

FOR DISCUSSION ONLY

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

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

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ON UNIFORM STATE LAWS

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UNIFORM COMMERCIAL CODE

ARTICLE 7

DOCUMENTS OF TITLE

Prefatory Note

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

To provide for electronic documents of title, several definitions in Article 1 were revised including “bearer,” “bill of lading,” “delivery,” “document of title,” “holder,” and “warehouse receipt.” The concept of an electronic document of title was to allow for commercial practice to determine what records issued by bailees are “in the regular course of business or financing” are “treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers.” Section 1-201(15) [(b)(16)]. Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title.

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

Other changes that have been made are:

1. New definitions of “carrier,” “good faith,” “record,” “sign” and “shipper” in Section 7-102.
2. Deletion of references to tariffs or filed classifications given the deregulation of the affected industries. See e.g. section 7-103 and 7-309,
3. Clarifying the rules regarding when a document is nonnegotiable. Section 7-104.
4. Making clear when rules apply just to warehouse receipts or bills of lading, thus eliminating the need for former section 7-105.
5. Clarifying that particular terms need not be included in order to have a valid warehouse receipt. Section 7-202.
6. Broadening the ability of the warehouse to make an effective limitation of liability in its warehouse receipt or storage agreement in accord with commercial practice. Section 7-204.
7. Allowing a warehouse to have a lien on goods covered by a storage agreement and clarifying the priority rules regarding the claim of a warehouse lien as against other interests. Section 7-209.
8. Conforming language usage to modern shipping practice. Sections 7-301 and 7-302.
9. Clarifying the extent of the carrier’s lien. Section 7-307.
10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504, 7-509.
11. Clarifying that the warranty made by negotiation or delivery of a document of title should apply only in the case of a voluntary transfer of possession or control. Section 7-507.
12. Providing greater flexibility to a court regarding adequate protection against loss when ordering

1 delivery of the goods or issuance of a substitute document. Section 7-601.
2 13. Providing conforming amendments to the other Articles of the Uniform Commercial Code to
3 accommodate electronic documents of title.

4 **PART 1.**

5 **GENERAL**

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

8 **OFFICIAL COMMENT**

9 This Article is a revision of the 1962 Official Text with Comments as amended since 1962. The 1962
10 Official Text was a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of
11 Lading Act, and embraces also the provisions of the Uniform Sales Act relating to negotiation of documents of title.

12 The only substantial omissions of material covered in the previous uniform acts are the criminal provisions
13 found in the Warehouse Receipts and Bills of Lading acts. These criminal provisions are inappropriate to a
14 Commercial Code, and for the most part duplicate portions of the ordinary criminal law relating to frauds. The only
15 explicit deletion in this revised Article of a section from the 1962 Official Text is the deletion of Section 7-105
16 Construction Against Negative Implication. Deletion of Section 7-105 is not meant to be a substantive change about
17 the interpretive application of Article 7 by courts. Courts should apply Article 7 only when the definitions of Section
18 7-102 make Article 7 applicable to the situation. However, it may be appropriate for a court to apply one or more
19 provisions of Article 7 by analogy taking into account the expectations of the parties and avoiding a construction
20 against negative implication. Whether such analogical application is appropriate depends upon the facts of each
21 case.

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

27 ***Reporter's Note***

28 *The longer addition to the Comment identifies the deletion of Section 7-105, explains that its deletion is*
29 *not meant to be a substantive change, and adds language taken from comment 2 to Section 3-104.*

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

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

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

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

35 (3) "Consignee" means a person named in a bill of lading to which or to whose

1 order the bill promises delivery.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 "Control", Section 7-106.

10 "Duly negotiate", Section 7-501.

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

13 "Contract for sale", Section 2-106.

14 "'Receipt' of goods", Section 2-103.

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

17 **OFFICIAL COMMENT**

18 **Prior Uniform Statutory Provision:** Former Section 7-102.

19
20 **Changes:** New definitions of "carrier," "good faith," "record," "sign," and "shipper." Other definitions revised to
21 accommodate electronic mediums.

22
23 **Purposes:**

24
25 1. "Bailee" ~~was not defined in the old uniform acts. It~~ is used in this Article as a blanket term to designate
26 carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have
27 received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges
28 possession when ~~he~~ it does not have possession, ~~it~~ he ~~the~~ bailee is bound by sections of this Article which declare the
29 "bailee's" obligations. (See definition of "Issuer" in this section and Sections 7-203 and 7-301 on liability in case of

1 non-receipt.) A “carrier” is one type of bailee and is defined as a person that issues a bill of lading. A “shipper” is a
2 person who enters into the contract of transportation with the carrier. The definitions of “bailee,” “consignee,”
3 “consignor,” “goods”, and “issuer”, are unchanged in substance from prior law. “Document of title” is defined in
4 Article 1.

5
6 2. The definition of warehouse receipt contained in the general definitions section of this Act (Section
7 1-201) ~~eliminates the requirement of the Uniform Warehouse Receipts Act that the~~ does not require that the issuing
8 warehouseman be "lawfully engaged" in business or for profit. The warehouseman's compliance with applicable
9 state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this Article.
10 Certainly the issuer's violations of law should not diminish his its responsibility on documents ~~he~~ the issuer has put in
11 commercial circulation. ~~The Uniform Warehouse Receipts Act requirement that the warehouseman be engaged "for~~
12 ~~profit" has also been eliminated in view of the existence of state operated and co-operative warehouses.~~ But it is still
13 essential that the business be storing goods "for hire" (Section 1-201 and this section). A person does not become a
14 warehouseman by storing his its own goods.

15
16 3. ~~Delivery orders, which were included without qualification in the Uniform Sales Act definition of~~
17 ~~document of title, must be treated differently in this consolidation of provisions from the three uniform acts.~~ When a
18 delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt.
19 Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of
20 contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be in other than
21 tangible form as long as they are “records.”

22
23 4. The obligation of good faith imposed by this Article and by Article 1, 1-203 [1-304] includes the
24 observance of reasonable commercial standards of fair dealing.

25
26 5. The definitions of “record” and “sign” are included to facilitate electronic mediums. See comment 9 to
27 Section 9-102 discussing “record” and comment to amended 2-103 discussing “sign.”

28
29 6. “Person entitled under the document” is moved from former Section 7-403.
30

31 **Cross References:**

32
33 Point 1: Section 7-203 and 7-301.

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

35 Point 4: Section 1-203 [1-304].

36 Point 5: Section 9-102 and 2-103.

37 See general comment to document of title in Section 1-201.

38 **Definitional Cross References:**

39
40 "Bill of lading". Section 1-201.

41 "Contract". Section 1-201.

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

43 "Delivery". Section 1-201.

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

45 "Person". Section 1-201.

46 "Purchase". Section 1-201.

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

48 "Right". Section 1-201.

49 "Warehouse receipt". Section 1-201.

50 ~~"Written". Section 1-201.~~

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

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

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

9 **OFFICIAL COMMENT**

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

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

12 **Purposes:**

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

15
16 2. To make clear also that regulatory state statutes (such as those fixing or authorizing a commission to fix
17 rates and prescribe services, authorizing different charges for goods of different values, and limiting liability for loss
18 to the declared value on which the charge was based) are not affected by the Article and are controlling on the
19 matters which they cover. ~~Notice that the reference is not only to such statutes, but to tariffs, classifications and~~
20 ~~regulations filed or issued pursuant to them. The references to tariffs, classifications, and regulations filed or issued~~
21 ~~pursuant to regulatory state statutes have been deleted as inappropriate in the modern era of less regulation of~~
22 ~~carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that~~
23 ~~tariff or classification would be given effect via the state regulatory scheme that this Article recognizes as~~
24 ~~controlling. Permissive tariffs or classifications would not displace the provisions of this act, pursuant to this~~
25 ~~section, but may be given effect through the ability of parties to incorporate those terms by reference into their~~
26 ~~agreement.~~

27
28 3. The document of title provisions of this act supplement the federal law and regulatory state law largely
29 in matters other than the regulatory obligations of the bailee, e.g. form and effects of negotiation, procedure in the
30 case of lost documents, effect of overissue, possibility of rapid transmission of documents. This Article focuses on
31 the commercial importance and usage of documents of title. State ex. rel Public Service Commission v. Gunkelman
32 & Sons, Inc., 219 N.W.2d 853 (N.D. 1974).

33
34 **Cross References:**

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

Definitional Cross Reference:

"Bill of lading". Section 1-201.

Reporter's Note

The added language in Point 2 reflects the Committee's decision. Point 3 restates, but more briefly, and clarifies the comment to Section 10-104 that has been moved to subsection (b). A case citation was added to provide guidance about the proper interpretation of subsection (b). Query: Does the Definitional Cross Reference make sense?

SECTION 7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.

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

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-104.

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

Purposes of Changes:

1. This Article deals with a class of commercial paper representing commodities in storage or transportation. This "commodity paper" is to be distinguished from what might be called "money paper" dealt with in the Article of this Act on Commercial Paper (Article 3) and "investment paper" dealt with in the Article of this Act on Investment Securities (Article 8). The class of "commodity paper" is designated "document of title" following the terminology of the Uniform Sales Act Section 76. Section 1-201. The distinctions between negotiable and nonnegotiable documents in this section makes the most important subclassification employed in the Article, in that the holder of negotiable documents may acquire more rights than his transferor had (See Section 7-502).

A document of title is negotiable only if it satisfies this section. "Deliverable on proper indorsement and

surrender of this receipt" will not render a document negotiable. Bailees often include such provisions as a means of insuring return of nonnegotiable receipts for record purposes. Such language may be regarded as insistence by the bailee upon a particular kind of receipt in connection with delivery of the goods. Subsections ~~(1)(a)~~ and ~~(2)~~ makes it clear that a document is not negotiable which provides for delivery to order or bearer only if written instructions to that effect are given by a named person.

2. Subsection (c) allows the issuer to stamp or otherwise legend a document of title as nonnegotiable regardless of having the language in subsection (a) in the document. Subsection (c) is similar to Section 3-104(d). Once issued as a negotiable document of title, the document cannot be changed from a negotiable document to a nonnegotiable document. However, one can fail to negotiate a negotiable document by due negotiation. (See Section 7-501(5)). A document that is nonnegotiable cannot be made negotiable by stamping or marking the document as negotiable. The only way to make a document negotiable is to comply with subsection (a).

Cross Reference: Sections 7-501 and 7-502.

Definitional Cross References:

"Bearer". Section 1-201.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

~~"Overseas". Section 2-323.~~

"Person". Section 1-201.

"Sign". Section 7-102

"Warehouse receipt". Section 1-201.

Reporter's Note

Comment 2 is new and reflects the Committee's decision to add subsection (c).

SECTION 7-105. REISSUANCE IN ALTERNATE MEDIUM.

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

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

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

(b) Upon issuance of a tangible document of title in substitution for an electronic

document of title in accordance with subsection (a):

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

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

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

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

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

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

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Instrument on Transport Documents

Purpose:

1. This section allows for documents of title issued in one medium to be converted and reissued in another medium. This section sets forth minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternate medium and if the issuer chooses to do so, it may impose additional requirements. The section applies to both negotiable and nonnegotiable documents.

2. The request must be made to the issuer by the person entitled to enforce the document. (Section 7-102(a)(9)) and that person must surrender possession or control of the original document to the issuer. The reissued document must have a notation that it has been issued as a substitute for the original document. These minimum requirements must be met in order to give the substitute document effect and validity.

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

Cross Reference: Section 7-601.

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

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

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

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

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

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

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

(3) the authoritative copy is communicated to and maintained by the person

1 asserting control or its designated custodian;

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

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

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

8 **OFFICIAL COMMENT**
9

10 **Prior Uniform Statutory Provision:** Uniform Electronic Transactions Act § 16.
11

12 **Purpose:**
13

14 1. The section defines “control” for electronic documents of title and derives its rules from the Uniform
15 Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16, however, a document of title may be
16 converted from tangible to electronic form or vice versa. At any point in time in which a document of title is in
17 electronic form, the control concept of this section is relevant.
18

19 2. Control of an electronic document of title substitutes for the concept of indorsement and possession in
20 the tangible document of title context. See Section 7-501. A person with a tangible document of title delivers the
21 document by voluntarily transferring possession and a person with an electronic document of title delivers the
22 document by voluntarily transferring control. (Delivery is defined in Section 1-201).
23

24 3. Subsection (a) sets forth the general rule that the “system employed for evidencing the transfer of
25 interests in the electronic document reliably establishes that person as the person to which the electronic document
26 was issued or transferred.” The key to having a system that satisfies this test is that identity of *the* person to which
27 the document was issued or transferred must be reliably established. Of great importance to the functioning of the
28 control concept is to be able to demonstrate that at any point in time the person entitled under the document. Third
29 party registry systems may satisfy this test. This Article leaves to the market place the development of sufficient
30 technologies and business practices that will meet the test. To the extent that third parties wish to deal in paper
31 mediums, Section 7-105 provides a mechanism for exiting the electronic environment.
32

33 4. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in
34 subsection (a). This test is also used in Section 9-105. At any point in time, a party should be able to identify the
35 single authoritative copy which is unique and identifiable as the authoritative copy. This does not mean that once
36 created that the authoritative copy need be static and never moved or copied from its original location. To the extent
37 that backup systems exist which result in multiple copies, the key to this idea is that at any point in time, the one
38 authoritative copy needs to be unique and identifiable.
39

40 5. Article 7 has historically provided for rights under documents of title and rights of transferees of
41 documents of title as those rights relate to the goods covered by the document. Third parties may possess or have
42 control of documents of title. While misfeasance or negligence in failure to transfer or misdelivery of the **document**
43 by those third parties may create serious issues, this article has never dealt with those issues as it relates to tangible

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

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

PART 2.

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-201.

Changes: Update for style only.

Purposes:

It is not intended by re-enactment of subsection (a) to repeal any provisions of special licensing or other statutes regulating who may become a warehouseman. ~~See Section 10-103.~~ Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. Section 7-103. Compare Section 7-401(d) on the liability of the issuer in such cases. Subsection (b) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. Chapter 26 51. Delivery orders can be equivalent to warehouse receipts. See Section 7-102(a)(5).

Cross References: Sections 7-103, 7-401, ~~10-103~~.

Definitional Cross References:

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Reporter's Note

Rearrangement of the sentence order but no substantive change. Other changes are to update and clarify the comment.

SECTION 7-202. FORM OF WAREHOUSE RECEIPT.

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

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

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

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

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

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

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

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

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

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest but if the precise amount of advances made

1 or of liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to
2 its agent that issued the receipt, a statement of the fact that advances have been made or liabilities
3 incurred and the purpose of the advances or liabilities is sufficient.

4 (c) A warehouse may insert in its receipt any terms that are not contrary to the provisions
5 of [the Uniform Commercial Code] and do not impair its obligation of delivery under Section 7-
6 403 or its duty of care under Section 7-204. Any contrary provisions are ineffective.

7 **OFFICIAL COMMENT**
8

9 **Prior Uniform Statutory Provision:** Section 7-202
10

11 **Changes:** Language is updated to accommodate electronic commerce and to reflect modern style.
12

13 **Purposes:**

14 1. To make clear that the formal requirements of the Uniform Warehouse Receipts Act are continued but
15 not to displace particular legislation requiring other or different specifications of form, see Sections 7-103 and
16 ~~10-103~~. This section does not require that a receipt be issued but states formal requirements for those which are
17 issued. The idea that these terms must be provided for in the warehouse receipt allows for a number of records
18 collectively to be a warehouse receipt. The idea of an identification code accommodates electronic documents. The
19 signature of the warehouse will usually be by agents acting on behalf of the warehouse. Questions regarding agency
20 authority are left to other law.

21 The title is revised to eliminate the phrases “essential terms” and “ordinary terms” to negate any inference
22 that any of the types of terms listed in subsection (b) must be in the warehouse receipt in order to qualify as a
23 warehouse receipt. The only consequence of a warehouse receipt not containing those terms is that a person injured
24 by its omission has a right against the warehouse for harm caused by the omission. Omission of a term should not
25 affect the validity of a document of title as a document of title.

26 2. The unique identification code can include any combination of letters, number, signs, and/or symbols
27 that provide a unique identification.
28

29 **Cross References:** Sections 7-103 and ~~10-103~~ 7-401.
30

31 **Definitional Cross References:**
32

33 "Bearer". Section 1-201.
34

35 "Delivery". Section 1-201.
36

37 "Goods". Section 7-102.
38

39 "Person". Section 1-201.
40

41 "Security interest". Section 1-201.
42

43 "Sign". Section 7-102.
44

"Term". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

~~"Written". Section 1-201.~~

1 **Reporter's Note**

2 *The additional lines in the first paragraph of comment 1 are for purposes of clarification as requested by*
3 *the Committee. The second paragraph of comment 1 is added to undermine case decisions that have ruled that a*
4 *document of title is invalid because it lacks one of the terms in subsection (b). The case decisions have arisen*
5 *primarily with respect to whether a warehouse is entitled to claim a warehouse lien.*

6 *Comment 2 is added based on the suggestion of a commissioner in Tucson.*

7 *Query: Does the comment still need a reference to linking and incorporation by reference? The Reporter*
8 *does not think so and, consequently, has not fulfilled a request for such comment made at the October 2001 meeting.*
9 *The October 2001 draft had language about "expressly states" and this language was deleted.*

10 *Commissioner Ray Pepe suggested that § 7-202(b)(9) be simplified and clarified as follows: "(9) a*
11 *statement of the amount for which the warehouse claims a lien under § 7-209, but if the amount claimed cannot be*
12 *determined at the time the receipt is issued, a statement that a lien is claimed." Commission Pepe also suggestion*
13 *that § 7-202(b)(3) be reworded as follows: "(3) a unique identification number or code;". Should Commissioner*
14 *Pepe's proposed substitutions be adopted?*

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

16 party to or purchaser for value in good faith of a document of title, other than a bill of lading,
17 relying upon the description of the goods in the document may recover from the issuer damages
18 caused by the nonreceipt or misdescription of the goods, except to the extent that:

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

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

25 **OFFICIAL COMMENT**

26 **Prior Uniform Statutory Provision:** Section 7-203.

27 **Changes:** Changes to this section are for style only.

28 **Purposes of Changes and New Matter:**

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

Cross References:

Sections 7-301 and 7-203.

Definitional Cross References:

"Conspicuous". Section 1-201.

~~"Document". Section 7-102.~~

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Good Faith". Section 7-102

"Issuer". Section 7-102.

"Notice". Section 1-201.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt of goods". Section 2-103.

"Value". Section 1-201.

Reporter's Note

Changes for style and to update the comments.

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

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

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

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

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-204.

Changes: Updated to reflect modern, standard commercial practices; changes only in subsections (b) and (c).

Purposes of Changes:

~~The old uniform acts provided that receipts could not contain terms impairing the obligation of reasonable care. Whether this is violated by a stipulation that in case of loss the bailee's liability is limited to stated amounts has been much controverted. The section is intended to eliminate that controversy by setting forth the conditions under which liability is so limited. However, as subsection (4) makes clear, the states as well as the federal government may supplement this section with more rigid standards of responsibility for some or all bailees.~~

1. The previous language of subsection (b) required that the term limiting damages do so by setting forth a specific liability per article or item or of a value per unit of weight. This requirement has been deleted as out of step with modern industry practice. A warehouse receipt or storage agreement is a contract. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The enforceability of a term limiting the amount of damages would be tested pursuant to contract law principles. The parties cannot negate by contract the obligatory standard of care. Section 1-102.

2. The language that an increased rate can not be charged if contrary to a tariff has been deleted. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section allowing an increased rate. As governed by contract law, parties may incorporate by reference the limits on the amount of damages set forth in applicable tariffs. References to public tariffs have been deleted in light of the modern era of deregulation. See Comment 2 to Section 7-103. Subsections (c) deletes the reference to tariff for the same reason that it has been omitted in subsection (b).

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

4. A storage agreement is a standard document in the relationship between a warehouse and a depositor of goods. Storage agreements commonly establish the contractual relationship between warehouses and depositors who have an on-going relationship. The storage agreement allows for the movement into and out of a warehouse without

1 the necessity of issuing or amending a warehouse receipt upon each entry or exit of goods from the warehouse.

2 **Cross References:** Sections 1-102, 7-103, 7-309 and ~~10-103~~ 7-403.

3 **Definitional Cross References:**

4 ~~"Action". Section 1-201.~~

5 ~~"Agreed". Section 1-201.~~

6 "Goods". Section 7-102.

7 "Reasonable time". Section 1-204.

8 "Sign". Section ~~1-102~~ 7-102.

9 "Term". Section 1-201.

10 "Value". Section 1-201.

11 "Warehouse receipt". Section 1-201.

12 "Warehouseman". Section 7-102.

13 ~~"Written". Section 1-201.~~

14 *Reporter's Note*

15 *Comments rewritten to reflect the discussions and suggestions of the Committee.*

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

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

21 **OFFICIAL COMMENT**

22 **Prior Uniform Statutory Provision:** Section 7-205.

23 **Changes:** Changes for style only.

24 **Purposes:**

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

34 2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due
35

1 negotiation is provided for in 7-501. The definition of "buyer in ordinary course" is in Article 1 and provides,
2 among other things, that a buyer must either have possession or a right to possession of the goods under Article 2 in
3 order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in
4 ordinary course. Delivery requires voluntary transfer of control of the fungible goods to the buyer. This section is
5 not satisfied by the delivery of the document of title to the buyer in ordinary course.

6
7 **Cross References:** Sections 2-403 and 9-320.

8
9 **Definitional Cross References:**

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

11 "Delivery". Section 1-201.

12 "Duly negotiate". Section 7-501.

13 "Fungible" goods. Section 1-201.

14 "Goods". Section 7-102.

15 "Value". Section 1-201.

16 "Warehouse receipt". Section 1-201.

17 "Warehouseman". Section 7-102.

18 ***Reporter's Note***

19 *Comment 2 is added for clarification in light of Committee discussions.*

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

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

28 (b) If a warehouse in good faith believes that goods are about to deteriorate or decline in
29 value to less than the amount of its lien within the time provided in subsection (a) and Section 7-
30 210, the warehouse may specify in the notification any reasonable shorter time for removal of the
31 goods and, if the goods are not removed, may sell them at public sale held not less than one week
32 after a single advertisement or posting.

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

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

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

12 OFFICIAL COMMENT

13 **Prior Uniform Statutory Provision:** Section 7-206.

14 **Changes:** Changes to add clarity to the statutory language and for style.

15 **Purposes of Changes:**

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

22 2. In permitting expeditious disposition of perishable and hazardous goods the pre-Code Uniform
23 Warehouse Receipts Act, Section 34, made no distinction between cases where the warehouseman knowingly
24 undertook to store such goods and cases where the goods were discovered to be of that character subsequent to
25 storage. The former situation presents no such emergency as justifies the summary power of removal and sale.
26 Subsections (2b) and (3c) distinguish between the two situations.

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

30 4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of
31
32
33

1 some states forbidding warehouses~~men~~ from discriminating among customers. Nor does the section relieve the
2 warehouse~~man~~ of any obligation under the state laws to secure the approval of a public official before disposing of
3 deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Sections
4 7-103, ~~10-103~~.

5
6 **Cross References:** Sections 7-103, 7-403, ~~10-103~~.

7
8 **Definitional Cross References:**

9 "Delivery". Section 1-201.

10 ~~"Document". Section 7-102.~~

11 "Document of title". Section 1-102

12 "Good faith". Section 1-201.

13 "Goods". Section 7-102.

14 "Notice". Section 1-201.

15 "Notification". Section 1-201.

16 "Person". Section 1-201.

17 "Reasonable time". Section 1-204.

18 "Value". Section 1-201.

19 "Warehouse~~man~~". Section 7-102.

20 ***Reporter's Note***

21 *Changes in subsection (a) to use defined term "notice" in order to give clarity to the statutory language.*
22 *Stylistic changes in comments only.*

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

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

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

32 **OFFICIAL COMMENT**

33 **Prior Uniform Statutory Provision:** Section 7-207.

34 **Changes:** Changes for style only.

Purposes of Changes:

No change of substance is made other than the explicit statement that holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional Cross References:

"Delivery". Section 1-201.
"Duly negotiate". Section 7-501.
"Fungible goods". Section 1-201.
"Goods". Section 7-102.
"Holder". Section 1-201.
"Person". Section 1-201.
"Warehouse receipt". Section 1-201.
"Warehouseman". Section 7-102.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-208.

Changes: To accommodate electronic documents of title.

Purpose:

1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The innocent purchaser must be in good faith to be able to take advantage of this protection. Electronic documents of title should not be issued with any "blanks" and thus this protection is not necessary in that context.

2. An unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of ~~his~~ its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouseman. This rule applies to both tangible and electronic warehouse receipts.

Definitional Cross References:

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

1 "Purchaser". Section 1-201.
2 "Value". Section 1-201.
3 "Warehouse receipt". Section 1-201.

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

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

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

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

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

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

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

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Sections 7-209 and 7-503.

Changes: Expanded to recognize warehouse lien in storage agreements and against proceeds of the stored goods; language brought into the subsection (c) from 7-503 to provide clarity.

Purposes of Changes:

1. Subsection (~~1a~~) defines the warehouseman's statutory lien. A specific lien attaches automatically, as a possessory lien without express notation on the ~~receipt~~ document with regard to goods stored under a non-negotiable

1 ~~document receipt~~. That lien is limited to the usual charges arising out of a storage transaction. ~~By~~ notation on the
2 ~~document receipt~~ it can be made a general lien extending to like charges in relation to other goods. The same rules
3 apply where the receipt is negotiable, except that as against a holder by due negotiation the lien is limited to the
4 amount or rate specified on the receipt for the specific lien or the general lien, or, if none is specified, to a reasonable
5 charge for storage of the specific goods after the date of the receipt.

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

15
16 3. Subsections (1a) and (2b) validate the lien and security interest "against the bailor." As against third
17 parties, subsection (3)(a) (c)(1) continues the rule under the prior uniform statutory provision that to validate the lien
18 the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by
19 the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not be
20 subjected to a lien or security interest arising out of a deposit of his goods by a thief. The warehouseman may be
21 protected because of the actual, implied or apparent authority of the depositor, because of a Factor's Act, or because
22 of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under
23 Section 7-503. Subsection (c) first sentence. See example 10 in comment 4.

24 Where the third party is the holder of a security interest, obtained prior to the issuance of a negotiable
25 warehouse receipt, the rights of the warehouseman depend on the priority given to a hypothetical bona fide pledgee
26 by Article 9, particularly Section 9-322. Thus the special priority granted to statutory liens by Section 9-333 does
27 not apply to liens under subsection (1a) of this section, since subsection (3c) second sentence "expressly provides
28 otherwise" within the meaning of Section 9-333. See example 11 in comment 4.

29 Subsection (c) addresses situations in which the legal interest or security interest against the goods arose
30 prior to the goods being deposited with the warehouse. If the opposite is factually true -- i.e. the goods are deposited
31 prior to the legal interest or the security interest arising --, the warehouse lien is a possessory statutory lien that
32 trumps the later legal interest or security interest for either non-negotiable or negotiable documents. Sections 9-
33 312(c)& (d), 9-333 and example 8 of comment 4. Cf. also 9-331.

34 As to household goods, however, subsection (3)(b) (c)(2) makes the warehouseman's lien "for charges and
35 expenses in relation to the goods" effective against all persons if the depositor was the legal possessor. The purpose
36 of the exception is to permit the warehouseman to accept household goods for storage in sole reliance on the value of
37 the goods themselves, especially in situations of family emergency. ~~[This paragraph was amended in 1966].~~

38
39 4. ~~It is unnecessary to state here, as in Uniform Warehouse Receipts Act 31, that a bailee with a valid lien~~
40 ~~need not deliver until the lien is satisfied. Section 7-403 provides that a person demanding delivery under a~~
41 ~~document must be prepared to satisfy the bailee's lien. As under previous law, this section creates a statutory~~
42 ~~possessory lien in favor of the warehouse on the goods stored with the warehouse or on the proceeds of the goods.~~
43 ~~The warehouse loses its lien if it loses possession of the goods or the proceeds. This section also contains several~~
44 ~~priority rules about the priority of the lien as against other persons. The following examples illustrate those priority~~
45 ~~rules.~~

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

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

1 by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored
2 other goods (lot B) with the warehouse. Under subsection (a), second sentence, the warehouse has a lien on the
3 goods in lot A for the storage charges and the other expenses for the goods in lot B. That lien is enforceable as
4 against the bailor regardless of whether the receipt is negotiable or nonnegotiable.

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

10 Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has been duly
11 negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the lien on lot
12 A goods for the storage charges and the other expenses for lot B goods is not enforceable as against the person to
13 whom the receipt has been duly negotiated. Without a statement of a specified amount or rate for the general lien,
14 the warehouse's general lien disappears as against the person to whom the negotiable document has been duly
15 negotiated.

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

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

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

32 Example 8: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse
33 receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a).
34 Bailor grants a security interest to a SP who properly perfects a security interest in the goods after the goods are
35 already in the possession of the warehouse. See Revised 9-312(d). The warehouse lien is superior in priority over
36 SP's security interest. Revised 9-333.

37 Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt.
38 A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor
39 gives a security interest in the negotiable document to SP. SP properly perfects its interest in the negotiable
40 document by filing or by taking possession through a 'due negotiation.' Revised 9-312(c). Given that SP's security
41 interest would be subordinate to the lien in the event of "due negotiation" of the negotiable document to SP
42 (subsection (a) last sentence), perfection by filing after the goods were in the possession of the warehouse should not
43 give a different result. Revised 9-331(a) does not provide a different result and is compatible with Section 7-209 and
44 this example 9.

45 Example 10: Bailor gives a perfected security interest in goods to SP prior to storage of the goods with a
46 warehouse. Bailor then stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt
47 for the goods. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection
48 (a). Under subsection (c), first sentence, the lien is effective as against SP only if SP so entrusted Bailor with the
49 goods so that the Bailor could have made an effective pledge of them to a good faith purchaser for value. On that
50 point, see Revised 9-401, which allows a security interest to be effective even if the security agreement forbids
51 further encumbrances. A secured party may be a good faith purchaser for value.

52 Example 11: Same as Example 10, except that the warehouse issues a negotiable warehouse receipt. In

1 order for the warehouse lien to be effective against the SP that took a security interest in the goods prior to the
2 bailment, the court must find that the SP delivered or entrusted the goods as provided in subsection (c)(1) or
3 acquiesced in the procurement of the document as provided in subsection (c)(2).

4 Example 12: Sheriff who had lawfully repossessed household goods in an eviction action stored the goods
5 with a warehouse. A lien on the bailed goods arises under subsection (a). The lien is effective as against the owner
6 of the goods. Subsection (d).

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

19
20 6. A possessory warehouse lien attaches automatically if the parties to the bailment have a storage
21 agreement. In the modern warehouse, the bailor and the bailee may enter into a master contract governing the
22 bailment with the bailee and bailor keeping track of the goods stored pursuant to the master contract by notation on
23 their respective books and records and the parties send notification via electronic communication as to what goods
24 are covered by the master contract. Warehouse receipts are not issued. See Comment 4 to Section 7-204.

25
26 7. As a possessory lien, the warehouse lien arises automatically when the parties have a contractual
27 document of title for storage. Failure to have the requirements for the form of a warehouse receipt (Section 7-202)
28 should not deprive the warehouse of the possessory warehouse lien.

29
30 8. Modern warehousing often involves more than passive storage of goods. Warehouses may break bulk
31 and repackage goods prior to redelivering to the bailor. Activities reasonably incidental to the bailment, such as
32 breaking bulk and repackaging, are storage charges covered by the warehouse lien. By contrast, if the warehouse
33 engages in activities to add value to the stored goods, such as refining or processing, these refining and processing
34 charges are not storage charges for a warehouse lien. As to these value-added activities, a warehouse must protect its
35 charges by other lawful means which usually means a security interest under subsection (b) or under Article 9
36 directly.

37
38 9. The language of Section 7-503 is brought into subsection (c) for purposes of clarity. The comments to
39 Section 7-503 are helpful in interpreting delivery, entrustment or acquiescence. In interpreting subsection (c), it is
40 helpful to remember that a warehouse lien is a possessory lien that arises automatically when a document of title for
41 storage exists for the bailment.

42 **Cross References:**

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

44 Point 3: Sections 7-503, 9-312, 9-322, 9-331, and 9-333.

45 Point 4: Section ~~7-403~~ 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, 9-401.

46 Point 5: Section 2-503.

47 Point 6: Section 7-204.

48 Point 7: Section 7-202.

49 Point 9: Section 7-503.

50 **Definitional Cross References:**

1 "Deliver". Section 1-201.
2 ~~"Document". Section 7-102.~~
3 "Document of Title". Section 1-201
4 "Goods". Section 7-102.
5 "Money". Section 1-201.
6 "Person". Section 1-201.
7 "Purchaser". Section 1-201.
8 "Right". Section 1-201.
9 "Security interest". Section 1-201.
10 "Value". Section 1-201.
11 "Warehouse receipt". Section 1-201.
12 "Warehouseman". Section 7-102.

13 *Reporter's Note*

14
15 *The word "specific" is proposed as a change to the last sentence of subsection (a) to clarify what has*
16 *apparently always been meant and to clarify the examples set forth in the comments. The word came from the*
17 *original comment 1.*

18 *The comments are expanded to give guidance in comment 4 through examples about priority disputes*
19 *between warehouse liens and warehouse security interests as against competing third parties. For similar reasons,*
20 *comment 3 is expanded and broken into several paragraphs. As rewritten, comment 3 does not change prior law*
21 *but clarifies the prior law as applied to the examples in comment 4. The comments also set forth the suggestions for*
22 *comments made by the Committee during the discussions of this section.*

23 *In Sections 7-209 and 7-503, the word "negotiable" had been reinserted and Section 7-209(c) has been*
24 *clarified to parallel Section 7-503. See the Reporter's Note to Section 7-503.*

25 *Query: At the first reading in Tucson, a commissioner raised the question about how large the warehouse*
26 *lien could become and inquired whether a limit for the amount. Another commissioner queried whether warehouse*
27 *liens could be considered unconscionable in light of their automatic existence and potential size. What is the*
28 *Committee's desired response to these commissioner questions?*

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

30 (a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced
31 by public or private sale of the goods in bulk or in packages, at any time or place and on any
32 terms that are commercially reasonable, after notifying all persons known to claim an interest in
33 the goods. The notification must include a statement of the amount due, the nature of the
34 proposed sale, and the time and place of any public sale. The fact that a better price could have
35 been obtained by a sale at a different time or in a different method from that selected by the
36 warehouse is not of itself sufficient to establish that the sale was not made in a commercially
37 reasonable manner. If the warehouse (i) sells the goods in the usual manner in any recognized
38 market therefor, (ii) sells at the price current in that market at the time of the sale, or (iii) has

1 otherwise sold in conformity with commercially reasonable practices among dealers in the type
2 of goods sold, the warehouse has sold in a commercially reasonable manner. A sale of more
3 goods than apparently necessary to be offered to ensure satisfaction of the obligation is not
4 commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

14 (4) The sale must [should] be held at the nearest suitable place to where the goods
15 are held or stored.

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

1 proposed sale.

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

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

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

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

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

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

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

19 **OFFICIAL COMMENT**

20 **Prior Uniform Statutory Provision:** Section 7-210.

21 **Changes:** Update to accommodate electronic commerce; other changes are stylistic.

22 **Purposes of Changes:**

23 1. Subsection (~~4~~a) makes "commercial reasonableness" the standard for foreclosure proceedings in all cases
24
25
26
27

except non-commercial storage with a warehouseman. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale; found in Section 33 of the Uniform Warehouse Receipts Act, are retained in subsection (2b). The swifter, more flexible procedure of subsection (1a) is appropriate to commercial storage. Compare seller's power of resale on breach by buyer under the provisions of the Article on Sales (Section 2-706).

2. The provisions of subsections (4d) and (5e) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices.

3. With respect to subsections (c) and (f), warehouses may have recourse to Section 7-603 for an interpleader action in appropriate circumstances.

4. If a warehouse has both a warehouse lien and a security interest through Section 7-209, the warehouse may enforce both the lien and the security interest simultaneously by using the procedures of Article 9. Section 7-210 adopts as its touchstone "commercial reasonableness" for the enforcement of a warehouse lien. Following the procedures of Article 9 satisfies "commercial reasonableness."

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

Definitional Cross References:

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

~~"Document". Section 7-102.~~

"Document of Title". Section 1-201.

~~"Good faith". Section 1-201~~ 7-102.

"Goods". Section 7-102.

"Notification". Section 1-201.

"Notifies". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Warehouseman". Section 7-102.

Reporter's Note

The bracketed word "should" in subsection (b)(4) is suggested in response to the commissioner from Alaska who asked about the geographical requirements for sale and posting of notice in subsection (b)(4) & (5). Moreover, by allowing flexibility as to the geographical location for the sale, Section 7-210 becomes more compatible with the enforcement provisions of Part 6 of Article 9. This compatibility becomes important for comment 4.

Comment 3 added in response to Committee request.

Queries: Should subsection (e) read "A purchaser for value ..."? The same issue arises in Section 7-308. A commissioner inquired about putting the check in the mail, as opposed to holding the balance for delivery. See Comment 3. A commissioner inquired about subsection (b)(5) and advertising in trade publications and on the Internet. What response does the Committee desire to give to these questions from Commissioners?

PART 3

1 **BILLS OF LADING: SPECIAL PROVISIONS**

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

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

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

19 (c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of
20 lading adequate facilities for weighing those goods, the issuer must ascertain the kind and
21 quantity within a reasonable time after receiving the shipper's request in a record to do so. In
22 that case, "shipper's weight" or other words of similar import are ineffective.

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-301.

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

Purposes of Changes:

1. The provision as to misdating in subsection (~~4a~~) conforms to the policy of the amendment to the Federal Bills of Lading Act by 44 Stat. 1450 (1927), as amended 49 U.S.C. Section 102, after the holding in *Browne v. Union Pac. R. Co.*, 113 Kan. 726, 216 P. 299 (1923), affirmed on other grounds 267 U.S. 255, 45 S.Ct. 315, 69 L.Ed. 601 (1925). Subsections (~~2b~~) and (~~3c~~) conform to the policy of the Federal Bills of Lading Act, 49 U.S.C. Sections 100, [101](#), and the laws of several states. See, e.g., N.Y.Pers.Prop.Law Section 209; Report of N.Y.Law Revision Commission, N.Y.Leg.Doc. (1941) No. 65(F).

2. The language of the ~~old~~ pre-Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve himself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. There ~~is~~ was some question whether under ~~present~~ pre-Code law a carrier ~~is~~ was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading in fact caused the loss. ~~It is this doubtful liability which is~~ Subsection (~~4d~~) permits the carrier to bar, by disclosure of shipper's loading, liability to a good faith purchaser.. There is no implication that decisions such as *Modern Tool Corp. v. Pennsylvania R. Co.*, 100 F.Supp. 595 (D.N.J.1951), are disapproved.

3. This section is a ~~simplified~~ restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor or shipper. The wording in this section – “contents or condition of contents of packages unknown” or “shipper’s weight, load and count” – to indicate that the shipper loaded the goods or that the carrier does not know

1 the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood
2 in the transportation industry. The reasons for this wording are as important in 2002 as when the prior section
3 initially was approved. The issuer is liable on documents issued by an agent, contrary to instructions of his
4 principal, without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the
5 care of the goods or their description.

6
7 4. The shipper's erroneous report to the carrier concerning the goods may cause damage to the carrier.
8 Subsection (5e) therefore provides appropriate indemnity.
9

10 5. The word "freight" in the prior uniform section has been changed to goods to conform to international
11 and domestic land transport usage in which "freight" means the price paid for carriage of the goods and not the
12 goods themselves. Hence, changing the word "freight" to the word "goods" is a clarifying change that fits both
13 international and domestic practice.
14

15 **Cross References:** Sections 7-203, ~~and~~ 7-309 and 7-501.
16

17 **Definitional Cross References:**

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

19 "Consignee". Section 7-102.

20 ~~"Document". Section 7-102.~~

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

22 "Duly negotiate". Section 7-501.

23 "Good faith". Section 1-201.

24 "Goods". Section 7-102.

25 "Holder". Section 1-201.

26 "Issuer". Section 7-102.

27 "Notice". Section 1-201.

28 "Party". Section 1-201.

29 "Purchaser." Section 1-201.

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

31 "Value". Section 1-201.

32 ***Reporter's Note***

33 *Change to subsection (a) to conform to correct style as already done in Section 7-203. Changes to*
34 *subsection (d) are for purposes of clarity.*

35 *Comments 3 and 5 have been amended to reflect discussions during Committee deliberations. The*
36 *Reporter will recheck the cited cases and statutes in comments 1 & 2 to insure that these citations remain accurate.*
37 *The substance in comments 1 & 2 is correct.*

38 **SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS**
39 **OF TITLE.**

40 (a) The issuer of a through bill of lading or other document of title embodying an
41 undertaking to be performed in part by a person acting as its agent or by a performing carrier is
42 liable to any person entitled to recover on the document for any breach by the other person or the

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

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: 7-302.

Changes: To conform to current terminology and for style.

Purposes:

1. The purpose of this section is to subject the initial carrier under a through bill to suit for breach of the contract of carriage by any ~~connecting~~performing carrier and to make it clear that any such ~~connecting~~performing carrier holds the goods on terms which are defined by the document of title even though such ~~connecting~~performing

1 carrier did not issue the document. Since the ~~connecting~~performing carrier does hold on the terms of the document,
2 it must honor a proper demand for delivery or a diversion order just as the original bailee would have to. Similarly it
3 has the benefits of the excuses for nondelivery and limitations of liability provided for the original bailee who issued
4 the bill. Unlike the original bailee-issuer, the ~~connecting~~performing carrier's responsibility is limited to the period
5 while the goods are in its possession. The section is patterned generally after the Interstate Commerce Act, but does
6 not impose any obligation to issue through bills.
7

8 2. The reference to documents other than through bills looks to the possibility that multi-purpose documents
9 may come into use, e.g., combination warehouse receipts and bills of lading. As electronic documents to title come
10 into common usage, storage documents (e.g. warehouse receipts) and transportation documents (e.g. bills of lading)
11 may merge seamlessly into one electronic document that can serve both the storage and transportation segments of
12 the movement of goods.
13

14 3. ~~Where the obligations or standards applicable to different parties bound by a document of title are~~
15 ~~different, the initial carrier's responsibility for portions of the journey not on its own lines will be determined by the~~
16 ~~standards appropriate to the connecting carrier. Thus a land carrier issuing a through bill of lading involving water~~
17 ~~carriage at a later stage will have the benefit of the water carrier's immunity from liability for negligence of its~~
18 ~~servants in navigating the vessel, where the law provides such an immunity for water carriers and the loss occurred~~
19 ~~while the goods were in the water carrier's possession.~~
20

21 ——— 4. Under Subsection (1a) the issuer of a through bill of lading may become liable for the fault of another
22 person. Subsection (3c) gives it the issuer appropriate rights of recourse.
23

24 4. The word “performing” is substituted for the word “connecting” to conform the terminology of this
25 section with terminology used in recent UNCITRAL and OAS proposals concerning transportation and through bills
26 of lading.. Performing carriers and connecting carriers are considered to be synonymous terminology.
27

28 5. Despite the broad language of subsection (a), Section 7-302 is subject to preemption by federal laws and
29 treaties. Section 7-103. The precise scope of federal preemption in the transportation sector is a question beyond
30 the competence of Article 7.
31

32 **Cross reference: Section 7-103**
33

34 **Definitional Cross References:**
35

36 "Agreement". Section 1-201.
37

38 "Bailee". Section 7-102.
39

40 "Bill of lading". Section 1-201.
41

42 "Delivery". Section 1-201.
43

44 "~~Document~~". ~~Section 7-102.~~
45

46 "Document of Title". Section 1-201.
47

48 "Goods". Section 7-102.
49

50 "Issuer". Section 7-102.
51

52 "~~Overseas~~". ~~Section 2-323.~~
53

54 "Party". Section 1-201.
55

56 "Person". Section 1-201.
57

58 ***Reporter's Note***

59 *Textual changes to subsection (a) are to clarify that the liability of this section is about the liability of the*
60 *issuer for the actions of others (agents and performing carriers), not the limitation of liability for the amount of*
61 *damages. Textual changes in subsection (b) are to avoid ambiguity as to whom the section refers by paralleling*

subsection (a) language. The additions to the comments reflect Committee discussions. Comment 3 is deleted as incorrect and in conflict with the language of subsection(b).

Query: Under 49 U.S.C. § 14706(a)(1), in road transportation, the delivering carrier has liability equivalent to the issuer for the actions of issuer's agents and the performing carriers. As drafted, subsection (b) holds the delivering carriers only liable for its own conduct and its own agents' conduct. Despite its broad terminology in subsection (a), Section 7-302 only applies to intrastate road transportation and a person claiming damages would be able to sue the issuer in that state. Federal law contemplates that a person suing for damages could sue the delivering carrier (the local carrier in many instances) under the through bill of lading. Under federal law, the delivering carrier would then have to seek recourse against other persons (who may be far away) involved in the transportation. Should Section 7-302(b) be changed to reflect the federal law?

Query: Under 49 U.S.C. §§ 14101 and 14706(c), in road transportation, the Carmack Amendment (as amended in 1996) allows the contracting carrier to reach agreement with the shipper to limit its liability to only the time the goods are in the possession of the contracting carrier. Subsection (a), based on current Section 7-302, does not allow the contracting carrier to disclaim liability for the acts of performing carriers as independent contractors. Should Section 7-302(a) be changed to reflect the current federal law?

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

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

(1) the holder of a negotiable bill;

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

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

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

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

terms.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-303.

Changes: To accommodate electronic documents and for style.

Purposes:

1. ~~The old Acts contained no reference to D~~diversion; is a very common commercial practice which defeats delivery to the consignee originally named in a bill of lading. Under pre-Code law, tThe carrier was protected under the heading of "justified delivery" if the substituted consignee who received delivery was "a person lawfully entitled to possession of the goods." Cf. subsection ~~(1a)(4)~~. ~~This in turn depended on whether the person ordering the diversion was the owner of the goods or empowered to dispose of them, which again might depend upon whether under sales law title had passed from the consignor-seller to the consignee-buyer.~~ The carrier is plainly not in a position to decide ~~such questions~~ whether a consignee who received delivery was "a person lawfully entitled to possession of the goods" when directed by the person with whom it has contracted for transportation to change the destination of the goods in transit. This section continues the prior section's safe harbor rules for carriers in situations involving diversion. This section works compatibly with Section 2-705. Carriers may as a business matter be willing to accept instructions from consignees in which case, ~~as under the old uniform acts,~~ the carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods under subsection (a)(4). The section imposes no duty on carriers to undertake diversion; The carrier it is of course subject to the provisions of filed tariffs. Section 7-103.

2. It should be noted that the section provides only an immunity for carriers against liability for "misdelivery." It does not, for example, defeat the title to the goods which the consignee-buyer may have acquired from the consignor-seller upon delivery of the goods to the carrier under a non- negotiable bill of lading. Thus if the carrier, upon instructions from the consignor, returns the goods to him, the consignee may recover the goods from the consignor or his insolvent estate. However, under certain circumstances, the consignee's title may be defeated by diversion of the goods in transit to a different consignee. The sale relationship between the consignor-seller and the consignee-buyer is an Article 2 matter.

Cross References:

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

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

Definitional Cross References:

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Carrier". Section 7-102

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Notice". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Term". Section 1-201.

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Reporter's Note

Comments are updated to reflect Committee discussions.

5
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
23
24
OFFICIAL COMMENT

25 **Prior Uniform Statutory Provision:** Section 7-304.

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

27 **Purposes of Changes:**

28
29 1. Tangible bills of lading in a set are still used in some nations in international trade. Consequently, a

1 tangible bill of lading part of a set could be at issue in a lawsuit that might come within Article 7. The statement of
2 the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other
3 overseas international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions
4 and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in
5 a set are recognized by this Article. Tangible bills of lading in a set are prohibited in domestic trade.
6

7 2. Electronic bills of lading in domestic or international trade will not be issued in a set given the
8 requirements of control necessary to deliver the bill to another person. An electronic bill of lading must be a single,
9 authoritative copy – sometimes called the guarantee of singularity. Section 7-106. Hence, this section differentiates
10 between electronic bills of lading and tangible bills of lading. This section does not prohibit electronic data
11 messages about goods in transit because these electronic data messages are not the issued bill of lading. Electronic
12 data messages contain information for the carrier's management and handling of the cargo but this information for
13 the carrier's use is not the issued bill of lading.
14

15 **Cross Reference:** Section ~~1-103~~ 7-103, 7-303 and 7-106.
16

17 **Definitional Cross References:**
18

19 "Bailee". Section 7-102.
20 "Bill of lading". Section ~~1-201~~ 7-102.
21 "Delivery". Section 1-201.
22 "~~Document~~". Section ~~7-102~~.
23 "Document of Title". Section 1-201.
24 "Duly negotiate". Section 7-501.
25 "Good faith". Section 1-201.
26 "Goods". Section 7-102.
27 "Holder". Section 1-201.
28 "Issuer". Section 7-102.
29 "~~Overseas~~". Section ~~2-323~~.
30 "Person". Section 1-201.
31 "Receipt of goods". Section 2-103.
32

33 ***Reporter's Note***
34

35 *Changes to comments reflect Committee discussions.*

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

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

40 (b) Upon request of any person entitled as against a carrier to control the goods while in
41 transit and on surrender of possession or control of any outstanding bill of lading or other receipt
42 covering the goods, the issuer may, subject to Section 7-105, procure a substitute bill to be issued

1 at any place designated in the request.

2 **OFFICIAL COMMENT**

3
4 **Prior Uniform Statutory Provision:** 7-305.

5
6 **Changes:** To accommodate electronic bills of lading and for style.

7
8 **Purposes:**

9
10 1. This proposal is designed to facilitate the use of order bills in connection with fast shipments. Use of
11 order bills on high speed shipments is impeded by the fact that the goods may arrive at destination before the
12 documents, so that no one is ready to take delivery from the carrier. This is especially inconvenient for carriers by
13 truck and air, who do not have terminal facilities where shipments can be held to await consignee's appearance.
14 Order bills would be useful to take advantage of bank collection. This may be preferable to C.O.D. shipment in
15 which the carrier, e.g. a truck driver, is the collecting and remitting agent. Financing of shipments under this plan
16 would be handled as follows: seller at San Francisco delivers the goods to an airline with instructions to issue a bill
17 in New York to a named bank. Seller receives a receipt embodying this undertaking to issue a destination bill.
18 Airline wires its New York freight agent to issue the bill as instructed by the seller. Seller wires the New York bank a
19 draft on buyer. New York bank indorses the bill to buyer when the buyer ~~he~~ honors the draft. Normally seller would
20 act through its ~~his~~ own bank in San Francisco, which would extend him credit in reliance on the airline's contract to
21 deliver a bill to the order of its New York correspondent. This section is entirely permissive; it imposes no duty to
22 issue such bills. Whether a ~~connecting~~ performing carrier will act as issuing agent is left to agreement between
23 carriers.

24
25 2. In subsection (b) if the substitute bill changes mediums, the issuance must comply with section 7-105 to
26 give the substitute bill validity and effect.

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

29
30 **Definitional Cross References:**

31
32 "Bill of lading". Section 1-201.
33 "Consignor". Section 7-102.
34 "Goods". Section 7-102.
35 "Issuer". Section 7-102.
36 "Receipt of goods". Section 2-103.

37
38 ***Reporter's Note***

39
40 *Changes to comments for purposes of gender neutrality and consistency in terminology.*

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

43 **OFFICIAL COMMENT**

44 **Prior Uniform Statutory Provision:** Section 7-306.

45 **Changes:** None

1 **Purposes of Changes:**

2 An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not
3 relieve the issuer of his liability on the document as originally executed. ~~Uniform Warehouse Receipts Act 13~~
4 ~~excused the issuer from any liability to a fraudulent alterer, other than the liability to deliver the goods according to~~
5 ~~the terms of the original document. It is difficult to conceive what liability the draftsman intended to excuse.~~
6 ~~Uniform Bills of Lading Act 16 contains no such excuse provision, and is followed in this respect in the present~~
7 ~~section. Uniform Bills of Lading Act 16 characterizes an unauthorized alteration as "void" but apparently nothing~~
8 ~~more was intended than that the alteration did not change the obligation of the issuer. This is sufficiently covered by~~
9 ~~the terms of this Section. Moreover cases are conceivable in which an alteration would not be "void"; for example,~~
10 ~~an alteration made by common consent of a transferor and transferee of a document might evidence an enforceable~~
11 ~~contract between them. The same rule is made applicable to the filling in of blanks, a matter on which the prior Acts~~
12 ~~were silent. This section applies to both tangible and electronic bills of lading, applying the same rule to both~~
13 ~~formats. The control concept of 7-106 requires that any changes to the electronic document of title be readily~~
14 ~~identifiable as authorized or unauthorized. Section 7-306 should be compared to Section 7-208 where a different~~
15 ~~rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.~~

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

17 **Definitional Cross References:**

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

19 "Issuer". Section 7-102.

20 *Reporter's Note*

21 *Comment updated and the additions reflect Committee discussions.*

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

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

30 (b) A lien for charges and expenses under subsection (a) on goods that the carrier was
31 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.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-307.

Changes: Expanded to cover proceeds of the goods transported and for style.

Purposes of Changes:

1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehousemen by the first sentence of Section 7-209. But ~~since~~ because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7-209(~~ta~~) and (~~2b~~) are omitted. ~~See Comment to Section 7-105. There is no general lien for carriers. Carriers may utilize Article 9 to obtain a security interest and become a secured party. Since~~As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (~~2b~~) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. ~~Cf. Section 9-333. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has a lien under this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, Sections 7-307 and 9-333 combine to give priority to a carrier's lien over security interests in the goods. In this regard, the judicial decision in In re Sharon Steel Corp., 25 U.C.C. Rep.2d 503, 176 B.R. 384 (W.D. Pa. 1995) is correct and is the controlling precedent.~~

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

3. The carrier's specific lien under this section is a possessory lien. See subsection (c). Part 3 of Article 7 does not require any particular form for a bill of lading. As a possessory lien, the carrier's lien should arise automatically so long as the carrier and bailor have a contractual document evidencing the bailment relationship.

Cross References:

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

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

Definitional Cross References:

"Bill of lading". Section 1-201.
"Carrier". Section 7-102.
"Consignor". Section 7-102.
"Delivery". Section 1-201.
"Goods". Section 7-102.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Value". Section 1-201.

Reporter's Note

Changes to the comment 1 are to clarify and update the comment. Additional comments 2 & 3 reflect Committee discussions.

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

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

(b) Before any sale pursuant to this section, any person claiming a right in the goods may

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

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

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

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

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

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

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

17 OFFICIAL COMMENT

18 **Prior Uniform Statutory Provision:** Section 7-308.

19 **Changes:** To conform terms to modern usage and for style.

20 **Purposes of Changes:**

21 This section is intended to give the carrier an enforcement procedure of ~~his~~ its lien coextensive with that
22 given the warehouseman in cases other than those covering noncommercial storage by ~~him~~ the warehouse. ~~See~~
23 ~~Comment to Section 7-210. See Section 7-210 and comments.~~

24 **Cross Reference:** Section 7-210.

Definitional Cross References:

"Bill of lading". Section 1-201.
"Carrier". Section 7-102.
"Creditor". Section 1-201.
"Delivery". Section 1-201.
"Good faith". Section 1-201.
"Goods". Section 7-102.
"Notification". Section 1-201.
"Notifies". Section 1-201.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.

Reporter's Note

*Changes in comment for gender neutrality and clarity.
Query: Should subsection (d) read "a purchaser for value"? Same issue exists for Section 7-210.
Compare the language in Section 7-307(a).*

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

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

(b) Damages may be limited by a term in the bill of lading that the carrier's liability may not exceed a value stated in the bill if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, no such limitation is effective with respect to the carrier's liability for

conversion to its own use.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-309.

Changes: Changes to acknowledge deregulation and for style..

Purposes of Changes:

1. The old uniform act provided that bills of lading could not contain terms impairing the obligation of reasonable care. Whether this is violated by a stipulation that in case of loss the bailee's liability is limited to stated amounts has been much controverted. For interstate rail transportation the matter is settled by the Carmack Amendment to the Interstate Commerce Act (See 49 U.S.C.A. § 20(11)). The present section is a generalized version of the Interstate Commerce Act provisions. The obligation of due care is radically qualified, in the case of maritime bills and international airbills, by federal legislation and treaty. All this special legislation would remain in effect even if Congress enacts this Code, including the present Article. See Section 7-103. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The enforceability of a term limiting the amount of damages would be tested pursuant to contract law principles. The parties cannot negate by contract the obligatory standard of care. Section 1-102.

Federal statutes and treaties for air, maritime and rail transport may alter the standard of care. These federal statutes and treaties preempt this section when applicable. Section 7-103. Subsection (1a) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (2b), however, applies to ~~such~~ insurer liability as well as to liability based on negligence.

2. The entire section is subject under Section 7-103 to applicable provisions in filed tariffs, such as the common disclaimer of responsibility for undeclared articles of extraordinary value, hidden from view. Tariffs which lawfully provide a maximum unit value beyond which goods are not taken fall within the same principle, and are expressly covered by the words "value as lawfully provided in the tariff." References to public tariffs in former subsections (2) and (3) have been deleted in light of the modern era of deregulation. See Comment 2 to Section 7-103. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section. As governed by contract law, parties may incorporate by reference the limits on the amount of damages or the reasonable provisions as to the time and manner of presenting claims set forth in applicable tariffs, e.g. a maximum unit value beyond which goods are not taken or a disclaimer of responsibility for undeclared articles of extraordinary value.

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

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

Cross Reference: Sections 1-102 7-103, 7-204, 7-403.

Definitional Cross References:

"Action". Section 1-201.
"Bill of lading". Section 1-201.
"Carrier". Section 7-102
"Consignor". Section 7-102.
~~"Document". Section 7-102.~~
"Document of Title". Section 1-102.
"Goods". Section 7-102.
"Value". Section 1-201.

Reporter's Note

The additional comments are added to reflect Committee discussions and, concerning delay, a query from a commissioner in Tucson. The comments have been rewritten to update the comments.

Query: Several persons have asked about deteriorating goods in the possession of a carrier. Deteriorating goods are mentioned only in Section 7-206 in which a warehouse may terminate a storage agreement in certain circumstances. Should deteriorating goods be addressed this section and/or other sections for carriers and warehouses?

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

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

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

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

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

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

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OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-401.

Changes: Changes for style only.

Purposes of Changes and New Matter:

The bailee's liability on ~~his~~ its document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid ~~his~~ its obligation to deliver the goods (Section 7-403) or his obligation of due care with respect to them (Sections 7-204 and 7-309) by taking the position that no valid "document" was issued because ~~he~~ it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. ~~As to the continuing vitality of regulations, in addition to those found in this Article, of documents of title, see Sections 7-103 and 10-103.~~

Cross References: Sections 7-103, 7-203, 7-204, 7-301, 7-309 and 10-103.

Definitional Cross References:

"Bailee". Section 7-102.

~~"Document". Section 7-102.~~

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

~~"Warehouseman". Section 7-102.~~

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Reporter's Note

This section has no changes other than style changes.

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

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

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OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-402.

Changes: Changes to accommodate electronic documents and to reflect new Section 7-105.

Purposes of Changes:

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

Section 7-105 allows documents to be converted from one medium to another. Conversion of a document from one medium to another under section 7-105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the substitute document is not issued in compliance with section 7-105, then the purported substitute document should be treated as a duplicate under this section.

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

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

Cross References:

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

Point 3: Section 7-503.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

~~"Document". Section 7-102.~~

"Document of title". Section 1-201.

"Fungible goods." Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Right". Section 1-201.

Reporter's Note

The word "tangible" is added to the text to provide clarity in conformity with Section 7-304. The

1 *additional paragraph in comment 1 is to explain the how this section relates to Section 7-105.*
2

3 **SECTION 7-403. OBLIGATION OF WAREHOUSE OR CARRIER TO**
4 **DELIVER; EXCUSE.**

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

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

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

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

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

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

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

19 (7) any other lawful excuse.

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

23 (c) Unless the person claiming the goods is one against which the document of title does

not confer a right under Section 7-503(a), a person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries, and the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-403.

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

Purposes of Changes:

1. ~~The general and primary purpose of this revision is to simplify the statement of the bailee's obligation on the document. The interrelations of the separate sections of the old uniform acts dealing with "obligation to deliver," "justification in delivering," and "liability for misdelivery" are obscure. The present section, following former Section 7-403, is constructed on the basis of stating what previous deliveries or other circumstances operate to excuse the bailee's normal obligation on the document. Accordingly, "justified" deliveries under the old pre-Code uniform acts now find their place as "excuse" under subsection (1a). Unjustified deliveries, i.e., "misdeliveries" under the old acts, are simply omitted from the list of excuses, thus permitting the normal obligation on the document to be asserted.~~

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

3. Subsection (1a)(2) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this Act. Much of the applicable law as to responsibility of bailees for the preservation of the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by Section 7-103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Sections 7-204 and 7-309 of this Article. ~~The optional language in subsection (1)(b) states the rule laid down for interstate carriers in many federal cases. State decisions are in conflict as to both carriers and warehousemen. Particular states may prefer to adopt the federal rule.~~

The bracketed language in former Section 7-403(1)(b) has been deleted thereby leaving the allocations of the burden of going forward with the evidence and the burden of proof to the procedural law of the various states. States that have enacted the bracketed language may retain that language as part of Article 7 without creating a non-uniformity.

1 4. ~~Subsection (2) eliminates the implication of the old uniform acts~~ As under former Section 7-403, there is
2 no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due.
3 Rather, the bailee must request payment of the amount of his lien when asked to deliver, and only in case this request
4 is refused is ~~he~~ it justified in declining to deliver because of nonpayment of charges. Where delivery without
5 payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to
6 prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction
7 with the priorities given to the warehouse lien and the carrier lien under Section 7-209 and 7-307, respectively. If
8 the bailee and the bailor are in dispute about whether the request for payment of the lien is legally proper, the bailee
9 may have recourse to Section 7-603 for a judicial settlement of the dispute.

10
11 5. Subsection (3~~c~~) states the obvious duty of a bailee to take up a negotiable document or note partial
12 deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that stated
13 in subsection ~~1(a)~~ (a)(1) of this section and in Section 7-503(~~1a~~). ~~It~~ Subsection (c) is limited to cases of delivery to a
14 claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to
15 enforce the bailee's lien.

16
17 6. When courts are considering subsection (a)(7), "any other lawful excuse," among others, refers to
18 compliance with court orders under Sections 7-601, 7-602 and 7-603.

19
20 **Cross References:**

21
22 Point 2: Sections 7-502 and 7-503.

23 Point 3: Sections 7-103, 7-204, and 7-309 and 10-103.

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

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

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

27
28 **Definitional Cross References:**

29
30 "Bailee". Section 7-102.

31 "Conspicuous". Section 1-201.

32 "Delivery". Section 1-201.

33 ~~"Document". Section 7-102.~~

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

35 "Duly negotiate". Section 7-501.

36 "Goods". Section 7-102.

37 "Lessor". Section 2A-103.

38 "Person". Section 1-201.

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

40 "Right". Section 1-201.

41 "Terms". Section 1-201.

42 "Warehouseman". Section 7-102.

43 ~~"Written". Section 1-201.~~

44
45 ***Reporter's Note***

46
47 *Changes in the comments update and clarify the comments and reflect Committee decisions and*
48 *discussions.*

49 **SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT**
50 **TO DOCUMENT OF TITLE.** A bailee that in good faith has received goods and delivered or

otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-404.

Changes: Changes reflect the definition of good faith in Section 7-102 and for style .

Purposes of Changes:

This section uses the ~~The generalized~~ test of good faith, as defined in Section 7-102, to continue the policy of former Section 7-404. and observance of reasonable commercial standards is substituted for the attempts to particularize what constitutes good faith in the cited sections of the old uniform acts. The section states explicitly what is perhaps an implication from the old acts that the common law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is inapplicable to the operations of commercial carriers and warehousemen; who in good faith and with reasonable observance of commercial standards perform obligations that which they have assumed and that which generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well as to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a bailee may use Section 7-603.

Cross Reference: Section 7-603

Definitional Cross References:

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Section ~~1-201~~ 7-102.

"Goods". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Term". Section 1-201.

Reporter's Note

Changes are to update the comment and to reflect Committee decisions and discussion.

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

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

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

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

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

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

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

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

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

(1) If the document's original terms run to the order of a named person or to

1 bearer, the document is negotiated by delivery of the document to another person. Indorsement
2 by the named person is not required to negotiate the document.

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

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

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

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

16 OFFICIAL COMMENT

17 **Prior Uniform Statutory Provision:** Section 7-501

18 **Purpose:**

19
20
21 1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise remains
22 unchanged in substance from the rules in former section 7-501. Subsection (b) applies to electronic negotiable
23 documents of title. Delivery of a negotiable electronic document is through voluntary transfer of control. Section 1-
24 201. The control concept is the substitute for both possession and indorsement given the requirements of having
25 control. Section 7-106. In general this section is intended to clarify the language of the old acts and to restate the
26 effect of the better decisions thereunder.

27 As under prior law, in order to effect a "due negotiation" the negotiation must be in the ~~An important new~~
28 concept is added, however, in the requirement of "regular course of business or financing" to effect the "due
29 negotiation" which will in order to transfer greater rights than those held by the person negotiating. The foundation
30 of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the

1 furtherance and protection of the regular course of trade. ~~The reason for allowing a person, in bad faith or in error,~~
2 ~~to convey away rights which are not his own has from the beginning been to make possible the speedy handling of~~
3 ~~that great run of commercial transactions which are patently usual and normal.~~

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

11 The second question posed by the "regular course" qualification is: Is the transaction one which is normally
12 proper to pass full rights without inquiry, even though the transferor himself may not have such rights to pass, and
13 even though he may be acting in breach of duty? In raising this question the "regular course" criterion has the further
14 advantage of limiting, the effective wrongful disposition to transactions whose protection will really further trade.
15 Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection
16 as a matter of policy: it is also clearly outside the range of regular course.
17 Any notice from ~~the face of~~ the document sufficient to put a merchant on inquiry as to the "regular course" quality of
18 the transaction will frustrate a "due negotiation". Thus irregularity of the document ~~on its face~~ or unexplained
19 staleness of a bill of lading may appropriately be recognized as negating a negotiation in "regular" course.

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

27
28 2. Negotiation under this section may be made by any holder no matter how he acquired possession or
29 control of the document. ~~The present section follows in this respect the Uniform Bills of Lading Act and~~
30 ~~amendments of the original Uniform Sales Act and Uniform Warehouse Receipts Act proposed by the~~
31 ~~Commissioners on Uniform State Laws in 1922.~~

32
33 3. Subsections (a)(3) and (b)(2) ~~(2)(b)~~ makes explicit a matter upon which the intent of the ~~old acts pre-~~
34 Code law was clear but the language somewhat obscure: a negotiation results from a delivery to a banker or buyer to
35 whose order the document has been taken by the person making the bailment. There is no presumption of
36 irregularity in such a negotiation; it may very well be in "regular course."

37
38 4. This Article does not contain any provision creating a presumption of due negotiation to, and full rights
39 in, a holder of a document of title akin to that created by Uniform Commercial Code Article 3, Sections 16, 24 and
40 59 of the Negotiable Instruments Law. But the reason of the provisions of this Act (Section 1-202 [1-307]) on the
41 prima facie authenticity and accuracy of third party documents, joins with the reason of the present section to work
42 such a presumption in favor of any person who has power to make a due negotiation. It would not make sense for
43 this Act to authorize a purchaser to indulge the presumption of regularity if the courts were not also called upon to do
44 so.

45
46 5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible and electronic
47 documents of title.

48
49 **Cross References:** Sections 7-502 and 7-503.

50
51 **Definitional Cross References:**
52

1 "Bearer". Section 1-201.
2 "Control". Section 7-106.
3 "Delivery". Section 1-201.
4 ~~"Document". Section 7-102.~~
5 "Document of title". Section 1-201.
6 "Good faith". Section 7-102 ~~†-20†~~.
7 "Holder". Section 1-201.
8 "Notice". Section 1-201 [1-202].
9 "Person". Section 1-201.
10 "Purchase". Section 1-201.
11 "Rights". Section 1-201.
12 "Term". Section 1-201.
13 "Value". Section 1-201.

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

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

- 17 (1) title to the document;
- 18 (2) title to the goods;
- 19 (3) all rights accruing under the law of agency or estoppel, including rights to
20 goods delivered to the bailee after the document was issued; and
- 21 (4) the direct obligation of the issuer to hold or deliver the goods according to the
22 terms of the document free of any defense or claim by the issuer except those arising under the
23 terms of the document or under this Article. In the case of a delivery order, the bailee's
24 obligation accrues only upon the bailee's acceptance of the delivery order and the obligation
25 acquired by the holder is that the issuer and any indorser will procure the acceptance of the
26 bailee.

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

- (1) the due negotiation or any prior due negotiation constituted a breach of duty;
- (2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
- (3) a previous sale or other transfer of the goods or document has been made to a third person.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-502

Purpose:

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

2. Subsection ~~(1)(c)~~ (a)(3) covers the case of "feeding" of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection ~~(1)(d)~~ (a)(4) of the bailee's direct obligation to the holder precludes the defense, ~~sometimes successfully asserted under the old acts,~~ that the document in question was "spent" after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as non-negligent destruction even though not apparent on ~~the face of the document, and the bailee's obligation is of course subject to lawful provisions in filed classifications and tariffs. See Sections 7-103, 7-403.~~ The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 7-503 ~~(2 b)~~ and Comment.

4. Subsection ~~(b 2)~~ (a)(2) ~~condenses and continues the law of a number of sections of the prior acts~~ which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in subsection ~~(1 a)~~ (a), but it has been included since such explicit references ~~were~~ was relied upon under the prior acts to preserve the rights of a purchaser by due negotiation unimpaired. The listing is not exhaustive. ~~Only those matters have been repeated in this subsection which were explicitly reserved in the prior acts except in the case of stoppage in transit. Here, the language has been broadened to include~~ The language "any stoppage" is included lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser's rights.

Cross References:

Sections 7-103, 7-205, 7-403, 7-501, and 7-503.

Definitional Cross References:

"Bailee". Section 7-102.

1 "Control". Section 7-106.
2 "Delivery". Section 1-201.
3 "Delivery order". Section 7-102.
4 ~~"Document". Section 7-102.~~
5 "Document of title". Section 1-201.
6 "Duly negotiate". Section 7-501.
7 "Fungible". Section 1-201.
8 "Goods". Section 7-102.
9 "Holder". Section 1-201.
10 "Issuer". Section 7-102.
11 "Person". Section 1-201.
12 "Rights". Section 1-201.
13 "Term". Section 1-201.
14 "Warehouse receipt". Section 1-201.

15 **SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN**
16 **CASES.**

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

20 (1) deliver or entrust the goods or ~~any~~ a negotiable document covering the goods
21 to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; with
22 power to obtain delivery under Section 7-403; or with power of disposition under Sections 2-403,
23 2A-304(2), 2A-305(2), or 9-320 or other statute or rule of law; or

24 (2) acquiesce in the procurement by the bailor or its nominee of ~~any~~ a negotiable
25 document.

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

30 (c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the

rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-503.

Changes: Changes to emphasize limitation to negotiable documents of title duly negotiated; to cross-reference to Article 2A; for style.

Purposes of Changes:

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

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in his its duty to sell for cash, the goods are "entrusted" to him the factor "with actual . . . authority . . . to sell" under subsection ~~(1)(a)~~(a)(1), and if he the factor procures a negotiable document of title he it can transfer the owner's interest to a purchaser by due negotiation. Further, where the factor is in the business of selling, goods entrusted to him it simply for safekeeping or storage may be entrusted under circumstances which give him the factor "apparent authority to ship, store or sell" under subsection (a)(1) ~~(1)(a)~~, or power of disposition under Section 2-403, 2A-304(2), 2A-305(2), ~~7-205~~ or 9-320, ~~or under a statute such as the earlier Factors Acts,~~ or under a rule of law giving effect to apparent ownership. See Section 1-103.

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

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

2. Under subsection ~~(1a)~~ a delivery order issued by a person having no right in or power over the goods is

1 ineffective unless the owner acts as provided in subsection ~~(1)(a)~~ (a)(1) or (b2). Thus the rights of a transferee of a
2 non-negotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if
3 the transferee "delivers or entrusts" to the "person procuring" the negotiable delivery order or "acquiesces" in his that
4 person's procurement. Similarly, a second delivery order issued by the same issuer for the same goods will
5 ordinarily be subject to the first, both under this section and under Section 7-402. After a delivery order is validly
6 issued but before it is accepted, it may nevertheless be defeated under subsection ~~(2b)~~ in much the same way that the
7 rights of a transferee may be defeated under Section 7-504. For example, a buyer in ordinary course from the issuer
8 may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer's rights
9 before notification of the holder's rights. Section 7-504~~(2b)~~(b2). But an accepted delivery order has the same effect
10 as a document issued by the bailee.

11
12 3. Under subsection ~~(3c)~~ a bill of lading issued to a freight forwarder is subordinated to the freight
13 forwarder's ~~certificate~~ negotiable document of title, since the bill on its face gives notice of the fact that a freight
14 forwarder is in the picture and the freight forwarder has in all probability issued a ~~certificate~~ document of title. But
15 the carrier is protected in following the terms of its own bill of lading.

16
17 4. Section 7-503 applies to negotiable documents of title that are duly negotiated only. Section 7-504
18 governs non-negotiable documents of title and negotiable documents that are not duly negotiated.

19 20 **Cross References:**

21
22 Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-501, 9-320, and 9-331.

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

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

25 Point 4: Section 7-501 and 7-504.

26 27 **Definitional Cross References:**

28
29 "Bill of lading". Section 1-201.

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

31 "Delivery". Section 1-201.

32 "Delivery order". Section 7-102.

33 ~~"Document". Section 7-102.~~

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

35 "Duly negotiate". Section 7-501.

36 "Goods". Section 7-102.

37 "Person". Section 1-201.

38 "Right". Section 1-201.

39 "Warehouse receipt". Section 1-201.

40 **Reporter's Note**

41 *The reporters have reinserted the word "negotiable" into Section 7-503(a). In addition, the word*
42 *"negotiable" has been added to subsections (a)(1)&(2). The textual changes in subsection (a) clarify that this*
43 *section applies only to negotiable documents. The change is purely a clarifying change and does not change the*
44 *substance of prior Section 7-503. Section 7-503 can only apply to negotiable documents because the section is*
45 *about giving greater rights to those who hold by due negotiation in comparison to the rights held by the transferor*
46 *to the holder by due negotiation. Only negotiable documents can be duly negotiated. Section 7-209 has been*
47 *changed to parallel Section 7-503.*

48 *The additional comment emphasizes that Section 7-503 applies to negotiable documents of title duly*
49 *negotiated only. Other changes are to update the comments.*

50 *Query: Commissioners Miller of Oklahoma and Reitz of Pennsylvania asked whether the phrase "actual or*

1 *apparent authority” could and should be changed to “authority” here and also in Section 7-209. In addition to*
2 *phrasing, Commissioner Reitz wondered about consistency with Section 7-307 where the word “authority” is used*
3 *without adjectives. Comment 3 to Section 7-209 makes clear that the word “authority” includes “actual, implied,*
4 *and apparent” authority which are, to the Reporter’s knowledge of agency, all the kinds of authority that exist. The*
5 *Reporter presents this Commissioners’ query to the Committee for decision.*

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

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

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

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

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

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

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

20 (c) A diversion or other change of shipping instructions by the consignor in a
21 nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee
22 defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary
23 course of business or a lessee in ordinary course of business and in any event defeats the
24 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.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-504.

Changes: To cross-reference to Article 2A to parallel references to Article 2; for style.

Purposes of Changes and New Matter:

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

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if ~~he~~ the purchaser had purchased the goods themselves. True, ~~his~~ the purchaser's rights are not subject to defeat by attachment of the goods or surrender of them to ~~his~~ the purchaser's transferor [Contrast subsection (2)]; but on the other hand, ~~he~~ the purchaser cannot acquire enforceable rights to control or receive the goods over the bailee's objection merely by giving notice to the bailee. Similarly, a consignee who makes payment to ~~his~~ its consignor against a straight bill of lading can thereby acquire the position of a good faith purchaser of goods under provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment made in good faith against an unendorsed order bill would not have such effect. The appropriate remedy of a purchaser in such a situation is to regularize ~~his~~ its status by compelling indorsement of the document (see Section 7-506).

2. As in the case of transfer—as opposed to "due negotiation"—of negotiable documents, subsection (~~1a~~) empowers the transferor of a nonnegotiable document to transfer only such rights as ~~he himself~~ it itself has or has "actual authority" to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than he actually has. Subsection (~~2b~~) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his transferor by giving notice of the transfer to the bailee.

3. Subsection (~~3c~~) is in part a reiteration of the carrier's immunity from liability if it honors instructions of the consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under pre-Code orthodox passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no consideration of commercial policy supports this involvement of an innocent third party in the default of the manufacturer on his contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in accordance with this subsection.

1 4. Subsection (~~4d~~) gives the carrier an express right to indemnity where he honors a seller's request to stop
2 delivery.
3

4 5. Section 1-201(27) gives the bailee protection, if due diligence is exercised, ~~similar to that found in the~~
5 ~~third paragraph of Section 33, Uniform Bills of Lading Act~~, where the bailee's organization has not had time to act
6 on a notification.
7

8 6. The section cross-references to Article 2A so as to parallel the references to Article 2. However, this
9 Section displaces the rights of the transferee in situations involving a lease only as necessary to accommodate the
10 lease.
11

12 **Cross References:**

13
14 Point 1: Sections 2-403 and 7-506.

15 Point 2: Section 2-402, 2-403, 2A-308.

16 Point 3: Sections 7-303, ~~and~~ 7-403(~~1a~~)(~~c5~~) and 7-404.

17 Point 4: Sections 2-705 and 7-403(~~1a~~)(~~d4~~).

18 Point 5: Section 1-201(27).
19

20 **Definitional Cross References:**

21
22 "Bailee". Section 7-102.

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

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

25 "Consignee". Section 7-102.

26 "Consignor". Section 7-102.

27 "Creditor". Section 1-201.

28 "Delivery". Section 1-201.

29 ~~"Document". Section 7-102.~~

30 "Document of Title". Section 1-201.

31 "Duly negotiate". Section 7-501.

32 "Good faith". Section ~~1-201~~ 7-102.

33 "Goods". Section 7-102.

34 "Honor". Section 1-201.

35 "Notification" Section 1-201.

36 "Purchaser". Section 1-201.

37 "Rights". Section 1-201.
38

39 ***Reporter's Note***

40
41 *Changes to comments to update and for gender neutrality. Comment 6 added to clarify the impact of the*
42 *cross-references to Article 2A.*

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

46 **OFFICIAL COMMENT**

Prior Uniform Statutory Provision: Section 7-505.

Changes: Limited to tangible documents of title.

Purposes:

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

Cross Reference: Section 7-502.

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Party". Section 1-201.

SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-506.

Changes: Limited to tangible documents of title.

Purposes:

1. This section has been limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. ~~This position is sustained by the absence of any reported case applying the prior provisions in almost forty years of decisions.~~ Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized ~~its~~ his position until such indorsement is supplied. Until this is done ~~he~~ the transferee cannot claim rights under due negotiation within the requirements of this Article (~~subsection (4)~~ of Section 7-501) on "due negotiation". Similarly, despite the transfer to

1 ~~him the transferee~~ of ~~his~~ the transferor's title, ~~he~~ the transferee cannot demand the goods from the bailee until the
2 negotiation has been completed and the document is in proper form for surrender. See Section 7-403(3 c).
3

4 **Cross References:**

5
6 Point 1: Section 7-505.

7 Point 2: Sections 7-501(4) and 7-403(2).
8

9 **Definitional Cross References:**

10
11 "Document of title". Section 1-201.

12 "Rights". Section 1-201.

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

18 (1) the document is genuine;

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

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

23 **OFFICIAL COMMENT**

24 **Prior Uniform Statutory Provision:** Section 7-507.

25 **Changes:** Substitution of the word "delivery" for the word "transfer" because "delivery" is defined in Section 1-201;
26 to cross-reference to Article 2A; and for style.

27 **Purposes of Changes:**

28 1. ~~This section omits provisions of the prior acts on warranties as to the goods as unnecessary and~~
29 ~~incomplete. It is unnecessary because such warranties derive from the contract of sale and not from the transfer of~~
30 ~~the documents. The fact that transfer of control occurs by way of a document of title does not limit or displace the~~
31 ~~ordinary obligations of a seller. The former provision, moreover, was incomplete because it did not expressly~~
32 ~~include all of the warranties which might rest upon a seller under such circumstances. This Act section handles the~~
33 ~~problem~~ warranties as to the goods by means of the precautionary reference to "any warranty made in selling or

1 leasing the goods." If the transfer of documents attends or follows the making of a contract for the sale or lease of
2 goods, the general obligations on warranties as to the goods (Sections 2-312 through 2-318 and Sections 2A-210
3 through 2A-316) are brought to bear as well as the special warranties under this section.
4

5 2. The limited warranties of a delivering or collecting intermediary are stated in Section 7-508.

6 **Cross References:**

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

8 Point 2: Section 7-508.

9 **Definitional Cross References:**

10 ~~"Document". Section 7-102.~~

11 ~~"Delivery". Section 1-201.~~

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

13 "Genuine". Section 1-201.

14 "Goods". Section 7-102.

15 "Person". Section 1-201.

16 "Purchaser". Section 1-201.

17 "Value". Section 1-201.

18 *Reporter's Note*

19 *Changes in the comments are to update the comments.*

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

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

26 **OFFICIAL COMMENT**

27 **Prior Uniform Statutory Provision:** Section 7-508.

28 **Changes:** Changes for style only.

29 **Purposes:**

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

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

3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5.

Cross References:

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

Definitional Cross References:

"Collecting bank". Section 4-105.

"Delivery". Section 1-201.

~~"Document". Section 7-102.~~

"Document of title". Section 1-102.

"Documentary draft". Section 4-104.

["Draft". Section 5-103.]

"Intermediary bank". Section 4-105.

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

Reporter's Note

This section contains style changes only. The definition of "draft" is placed in brackets. Query: Article 5 no longer defines documentary draft; where is the appropriate definition of "draft"? Refer to Section 5-102 comment 11? Refer to Section 4-104 as shown?

SECTION 7-509. WHEN ADEQUATE COMPLIANCE WITH COMMERCIAL

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Section 7-509.

Changes: To cross reference to leases and Article 2A.

Purposes:

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

Cross References: Articles 2, 2A and 5.

Definitional Cross References:

"Contract for sale". Section 2-106.

~~"Document". Section 7-102.~~

"Document of title". Section 1-201.

"Lease". Section 2A-103.

1 *Reporter's Note*

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

4 **PART 6**

5 **WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS**
6 **PROVISIONS**

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

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

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

22 **OFFICIAL COMMENT**

23 **Prior Uniform Statutory Provision:** Section 7-601.
24

25 **Changes:** To accommodate electronic documents; to provide flexibility to courts similar to the flexibility in Section
26

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

Purposes of Changes: ~~The purposes of the changes insofar as they are not self-evident are as follows:~~

1. ~~The old acts provide only for compulsory delivery of goods; Subsection (a) authorizes courts to order compulsory delivery of the goods or this Section provides also for compulsory issuance of a substitute document. Using language similar to that found in Section 3-309, courts are given discretion as to what is adequate protection when the lost, stolen or destroyed document was negotiable or whether security should be required when the lost, stolen or destroyed document was nonnegotiable. The court is also given discretion as to the bailee's costs and attorney fees. This subsection creates a legal action that is distinct from Section 7-603. The right of action created by the section is conditioned on a document being lost, stolen or destroyed. Plaintiff must of course bring itself within the section by the normal rules of evidence and burden of proof. Cf. Section 7-402. If continuance of the bailment is desirable there is no reason to require the goods to be withdrawn and redeposited in order to secure a negotiable document. The present acts would probably be so interpreted. Section 20 of the Federal Warehouse Act and some state laws expressly require issuance of a new receipt on proof of loss and posting of bond.~~

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

~~23. As to bailee's privilege to deliver without court order, doubt had arisen as to the propriety of such action under Section 54 of the Uniform Warehouse Receipts Act, which made it a crime to deliver goods covered by negotiable receipts without taking up the receipts "except in the cases provided for in Section 14" (the lost receipts section). This has been interpreted by one court as exempting from criminal liability only if the judicial procedure of Section 14 was followed. Dahl v. Winter-Truesdell-Diercks Co., 61 N.D. 84, 237 N.W. 202 (1931). Although the criminal provisions are not being re-enacted in this Act (and the Uniform Bills of Lading Act never did include such a criminal provision), it seems advisable to clarify. Subsection (b) follows prior Section 7-601 in recognizing the legality of the well established commercial practice of bailees to make making delivery when where they are satisfied in good faith that the claimant is the person entitled under a missing (i.e. lost, stolen, or destroyed) negotiable document. Since Acting without a court order, the bailee remains liable on the original negotiable document and, as a safe harbor to avoid conversion liability, the bailee in such cases, he may will usually insist that the claimant provide an indemnity bond. Cf. Section 7-403(c).~~

~~43. Claimants on non-negotiable instruments are permitted to avail themselves of this the subsection (a) procedure because straight (non-negotiable) bills of lading sometimes contain provisions that the goods shall not be delivered except upon production of the bill. If the carrier should choose to insist upon production of the bill, the consignee should have some means of compelling delivery on satisfactory proof of entitlement. Without a court order, a bailee may deliver, subject to Section 7-403, to a person claiming goods under a non-negotiable document that the same person claims is lost, stolen, or destroyed.~~

~~Ordinarily no security would be necessary to indemnify a bailee in delivering to the person named in a non-negotiable document. But disputes as to negotiability may arise, in which case if there is a reasonable doubt on the point the bailee should be protected against the possibility that the missing document would, in the hands of an innocent purchaser for value, be held negotiable.~~

~~4. It seems unnecessary to state, as do the present acts, that the court shall act "on satisfactory proof of such loss or destruction." The right of action created by the section is conditioned on a document being lost, stolen or destroyed. Plaintiff must of course bring himself within the section. There is nothing in the language of the old acts to suggest that they intended to impose anything but the normal burden of proof on the plaintiff in such proceedings.~~

~~5. Subsection (2) makes it clear that after delivery without court order the bailee remains liable for actual damages. Liability for conversion is provided where the delivery is dishonest, but excluded where a filed classification or tariff is followed in good faith, or where the described bond is posted in good faith and no classification or tariff is filed. Liability for conversion in other cases is left to judicial decision.~~

1 5. Deliveries that occur under this section are subject to Sections 7-209(e), 7-307(c) and 7-403(b) relating
2 to the bailee's lien.

3
4 **Cross References:**

5
6 Point 1: Sections 3-309, 7-402, 7-603.

7 Point 2: Section 7-105.

8 Point 3: Section 7-403(c).

9 Point 4: Section 7-403.

10 Point 5: Sections 7-209(e), 7-307(c) and 7-403(b).

11
12 **Definitional Cross References:**

13
14 "Bailee". Section 7-102.

15 ~~"Bill of lading". Section 1-201.~~

16 "Delivery". Section 1-201.

17 ~~"Document". Section 7-102.~~

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

19 ~~"Good faith". Section 1-201 7-102.~~

20 "Goods". Section 7-102.

21 "Person". Section 1-201.

22 ~~"Warehouse receipt". Section 1-201.~~

23 ~~"Warehouseman". Section 7-102.~~

24
25 *Reporter's Note*

26
27 *The comments are rearranged and substantially rewritten to better explain the meaning and application of*
28 *this section.*

29 **SECTION 7-602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE**

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

38 **OFFICIAL COMMENT**

Prior Uniform Statutory Provisions: Section 7-602.

Changes: Changes for style only.

Purposes of Changes:

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

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

Cross Reference:

Point 1: Section 7-503.

Definitional Cross References:

"Bailee". Section 7-102.

"Delivery". Section 1-201.

~~"Document". Section 7-102.~~

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Notice". Section 1-201.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Value". Section 1-201.

Reporter's Note

No changes to comments.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: Section 7-603.

Changes: Changes for style only..

Purposes of Changes:

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

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

Cross reference:

Point 1: Section 7-403(g)

Definitional Cross References:

"Action". Section 1-201.

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Reasonable time". Section 1-204.

Reporter's Note

Changes in the comments update and clarify the comments and reflect Committee decisions and discussions.

PART 7

TRANSITION PROVISIONS

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

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

SECTION 7-703. APPLICABILITY. This [Act] applies to a document of title that is issued or transaction within its scope that is entered into on or after the effective date of this [Act]. This [Act] does not apply to a document of title that is issued or transaction that is

1 entered into before the effective date of this [Act] even if the document or transaction would be
2 subject to this [Act] if it had been entered into after the effective date of this [Act]. This [Act]
3 does not apply to a cause of action that has accrued before the effective date of this [Act].

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

9 ***Reporter's Note***

10 *These comments will be written after all of the conforming amendments to other articles have been*
11 *addressed. See memorandum to the Committee dated September 13, 2002 on the proposed conforming*
12 *amendments.*

13 *The proposed transition rules contemplate a purely prospective application of the revised article 7 to*
14 *documents of title issued after its effective date. If documents of title have a relatively short life span, that*
15 *prospective only application makes sense as in short order the electronic documents of title will be incorporated*
16 *into the financing scheme of revised Article 9. However, if documents of title have a long life span, the Committee*
17 *may want to consider whether to allow the application of the rules in the revision to all documents of title in*
18 *existence on the effective date. Revised Article 9 did so as to its provisions even though it was creating the concept*
19 *of electronic chattel paper which would probably have been treated as a general intangible under old Article 9.*
20 *Electronic documents of title are probably general intangibles today in the Revised Article 9 scheme except as given*
21 *a different effect by the UETA. which in some instances could be argued to allow a secured party to obtain rights of*
22 *a holder of an electronic document of title that would be respected via 9-331.*

23 **Appendix I**

24 **Conforming amendments to UCC Article 1**

25 **ALTERNATIVE A**

26 *Legislative Note: These amendments should be adopted in the event a state has not yet adopted*
27 *Revised Article 1 as approved in 2001.*

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

29 Subject to additional definitions contained in the subsequent Articles of this Act which

are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

* * * *

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

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods but does not include a warehouse receipt, and includes an airbill. “Airbill” ~~means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.~~

* * * *

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

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

(A) a heading in capitals equal to or greater in size than the surrounding

1 text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
2 (B) language in the body of a record or display in larger type than the
3 surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or
4 set off from surrounding text of the same size by symbols or other marks that call attention to the
5 language.

6 * * * *

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

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

1 * * * *

2 (20) ~~“Holder,” with respect to a negotiable instrument, means the person in possession if~~
3 ~~the instrument is payable to bearer or, in the case of an instrument payable to an identified~~
4 ~~person, if the identified person is in possession. “Holder” with respect to a document of title~~
5 ~~means the person in possession if the goods are deliverable to bearer or to the order of the person~~
6 ~~in possession.~~

7 “Holder” means:

8 (A) the person in possession of a negotiable instrument that is payable
9 either to bearer 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
11 the goods are 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 * * * *

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

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

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

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

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

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

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

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

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

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

19 * * * *

20 (38) ~~“Send” in connection with any writing or notice means to deposit in the mail or~~
21 ~~deliver for transmission by any other usual means of communication with postage or cost of~~
22 ~~transmission provided for and properly addressed and in the case of an instrument to an address~~

1 ~~specified thereon or otherwise agreed, or if there be none to any address reasonable under the~~
2 ~~circumstances. The receipt of any writing or notice within the time at which it would have~~
3 ~~arrived if properly sent has the effect of a proper signing.~~

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

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

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

11 * * * *

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

14 OFFICIAL COMMENT

15 * * * *

16
17 5. "Bearer". From Section 191, Uniform Negotiable Instruments Law. The prior definition has been
18 broadened. The term bearer applies to negotiable documents of title and has been broadened to include a person in
19 control of a negotiable electronic document of title. Control in the context of an electronic document is defined in
20 Article 7 (Section 7-106).

21
22 6. "Bill of Lading". See similar definitions in Section 1, Uniform Bills of Lading Act. The definition has
23 been enlarged to include freight forwarders' bills and bills issued by contract carriers as well as those issued by
24 common carriers. The definition of airbill is new. A bill of lading is one type of document of title as defined in
25 subsection (15). This definition should be read in conjunction with the definition of carrier in Article 7 (7-102).

26 * * * *

27
28 10. "Conspicuous". ~~New. This is intended to indicate some of the methods of making a term~~
29 ~~attention-calling. But the test is whether attention can reasonably be expected to be called to it. This definition states~~
30 the general standard that to be conspicuous a term out to be noticed by a reasonable person. Whether a term is
31 conspicuous is an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term
32 conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a
33 planning function (giving guidance to the party relying on the term regarding how that result can be achieved).

1 Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether
2 attention can reasonably be expected to be called to it. The statutory language should not be construed to permit it a
3 result that is inconsistent with that test.

4
5 * * * *

6
7 14. "Delivery". Section 76, Uniform Sales Act, Section 191, Uniform Negotiable Instruments Law, Section
8 58, Uniform Warehouse Receipts Act and Section 53, Uniform Bills of Lading Act. The definition has been revised
9 to accommodate electronic documents of title. Control in the context of an electronic document of title is defined in
10 Article 7 (Section 7-106).

11
12 15. "Document of title". From Section 76, Uniform Sales Act, ~~but rephrased to eliminate certain~~
13 ~~ambiguities. This definition makes explicit~~ Thus, by making it explicit that the obligation or designation of a third
14 party as "bailee" is essential to a document, ~~this definition and~~ clearly rejects any such result as obtained in Hixson v.
15 Ward, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition
16 is left open so that new types of documents may be included, including documents which gain commercial
17 recognition in the international arena. See UNCITRAL Instrument on Transport Documents. It is unforeseeable
18 what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. ~~Truck~~
19 ~~transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a~~
20 ~~draft can move through banking channels faster than the goods themselves can reach their destination. There lie~~
21 ~~ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially~~
22 ~~as "Documents of Title".~~ The definition is stated in terms of the function of the documents with the intention that
23 any document which gains commercial recognition as accomplishing the desired result shall be included within its
24 scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of
25 which they are a part.

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

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

38 A document of title may be either tangible or electronic. Tangible documents of title should be construed to
39 mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic
40 medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include
41 electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to
42 converting from tangible to electronic mediums and vice versa, see Article 7, Section 7-105. Control for electronic
43 documents of title is defined in Article 7 (Section 7-106).

44
45 * * * *

46
47 20. "Holder". See similar definitions in Section 191, Uniform Negotiable Instruments Law; Section 58,
48 Uniform Warehouse Receipts Act; Section 53, Uniform Bills of Lading Act. The definition has been amended to
49 provide for negotiable electronic documents of title.

50
51 * * * *

52 25. "Notice". ~~New. Compare N.I.L. Sec. 56. Under the definition a person has notice when he has~~

received a notification of the fact in question. But by the last sentence the act leaves open the time and circumstances under which notice or notification may cease to be effective. Therefore such cases as *Graham v. White-Phillips Co.*, 296 U.S. 27, 56 S.Ct. 21, 80 L.Ed. 20 (1935), are not overruled.

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

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

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

* * * *

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

* * * *

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

ALTERNATIVE B

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

SECTION 1-201. GENERAL DEFINITIONS.

* * *

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

* * *

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

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

4 * * *

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

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

21 * * *

22 (21) “Holder” means:

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

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

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

* * *

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

OFFICIAL COMMENT

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

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

* * * *

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

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

Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a

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

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

11 A document of title may be either tangible or electronic. Tangible documents of title should be construed to
12 mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic
13 medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include
14 electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to
15 converting from tangible to electronic mediums and vice versa, see Article 7, Section 7-105. Control for electronic
16 documents of title is defined in Article 7 (Section 7-106).

17 * * * *

18
19
20 21. "Holder". Derived from former Section 1-201. The definition has been reorganized for clarity and
21 amended to provide for negotiable electronic documents of title.

22 * * * *

23
24
25 42. "Warehouse receipt". ~~Unchanged~~ Derived from former Section 1-201, which was derived from Section
26 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are
27 included, provided the warehouseman and the depositor of the goods are different persons. The definition makes
28 clear that the receipt must qualify as a document of title under subsection (16).

29 **Appendix II**

30 **Conforming Amendments to Other Articles of the UCC**

31
32
33 *The proposed conforming amendments to other Articles of the UCC are addressed in a*
34 *memorandum to the Committee that accompanies this draft.*