitutes for the concept of delivery

1 and indorsement for a negotiable document and delivery for a nonnegotiable document. The
2 reader should consult the definitions in the conforming amendments in Appendix I, particularly
3 the definitions of “delivery”, “bearer” and “holder.” The control concept is particularly
4 important to negotiation of the negotiable electronic document of title and the rights that can be
5 acquired by “due negotiation” of a negotiable electronic document. See 7-501, 7-502, and 7-503.
6

7 Article 7 has historically provided for rules providing for rights under documents of title and
8 rights of transferees of documents of title as those rights relate to the goods covered by the
9 document. Third parties may possess or have control of documents of title. While misfeasance
10 or negligence in failure to transfer or misdelivery of the **document** by those third parties may
11 create serious issues, this article has never dealt with those issues as it relates to tangible
12 documents of title, preferring to leave those issues to the law of contracts, agency and tort law.
13 In the electronic document of title regime, third party holding systems are just beginning to
14 develop. It is very difficult to write rules regulating those third parties without some definitive
15 sense of how the third party registry systems will be structured. Systems that are evolving to date
16 tend to be “closed” systems in which all participants must sign on to the master agreement which
17 provides for rights as against the registry system as well as rights among the members. In those
18 closed systems, the document of title never leaves the system so the parties rely upon the master
19 agreement as to rights against the registry in its failures in dealing with the document. This
20 article contemplates that those “closed” systems will continue to evolve and that the control
21 mechanism in this statute provides a method for the participants in the closed system to achieve
22 the benefits of obtaining control allowed by this article.
23

24 This article also contemplates that parties will evolve open systems where parties need not be
25 subject to a master agreement. In an open system a party that is expecting to obtain rights
26 through an electronic document may not be a party to the master agreement. To the extent that
27 open systems evolve by use of the control concept contained in this section, the law of contracts,
28 agency, and torts as it applies to the registry’s misfeasance or negligence concerning the transfer
29 of control of the electronic document will allocate the risks and liabilities of the parties as that
30 other law now does so for third parties who hold tangible documents and fail to deliver the
31 documents.
32

33 **PART 2**

34 **WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

35 36 **SECTION 7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT;** 37 **STORAGE UNDER BOND.**

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

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

6 7 **Reporter's Notes**

8 The changes to this section are for style. The phrase "storage under government bond" in the
9 section title has been changed to "storage under bond" as a more accurate description of the
10 coverage of the section.

11 12 **SECTION 7-202. FORM OF WAREHOUSE RECEIPT.**

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

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

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

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

18 (3) the identification code of the receipt;

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

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

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

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

2 (8) if the receipt is issued for goods of which the warehouse is owner, either solely,

3 jointly, or in common with others, the fact of that ownership; and

4 (9) a statement of the amount of advances made and of liabilities incurred for which

5 the warehouse claims a lien or security interest but if the precise amount of advances made or of

6 liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its

7 agent that issued the receipt, a statement of the fact that advances have been made or liabilities

8 incurred and the purpose of the advances or liabilities is sufficient.

9 (c) A warehouse may insert in its receipt any terms that are not contrary to the provisions

10 of [the Uniform Commercial Code] and do not impair its obligation of delivery under Section 7-

11 403 or its duty of care under Section 7-204. Any contrary provisions are ineffective.

12 **Reporter's Note**

13 The title is revised to eliminate the phrase "essential terms" to negate any inference that any

14 of the types of terms listed in subsection (b) must be in the warehouse receipt in order to qualify

15 as a warehouse receipt. The only consequence of a warehouse receipt not containing those terms

16 is that a person injured by its omission has a right against the warehouse for harm caused by the

17 omission.

18

19 Subsection (b)(3) has been changed from "consecutive number" to "identification code" to

20 facilitate electronic documents. "Identification

21

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

23 to or purchaser for value in good faith of a document of title, other than a bill of lading, relying

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

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

26 (1) the document conspicuously indicates that the issuer does not know whether all or

1 part of the goods in fact were received or conform to the description, such as a case in which the
2 description is in terms of marks or labels or kind, quantity or condition, or the receipt or
3 description is qualified by "contents, condition and quality unknown", "said to contain" or words
4 of similar import, if the indication is true; or

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

6 **Reporter's Note**

7 Changes to this section are for style only.
8

9 **SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF** 10 **WAREHOUSE'S LIABILITY.**

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

15 (b) Damages may be limited by a term in the warehouse receipt or storage agreement
16 limiting the amount of liability in case of loss or damage beyond which the warehouse is not
17 liable. The warehouse's liability, on request of the bailor in a record at the time of signing such
18 storage agreement or within a reasonable time after receipt of the warehouse receipt, may be
19 increased on part or all of the goods covered by the storage agreement or the warehouse receipt.
20 In this event, increased rates may be charged based on an increased valuation of the goods. No
21 such limitation is effective with respect to the warehouse's liability for conversion to its own use.

22 (c) Reasonable provisions as to the time and manner of presenting claims and

1 commencing actions based on the bailment may be included in the warehouse receipt or storage
2 agreement.

3 (d) This section does not impair or repeal ...

4 **Legislative Note:** Insert in subsection (d) a reference to any statute that imposes a higher
5 responsibility upon the warehouse or invalidates contractual limitations that would be
6 permissible under this Article.

7 **Reporter's Notes**

8 Changes to subsection (a) have been made for style purposes.
9

10 Subsection (b) has been revised in two ways. First, the previous language that seemed to
11 require that the term limiting damages do so by setting forth a specific liability per article or item
12 or of a value per unit of weight has been deleted as out of step with modern industry practice. A
13 warehouse receipt or storage agreement is a contract. Parties in their contract should be able to
14 limit damages for breach of that contract including breach of the duty to take reasonable care of
15 the goods. The enforceability of a term limiting damages would be tested pursuant to contract
16 law principles. Second, the language that an increased rate can not be charged if contrary to a
17 tariff has been deleted. If a tariff is required under state or federal law, pursuant to Section 7-
18 103(a), the tariff would control over the rule of this section allowing an increased rate.
19 Remaining changes to subsection (b) are for style. As under former law, subsection (b) provides
20 that a limitation of damages is ineffective if the warehouse has converted the goods to its own
21 use. A mere failure to redeliver the goods is not conversion to the warehouse's own use.
22 Conversion to its own use has a specialized meaning in the case law that is narrower than the
23 idea of conversion generally.
24

25 Subsections (c) deletes the reference to tariff for the same reason that it has been omitted in
26 subsection (c). If a tariff is required by state or federal law, the tariff would control over the rule
27 of this section. If a tariff is permissive under the state or federal law, the provisions of the tariff
28 may be incorporated by reference in the warehouse receipt or storage agreement.
29

30 Subsection (d) is unchanged.
31

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

33 **CERTAIN CASES.** A buyer in ordinary course of business of fungible goods sold and
34 delivered by a warehouse that is also in the business of buying and selling such goods takes the
35 goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been

duly negotiated.

Reporter's Note

Changes to this section are for style only. 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 possession of the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the goods to the buyer in ordinary course. Delivery requires voluntary transfer of control of the goods to the buyer. See proposed amendments to Article 2. This section is not satisfied by the delivery of the document to the buyer in ordinary course.

SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION.

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

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

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property or to the warehouse

1 facilities or to other persons, the warehouse may sell the goods at public or private sale without
2 advertisement or posting on reasonable notification to all persons known to claim an interest in
3 the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose
4 of them in any lawful manner and does not incur liability by reason of that disposition.

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

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

10 **Reporter's Note**

11 Changes to subsections (a), (d), and (e) are for style only. In addition to style changes,
12 subsection (b) has been changed by adding the reference to Section 7-210 and subsection (c) has
13 been changed by adding the words "or posting" after advertisement. Under subsection (b), the
14 warehouse must have a good faith belief that the goods will deteriorate or decline in value during
15 the time required to comply with the notification requirements.

16 17 **SECTION 7-207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.**

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

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

1 receipts have been duly negotiated.

2
3 **Reporter's Note**

4 Changes to this section are for style purposes.
5

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

11 **Reporter's Note**

12 The first sentence has been revised to make clear that the rule only applies to tangible
13 warehouse receipts and to make clear that the purchaser for value must be in good faith in order
14 to get the protection of the rule in the first sentence. The second sentence applies to both tangible
15 and electronic receipts and applies in the event the first sentence is not applicable. Remaining
16 changes to this section are for style purposes.
17

18 **SECTION 7-209. LIEN OF WAREHOUSE.**

19 (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt
20 or storage agreement or on the proceeds thereof in its possession for charges for storage or
21 transportation, including demurrage and terminal charges, insurance, labor, or charges, present or
22 future, in relation to the goods, and for expenses necessary for preservation of the goods or
23 reasonably incurred in their sale pursuant to law. If the person on whose account the goods are
24 held is liable for similar charges or expenses in relation to other goods whenever deposited and it

1 is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and
2 expenses in relation to other goods, the warehouse also has a lien against the goods covered by
3 the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those
4 charges and expenses, whether or not the other goods have been delivered by the warehouse.
5 However, as against a person to which a negotiable warehouse receipt is duly negotiated, a
6 warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt
7 or if no charges are so specified then to a reasonable charge for storage of the goods covered by
8 the receipt subsequent to the date of the receipt.

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

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

19 (1) deliver or entrust the goods or any document covering the goods to the bailor or
20 the bailor's nominee with actual or apparent authority to ship, store or sell; or with power to
21 obtain delivery under Section 7-403; or with power of disposition under Sections 2-403, 2A-
22 304(2), 2A-305(2) or 9-320 or other statute or rule of law; or

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

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

6 (e) A warehouse loses its lien on any goods which it voluntarily delivers or unjustifiably
7 refuses to deliver.

8 **Reporter's Note**

9 There are three changes to this section other than style changes. First, in subsection (a), the
10 phrase "storage agreement" is added to allow a bailor to claim the possessory lien allowed by this
11 statute in the following situation. In the modern warehouse, the bailor and the bailee enter into a
12 master contract governing the bailment with the bailee and bailor keeping track of the goods
13 stored pursuant to the master contract by notation on their respective books and records and send
14 notification via electronic communication as to what goods are covered by the master contract.
15 Warehouse receipts are not issued. The concept of storage agreement was borrowed from section
16 7-204. Second, the phrase "proceeds thereof in its possession" has been added to the second
17 sentence. Third, subsection (c) has been revised to import the language from section 7-503 that
18 was previously incorporated by reference in order to improve clarity. See the notes following
19 section 7-503 that discuss the addition of the references to Article 2A.

20
21 As under previous law, this section creates a statutory possessory lien in favor of the
22 warehouse on the goods stored with the warehouse or on the proceeds of the goods. The
23 warehouse loses its lien if it loses possession of the goods or the proceeds. This section also
24 contains several priority rules about the priority of the lien as against other persons. The
25 following examples illustrate those priority rules.

26
27 Example 1: Bailor stored goods with a warehouse and the warehouse issued a warehouse
28 receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the
29 charges for storage of those goods. The warehouse may enforce its lien under Section 7-210 as
30 against the bailor. Whether the warehouse receipt is negotiable or nonnegotiable is not important
31 to the warehouse's rights as against the bailor.

32
33 Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a
34 warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will
35 also have a lien on goods covered by the warehouse receipt for storage charges for any other

1 goods that are stored with the warehouse by the bailor. Bailor then stored other goods (lot B)
2 with the warehouse. Under subsection (a), second sentence, the warehouse has a lien on the
3 goods in lot A for the storage charges for the goods in lot B. That lien is enforceable as against
4 the bailor regardless of whether the receipt is negotiable or nonnegotiable.
5

6 Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable and has
7 been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of
8 subsection (a), the warehouse may enforce its lien against the bailor's goods stored in the
9 warehouse as against the person's rights under the negotiable warehouse receipt. Section 7-502.
10 That lien is limited to the charges or rates specified in the receipt or a reasonable charge for
11 storage as stated in the last sentence of subsection (a).
12

13 Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has
14 been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of
15 subsection (a), the lien on lot A goods for the storage charges for lot B goods is not enforceable
16 as against the person to whom the receipt has been duly negotiated.
17

18 Example 5: Bailor stores goods with a warehouse and the warehouse issues a warehouse
19 receipt that states that the warehouse is taking a security interest in the bailed goods for charges
20 of storage, expenses and all other obligations that the bailor may owe the warehouse. That is a
21 security interest covered in all respects by Article 9. Subsection (b).
22

23 Example 6: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable
24 warehouse receipt. A lien on the bailed goods for the charges for storage of the goods arises
25 under subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and
26 the bailee acknowledges that fact to the Buyer. Section 2-503. The warehouse lien for storage of
27 those goods is effective against Buyer.
28

29 Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable
30 warehouse receipt. A lien on the bailed goods for the charges for storage arises under subsection
31 (a). Bailor grants a security interest to a SP who properly perfects a security interest in the goods
32 while the goods are in the possession of the warehouse. See Revised 9-312(d). The warehouse
33 lien is superior in priority over SP's security interest. Revised 9-333.
34

35 Example 8: Bailor stores goods with a warehouse and the warehouse issues a negotiable
36 warehouse receipt. A lien on the bailed goods for the charges for storage arises under subsection
37 (a). Bailor gives a security interest in the negotiable document to SP. SP properly perfects its
38 interest in the negotiable document by filing or by taking possession through a 'due negotiation.'
39 Revised 9-312(c). Given that SP's security interest would be subordinate to the lien in the event
40 of "due negotiation" of the negotiable document to SP (subsection (a) last sentence), perfection
41 by filing should not give a different result.
42

43 Example 9: Bailor gives a perfected security interest in goods to SP prior to storage of the

1 goods with a warehouse. Bailor then stores goods with a warehouse and the warehouse issues a
2 nonnegotiable warehouse receipt for the goods. A lien on the bailed goods for the charges for
3 storage arises under subsection (a). Under the first sentence of subsection (c), the lien is effective
4 as against SP only if SP so entrusted Bailor with the goods so that the Bailor could have made an
5 effective pledge of them to a good faith purchaser for value. On that point, see Revised 9-401,
6 which allows a security interest to be effective even if the security agreement forbids further
7 encumbrances.
8

9 Example 10: Same as Example 9, except that the warehouse issues a negotiable warehouse
10 receipt. In order for the warehouse lien to be effective against the SP that took a security interest
11 in the goods prior to the bailment, the court must find that the SP delivered or entrusted the
12 goods as provided in subsection (c)(1) or acquiesced in the procurement of the document as
13 provided in subsection (c)(2).
14

15 Example 11: Sheriff who had lawfully repossessed household goods in an eviction action
16 stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The
17 lien is effective as against the owner of the goods. Subsection (d).
18

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

20 (a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced
21 by public or private sale of the goods in bulk or in packages, at any time or place and on any
22 terms that are commercially reasonable, after notifying all persons known to claim an interest in
23 the goods. The notification must include a statement of the amount due, the nature of the
24 proposed sale, and the time and place of any public sale. The fact that a better price could have
25 been obtained by a sale at a different time or in a different method from that selected by the
26 warehouse is not of itself sufficient to establish that the sale was not made in a commercially
27 reasonable manner. If the warehouse (i) sells the goods in the usual manner in any recognized
28 market therefor, (ii) sells at the price current in that market at the time of the sale, or (iii) has
29 otherwise sold in conformity with commercially reasonable practices among dealers in the type
30 of goods sold, the warehouse has sold in a commercially reasonable manner. A sale of more

1 goods than apparently necessary to be offered to ensure satisfaction of the obligation is not
2 commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **Reporter's Note**

17 There is one substantive change to this section. The language in former subsection (2)(b)
18 requiring that the "notification must be delivered in person or sent by registered or certified letter
19 to the last known address of any person to be notified" has been eliminated. Sending notification
20 by registered mail does not allow for electronic notification. Absent some policy reason for
21 heightened notice requirements that would require a paper notification, the warehouse should be
22 able to give this notice electronically. Rev. 9 allows the notice of sale to be given electronically
23 as it requires a "reasonable authenticated notification of disposition." Rev. UCC 9-611.
24 "Notify" is defined in Article 1 (Former 1-201(26); Revised 1-202(d)) as "taking such steps as
25 may be reasonably required to inform the other person in ordinary course, whether or not the
26 other person actually comes to know of it."

1
2 **PART 3**

3 **BILLS OF LADING: SPECIAL PROVISIONS**
4

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

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

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

22 (c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of

1 lading adequate facilities for weighing those goods, the issuer must ascertain the kind and
2 quantity within a reasonable time after receiving the shipper's request in a record to do so. In
3 that case, "shipper's weight" or other words of similar import are ineffective.

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

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

13 **Reporter's Note**

14 There are two substantive changes to this section. In subsections (b) and (c) the phrase
15 "common carrier" has been deleted as obsolete after deregulation. The word "freight" has been
16 changed to "goods" to conform to international usage in which "freight" means the price paid of
17 carriage of the goods and not the goods themselves. Domestic land transport also uses the word
18 "freight" to refer commonly to the price of the shipment. Hence, changing the word "freight" to
19 the word "goods" is a clarifying change that fits both international and domestic practice.
20

21 The wording in this section – such as "contents or condition of contents of packages
22 unknown" or "shipper's weight, load and count" –to indicate that the shipper loaded the goods or
23 that the carrier does not know the description, condition, or contents of the loaded packages
24 continues to be appropriate as commonly understood in the transportation industry. The reasons
25 for this wording are as important today as when this section initially was approved.
26

27 Remaining changes to this section are for style purposes.
28

1 **SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF**
2 **TITLE.**

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

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

16 (c) The issuer of a through bill of lading or other document of title described in
17 subsection (a) is entitled to recover from the performing carrier or other person in possession of
18 the goods when the breach of the obligation under the document occurred, the amount it may be
19 required to pay to any person entitled to recover on the document therefor, as may be evidenced
20 by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably
21 incurred by the issuer in defending any action commenced by any person entitled to recover on
22 the document therefor.

1 **Reporter's Note**

2 The word “performing” is substituted for “connecting” in order to conform Article 7 to the
3 terminology used in the newly adopted OAS Through Bill of Lading for Road Transport (Feb.
4 2002) and the UNCITRAL Draft Instrument on Transport Law. Other changes are for style
5 purposes only.

6
7 **SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF**
8 **INSTRUCTIONS.**

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

12 (1) the holder of a negotiable bill;

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

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

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

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

23 **Reporter's Note**

1 This section has the following nonstyle changes: First, the words “without liability for
2 misdelivery” were added to clarify the legal consequences of this section. These words come
3 from the present Official Comment 2 to Section 7-303. Second, in subsection (a)(3), the section
4 was altered to provide for electronic bills of lading.

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

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

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

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

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

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

22 **Reporter’s Note**

23 The following nonstyle changes have been made to this section. First, this section has been
24 limited to tangible bills of lading. Tangible bills of lading in a set are still used in some nations

1 in international trade. Consequently, a tangible bill of lading part of a set could be at issue in a
2 lawsuit that might come within the scope of Article 7. Electronic bills of lading will not be
3 issued in sets given the requirements of control necessary to deliver the bill to another person.
4 See 7-106. Second, the word “overseas” in former 7-304 has been changed to “international” to
5 reflect modern practice. Third, the word “drawn” formerly found in subsections (b), (d) and (e)
6 has been changed to “issued” in order to be consistent with modern usage concerning this type of
7 bill of lading.

8 9 **SECTION 7-305. DESTINATION BILLS.**

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

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

17 **Reporter’s Note**

18 Subsection (a) is unchanged except for style changes. Subsection (b) has style changes and
19 has been modified to allow for its application to both tangible and electronic bills of lading. In
20 issuing a substitute bill that switches mediums, the validity of the substitute bill depends upon
21 compliance with Section 7-105.

22
23 **SECTION 7-306. ALTERED BILLS OF LADING.** An unauthorized alteration or filling
24 in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

25 **Reporter’s Note**

26 This section is unchanged in text but will apply to both tangible and electronic bills of lading.
27 The control concept as articulated in section 7-106 requires that any changes to the electronic

document of title be identified as authorized or unauthorized.

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

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

Reporter's Note

This section has one substantive change and that is adding the reference to proceeds in subsection (a). For historical and practice reasons this lien is more restrictive than the warehouse lien allowed by section 2-709. A carrier's lien attaches to the goods and proceeds of the goods for the charges and expenses related to those goods and not for charges and expense related to other goods. This section also has a more straightforward set of priority rules than those in

1 section 2-709. The reference to “charges” in this section should be read as referencing a category
2 of charges and not a requirement that the bill state a specific dollar amount.
3

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

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

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

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

23 (d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free

1 of any rights of persons against which the lien was valid, despite the carrier's noncompliance
2 with this section.

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

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

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

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

12 **Reporter's Note**

13 This section remains unchanged from current law except for style changes.
14

15 **SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF** 16 **CARRIER'S LIABILITY.**

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

22 (b) Damages may be limited by a term in the bill of lading that the carrier's liability may

1 not exceed a value stated in the bill if the carrier's rates are dependent upon value and the
2 consignor is afforded an opportunity to declare a higher value and the consignor is advised of the
3 opportunity. However, no such limitation is effective with respect to the carrier's liability for
4 conversion to its own use.

5 (c) Reasonable provisions as to the time and manner of presenting claims and
6 commencing actions based on the shipment may be included in a bill of lading.

7 **Reporter's Note**

8 Only one substantive change has been made to this section. The references to tariffs found in
9 former subsections (2) and (3) have been eliminated as not appropriate given the deregulation of
10 the industry.

12 **PART 4**

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

14
15 **SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR**
16 **CONDUCT OF ISSUER.** The obligations imposed by this article on an issuer apply to a
17 document of title even if:

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

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

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

23 (4) the person issuing the document is not a warehouse but the document purports to be a

1 warehouse receipt.

2 **Reporter's Note**

3 This section has no changes other than style changes.

4
5 **SECTION 7-402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE.** A duplicate

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

12 **Reporter's Note**

13 Two substantive changes have been made in this section. The requirement of a conspicuous
14 notation be made "on the face" of the document has been deleted as incompatible with electronic
15 documents. A notation that the document is a duplicate must be conspicuous but need not be "on
16 the face" of the document. The second change is to reference section 7-105 allowing documents
17 to be converted from one medium to another. Conversion of a document from one medium to
18 another under section 7-105 requires that the original document be surrendered to the issuer in
19 order to make the substitute document the effective document. If the substitute document is not
20 issued in compliance with section 7-105, then the purported substitute document should be
21 treated as a duplicate under this section. Other changes to this section are style changes.

22
23 **SECTION 7-403. OBLIGATION OF WAREHOUSE OR CARRIER TO DELIVER;**
24 **EXCUSE.**

25 (a) A bailee shall deliver the goods to a person entitled under a document of title which
26 complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of

1 the following:

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

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

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

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

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

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

13 (7) any other lawful excuse.

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

17 (c) Unless the person claiming the goods is one against which the document of title does
18 not confer a right under Section 7-503(a), a person claiming under a document shall surrender
19 possession or control of any outstanding negotiable document covering the goods for cancellation
20 or indication of partial deliveries, and the bailee shall cancel the document or conspicuously
21 indicate in the document the partial delivery or be liable to any person to which the document is
22 duly negotiated.

1 **Reporter's Note**

2 This section contains the following substantive changes. First, the definition of “person
3 entitled under a document” has been moved to section 7-102 as it is a definition used throughout
4 the article. Second, the following language in former subsection (1)(b) (now (a)(2)) “but the
5 burden of establishing negligence in such cases is on the person entitled under the document” has
6 been deleted. That language was previously in the uniform version as bracketed language
7 available to the states for enactment if the state chose to do so. A small number of states did
8 enact the bracketed language. The deletion of the bracketed language from the draft does not
9 preclude a state from reenacting the language. The drafting committee was of the opinion that
10 this article should not take a position on the allocation of the burden of proof of the bailee’s
11 negligence, leaving such allocation to the general law of the state. Third, the cross reference to
12 Article 2A has been added to subsection (1)(d). That cross reference should probably have been
13 added when Article 2A was promulgated. Remaining changes are for style purposes.
14

15 The rule of subsection (b) needs to be read in light of the priority rules set forth in sections 2-
16 709 and 2-307 regarding priority of a bailee’s lien as against persons, other than the bailor,
17 claiming the goods.
18

19 **SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO**
20 **DOCUMENT OF TITLE.** A bailee that in good faith has received goods and delivered or
21 otherwise disposed of the goods according to the terms of a document of title or pursuant to this
22 article is not liable for the goods even if:

23 (1) the person from which the bailee received the goods had no authority to procure the
24 document or to dispose of the goods; or

25 (2) the person to which the bailee delivered the goods did not have authority to receive
26 the goods.
27

28 **Reporter's Note**

29 This section contains one substantive change. The definition of good faith in section 7-102
30 means both honesty in fact and the observance of reasonable commercial standards of fair
31 dealing. Given that revision of the definition of good faith, the phrase “including observance of
reasonable commercial standards” has been removed as redundant. Remaining changes are for

1 style purposes.

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 money 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 money 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 thereof of any
16 interest of that person in the goods.

17 **Reporter's Note**

18 This section provides the foundation for treatment of a negotiable electronic document of
19 title. Subsection (a) has been modified to apply to tangible negotiable documents of title only.
20 The rules in that subsection have been revised for style purpose but no substantive changes have
21 been made as regards negotiation and due negotiation of a tangible negotiable document of title.
22

23 Subsection (b) is new and applies to electronic negotiable documents of title. Delivery of the
24 document of title is what is required to negotiate the electronic document of title. The definition
25 of delivery in 1-201 will be revised (see the conforming amendments to Article 1 contained in
26 Appendix I to this draft) so that a voluntary transfer of control will be delivery of an electronic

document of title. The definition of control is in 7-106 of this draft and taken from UETA § 16. Given the definition of control, particularly the requirement that assignees be designated and that changes in assignees may only be done with the consent of the person asserting control, the concept of indorsement for tangible documents is not needed with respect to electronic documents. The concept of due negotiation also applies to an electronic negotiable document of title.

Example 1: A carrier issues an electronic negotiable bill of lading to bearer. The person to whom that bill was issued voluntarily transfers control as defined in section 7-106 to another person. The bill has been negotiated to that second person. Subsection (b)(1).

Example 2: A warehouse issues an electronic negotiable warehouse receipt to the order of a named person. Upon issuance to that named person who fulfills the control requirements of section 7-106, the effect is the same as if the document had been negotiated to that person. Subsection (b)(2).

Example 3: In example 2, the person in control voluntarily transfers control of the electronic negotiable warehouse receipt to its bank that qualifies as a good faith purchaser for value without notice of a defense against the document or a claim to it and that took control in the regular course of financing and not in payment or settlement of a money obligation. The receipt has been duly negotiated to the bank. Subsection (b)(3).

Subsections (c) and (d) are unchanged except for style and apply to both tangible and electronic documents of title. A purported indorsement of an electronic document of title has no effect.

SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.

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

- (1) title to the document;
- (2) title to the goods;
- (3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (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
3 obligation accrues only upon the bailee's acceptance of the delivery order and the obligation
4 acquired by the holder is that the issuer and any indorser will procure the acceptance of the
5 bailee.

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

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

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

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

15 **Reporter's Note**

16 This section has one substantive change to provide for the loss of control of an electronic
17 negotiable document of title in subsection (b)(2) as comparable to loss of possession of a tangible
18 negotiable document of title. Remaining changes are for style purposes.

19 20 **SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN** 21 **CASES.**

22 (a) A negotiable document of title confers no right in goods against a person that before
23 issuance of the document had a legal interest or a perfected security interest in the goods and that

1 did not:

2 (1) deliver or entrust the goods or any document covering the goods to the bailor or
3 the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain
4 delivery under Section 7-403; or with power of disposition under Sections 2-403, 2A-304(2), 2A-
5 305(2), or 9-320 or other statute or rule of law; or

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

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

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

15 **Reporter's Note**

16 This section applies to both tangible and electronic documents of title. The following
17 changes have been made. Subsection (a) has been changed to make clear that its application is to
18 negotiable documents of title and to add the power of disposition given in Article 2A in an
19 entrustment situation. The addition of the references to Article 2A should probably have been
20 made when Article 2A was promulgated. Remaining changes are for style.
21

22 **SECTION 7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION;** 23 **EFFECT OF DIVERSION; STOPPAGE OF DELIVERY.**

24 (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the

document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

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

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

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

(3) by a lessee from the transferor in ordinary course of business if the bailee has 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 provided 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.

Reporter's Note

This section has been revised to take account of the rights of a lessee in ordinary course,

subsection (b)(3) and subsection (c), and the rights of a lessor to stop goods in transit, subsection (d). Given the promulgation of Article 2A, and its parallelism with Article 2, it makes sense to incorporate those rights in this section. Other changes to this section are for style only.

SECTION 7-505. INDORSER NOT GUARANTOR FOR OTHER PARTIES. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

Reporter's Note

This rule is negating any inference that by indorsing the document, the indorser is liable for the bailee's obligations or for previous indorser's obligations. This section has been limited to tangible documents of title. Because indorsement is a concept that applies only to tangible documents, having a similar rule for electronic documents is not necessary. Electronic documents will not contain any indorsements. As stated in the Reporter's Note to Section 7-501, to negotiate an electronic negotiable document of title will require voluntary transfer of control. The control concept substitutes for both possession and indorsement through the requirements set forth in Section 7-106. Section 7-501(c) already states that indorsement of a nonnegotiable document does not add to the transferee's rights.

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.

Reporter's Note

Indorsement is a concept associated only with tangible negotiable documents. Electronic documents will not be indorsed so there need not be any enforceable right to compel the indorsement or to link negotiation as of the time of the indorsement being supplied. See Section 7-501(b). The issue of whether the transferee of a document of title can compel delivery of the document (whether tangible or electronic) is not addressed by this section and will be a matter of other law, including the rights arising out of the contract between the transferor and transferee.

1 **SECTION 7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF**
2 **DOCUMENT OF TITLE.** If a person negotiates or delivers a document of title for value,
3 otherwise than as a mere intermediary under Section 7-508, unless otherwise agreed, the
4 transferor warrants to its immediate purchaser only in addition to any warranty made in selling or
5 leasing the goods that:

6 (1) the document is genuine;

7 (2) the transferor has no knowledge of any fact that would impair the document's validity
8 or worth; and

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

11 **Reporter's Note**

12 There are two substantive changes to this section. First, "delivery" is substituted for transfer
13 as delivery is a defined term and transfer is not. In addition, delivery connotes "voluntary"
14 transfer of possession or control. The warranty should arise only in connection with a voluntary
15 action. Second, the words "or leasing" are added to cover the situation where the underlying
16 transaction may be a lease of the goods.

17
18 **SECTION 7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS**
19 **OF TITLE.** A collecting bank or other intermediary known to be entrusted with documents of
20 title on behalf of another or with collection of a draft or other claim against delivery of
21 documents warrants by the delivery of the documents only its own good faith and authority even
22 if the intermediary has purchased or made advances against the claim or draft to be collected.

23 **Reporter's Note**

24 This section contains style changes only.

1
2 **SECTION 7-509. WHEN ADEQUATE COMPLIANCE WITH COMMERCIAL**
3 **CONTRACT.** Whether a document of title is adequate to fulfill the obligations of a contract for
4 sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, Article
5 2A, or Article 5 as applicable.

6 **Reporter's Note**

7 This section has been modified to include a reference to contracts for lease and Article 2A.
8 Remaining changes are for style.
9

10
11 **PART 6**

12 **WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS**
13 **PROVISIONS**
14

15 **SECTION 7-601. LOST, STOLEN, DESTROYED, OR MISSING DOCUMENTS OF**
16 **TITLE.**

17 (a) If a document of title has been lost, stolen, or destroyed, a court may order delivery of
18 the goods or issuance of a substitute document and the bailee may without liability to any person
19 comply with the order. If the document was negotiable, a court may not order delivery of the
20 goods or issuance of a substitute document unless it finds that any person that may suffer loss as
21 a result of nonsurrender of possession or control of the document is adequately protected against
22 that loss. If the document was nonnegotiable, security may be required at the discretion of the
23 court. The court may also in its discretion order payment of the bailee's reasonable costs and
24 attorney's fees in any action under this subsection.

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

Reporter's Note

There are several substantive changes to this section. First, in subsection (a), the second sentence has been revised to be similar to Section 3-309 as it applies to lost negotiable instruments. The previous provision required posting security. The revision allows courts more flexibility to determine what would protect persons who would suffer a loss due to the failure to be able to produce the document. Second, subsection (a) has been revised to apply to electronic documents of title by referring to nonsurrender of control of the negotiable document. This provision should be read in accord with Section 7-105 in the event the document is going to be reissued in an alternate medium. Third, the reference in subsection (b) to tariffs or filed classifications has been deleted as outdated in light of deregulation.

SECTION 7-602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE

DOCUMENT OF TITLE. Unless the 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.

1 **Reporter's Note**

2 Changes are for style only.

3
4 **SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.** If more than one
5 person claims title or possession of the goods, the bailee is excused from delivery until the bailee
6 has a reasonable time to ascertain the validity of the adverse claims or to commence an action to
7 compel all claimants to interplead. The bailee may compel an interpleader either in defending an
8 action for nondelivery of the goods or by original action.

9 **Reporter's Note**

10 Changes to this section are for style only. This section allows the bailee to bring an
11 interpleader action but does not provide an exclusive basis for allowing interpleader. If either
12 state or federal procedural rules allow an interpleader in other situations, the bailee may
13 commence an interpleader under those rules. Even in an interpleader to which this section
14 applies, the state or federal process of interpleader applies to the bailee's action for interpleader.
15 Reference will be made to these state and federal statutes in the comments to indicate that, for
16 example, these state and federal interpleader statutes may permit a bailee to protect its lien in the
17 interpleader action.

18
19 **PART 7**

20 **TRANSITION PROVISIONS**

21
22 **SECTION 7-701. EFFECTIVE DATE.** This [Act] shall become effective on _____,
23 20____.

24
25 **SECTION 7-702. REPEALS.** This [Act] repeals [insert citation to existing Article 7].

1 **SECTION 7-703. APPLICABILITY.** This [Act] applies to a document of title that is
2 issued or transaction within its scope that is entered into on or after the effective date of this
3 [Act]. This [Act] does not apply to a document of title that is issued or transaction that is
4 entered into before the effective date of this [Act] even if the document or transaction would be
5 subject to this [Act] if it had been entered into after the effective date of this [Act]. This [Act]
6 does not apply to a cause of action that has accrued before the effective date of this [Act].
7

8 **SECTION 7-704. SAVINGS CLAUSE.** A document of title issued or a transaction entered
9 into before the effective date of this [Act] and the rights, obligations, and interests flowing from
10 that document or transaction are governed by any statute or other rule amended or repealed by
11 this [Act] as if amendment or repeal had not occurred and may be terminated, completed,
12 consummated, or enforced under that statute or other rule.

13 **Reporter's Note**

14 The transition provisions above are adapted from the standard transition provisions that have
15 accompanied other amendments to the UCC that are intended to have solely prospective effect.

1 ~~“conspicuous” if it is in larger or other contrasting type or color. But in a telegram any stated~~
2 ~~term is “conspicuous”. Whether a term or clause is “conspicuous” or not is for decision by the~~
3 ~~court.~~

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

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

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

12 * * * *

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

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

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

7 * * * *

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

13 "Holder" means:

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

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

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

19 * * * *

20 (25) Subject to subsection (27), a ~~A~~ person has "notice" of a fact if the person ~~when~~

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

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

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

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

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

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

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

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

1 duties or the individual ~~unless he~~ has reason to know of the transaction and that the transaction
2 would be materially affected by the information.

3 * * * *

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

10 (38) “Send” in connection with a writing, record, or notice means:

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

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

17 * * * *

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

20 **Reporter’s Notes**

21 These amendments to former Article 1 are indicated by underline and strikeout.
22 Subsection (5). The definition of “bearer” has been amended to distinguish between an
23 electronic and a tangible negotiable document of title. The term bearer as used in Article 7 is

1 only used in reference to a negotiable document. The concept of control is the electronic analog
2 to possession.

3
4 Subsection (6). The definition of “bill of lading” has been revised to make clear that a bill of
5 lading must also meet the definition of document of title. The addition of the words “directly or
6 indirectly” should be read in conjunction with the definition of carrier. Any person that issues a
7 bill of lading in connection with shipment of the goods should come within the definition of
8 carrier contained in 7-102.

9
10 Subsection (10). The definition of “conspicuous” is taken from Revised Article 1 and is
11 important for its applicability to both electronic and tangible documents of title.

12
13 Subsection (14). The definition of “delivery” has been revised to accommodate electronic
14 documents of title and treats control as the electronic analog of possession.

15
16 Subsection (15). The definition of “document of title” has been revised to accommodate
17 electronic documents of title by use of the word “record” and addition of the word “control.” The
18 addition of “transport document” in the list of illustrative documents of title conforms with
19 international terminology. The terms “electronic” and “tangible” document of title have been
20 adapted from the comparable definitions from Revised Article 9 of electronic and tangible chattel
21 paper. These terms are included in the definition of document of title in an attempt to avoid
22 renumbering the sections in Article 1 given the disruption that may have on the other articles of
23 the UCC. The reordering of the concepts in this definition was suggested by the Style
24 Committee.

25
26 Subsection (20). The definition of “holder” has been adapted to electronic documents of title
27 and is taken from Revised Article 1.

28
29 Subsections(25) through (27). These amendments in effect follow the changes to the
30 definitions of “notice”, “knowledge”, and “notifies” from Revised Article 1.

31
32 Subsection (38). The definition of “send” is taken from Revised Article 1 and accommodates
33 electronic communications.

34
35 Subsection (45). The change to the definition of “warehouse receipt” makes clear that the
36 receipt must qualify as a document of title in order to be a “warehouse receipt.”

37 **ALTERNATIVE B**

38 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is enacting*
39 *at the same time as this Act the provisions of Revised Article 1.*

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

1 * * *

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

4 * * *

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

8 (6) “Bill of lading” means a document of title evidencing the receipt of goods for
9 shipment issued by a person engaged in the business of directly or indirectly transporting or
10 forwarding goods but does not include a warehouse receipt.

11 * * *

12 (14) “Delivery”, with respect to an electronic document of title means voluntary transfer
13 of control and with respect to an instrument, a tangible document of title, or chattel paper, means
14 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" means:

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

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

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

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

15 **Reporter's Note**

16 See the Reporter's Note following the suggested amendments to former Article 1.

Appendix II

Conforming Amendments to Other Articles of the UCC

The following sections of the UCC mention the words document, documents, or documentary, referring to documents of title. These other Articles will be examined at the October 2002 Drafting Committee meeting to determine whether conforming amendments to these sections or others are necessary to incorporate Article 7's approach to electronic documents of title across the UCC. One of the important areas that will be discussed at the October 2002 Drafting Committee meeting will be the methodology for perfecting a security interest in an electronic negotiable document of title and the appropriate priority rules.

| | |
|------------------------------------------------|-------------------------------------------|
| <i>Article 2</i> | <i>Article 5</i> |
| <i>2-401</i> | <i>5-102(a)(6), (10) and (12)</i> |
| <i>2-503</i> | <i>5-108</i> |
| <i>2-504</i> | <i>5-109</i> |
| <i>2-505</i> | <i>5-110</i> |
| <i>2-506</i> | <i>5-111</i> |
| <i>2-509</i> | <i>5-113</i> |
| <i>2-705</i> | <i>5-114</i> |
| | <i>5-118 (added by Rev. 9)</i> |
| <i>Article 2A</i> | |
| <i>cross reference in 2A-103</i> | <i>Revised 9</i> |
| | <i>9-102(a)(30), (42), (44), and (77)</i> |
| <i>Article 4</i> | <i>9-301</i> |
| <i>4-104 (definition of documentary draft)</i> | <i>9-310</i> |
| <i>4-202</i> | <i>9-312</i> |
| <i>4-204</i> | <i>9-313</i> |
| <i>4-210</i> | <i>9-317</i> |
| <i>4-301</i> | <i>9-322</i> |
| <i>4-302</i> | <i>9-331</i> |
| <i>4-501</i> | <i>9-338</i> |
| <i>4-503</i> | <i>9-601</i> |
| <i>4-504</i> | |