

FOR DISCUSSION ONLY

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

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

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ARTICLE 7-DOCUMENTS OF TITLE
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PROPOSED 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.” Rev. Section 1-201(b)(16). Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title. Conforming amendments to other Articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC. Conforming amendments to other Articles of the UCC are contained in Appendix I and conforming amendments to other uniform acts are contained in Appendix II.

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.

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

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

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

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

8 10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504,
9 7-509.

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

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

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

16
17 *Legislative Note: All cross-references in this draft to Article 1 are to Revised Article 1 (2001).*

18 *In the event a state has not enacted Revised Article 1, the cross-references should be changed to*
19 *refer to the relevant sections in former Article 1.*

1 **PART 1.**

2 **GENERAL**

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

5 **PRELIMINARY COMMENT**

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

7
8 **Changes:** Revised for style only.
9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "'Receipt' of goods", Section 2-103.

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-102.

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

Purposes:

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

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1-201) does not require that the issuing warehouse be "lawfully engaged" in business or for profit. The warehouse's compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues

1 dealt with in this Article. Certainly the issuer's violations of law should not diminish its responsibility on documents
2 the issuer has put in commercial circulation. But it is still essential that the business be storing goods "for hire"
3 (Section 1-201 and this section). A person does not become a warehouse by storing its own goods.

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

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

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

12 6. "Person entitled under the document" is moved from former Section 7-403.

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

17
18 **Cross References:**

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

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

21 Point 3: Section 1-201.

22 Point 4: Section 1-304.

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

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

25
26 **Definitional Cross References:**

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

28 "Contract". Section 1-201.

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

30 "Delivery". Section 1-201.

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

32 "Person". Section 1-201.

33 "Purchase". Section 1-201.

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

35 "Right". Section 1-201.

36 "Warehouse receipt". Section 1-201.

37
38 **SECTION 7-103. RELATION OF ARTICLE TO TREATY OR STATUTE.**

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

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

of a document of title.

PRELIMINARY COMMENT

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

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

Purposes:

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

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

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

Cross References:

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

Definitional Cross Reference:

"Bill of lading". Section 1-201.

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 that 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.

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former 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:

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). The former Section 7-104, which provided that a document of title was negotiable if it runs to a named person or assigns if such designation was recognized in overseas trade, has been deleted as not necessary in light of current commercial practice.

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. Subsection (a) 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. Both tangible and electronic documents of title may be negotiable if the document meets the requirement of this section.

2. An issuer may stamp or otherwise provide by a notation on the document of title that it is nonnegotiable even if the document would otherwise comply with the requirement of subsection (a). Subsection (c). Subsection (c) is derived from 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 of title by due negotiation. See Section 7-501(5). A document of title that is nonnegotiable cannot be made negotiable by stamping or providing a notation that the document is negotiable. The only way to make a document of title 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.

"Person". Section 1-201.

"Sign". Section 7-102

"Warehouse receipt". Section 1-201.

7-105. REISSUANCE IN ALTERNATIVE MEDIUM.

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

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

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

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

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

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

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

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

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

22 (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.

PRELIMINARY COMMENT

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Draft Instrument on Transport Law.

Purpose:

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

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

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

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

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

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

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as

1 the person to which the electronic document was issued or transferred.

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

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

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

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

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

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

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

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

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

19 **PRELIMINARY COMMENT**

20
21 **Prior Uniform Statutory Provision:** Uniform Electronic Transactions Act Section 16.

22
23 **Purpose:**

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

1 electronic form, the control concept of this section is relevant. As under UETA § 16, the control concept embodied
2 in this section provides the legal framework for developing systems for electronic documents of title.

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

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

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

25 4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if
26 satisfied, results in control under the general test in subsection (a). The test in subsection (b) is also used in Section
27 9-105 although Section 9-105 does not include the general test of subsection (a). Under subsection (b), at any point
28 in time, a party should be able to identify the single authoritative copy which is unique and identifiable as the
29 authoritative copy. This does not mean that once created that the authoritative copy need be static and never moved
30 or copied from its original location. To the extent that backup systems exist which result in multiple copies, the key
31 to this idea is that at any point in time, the one authoritative copy needs to be unique and identifiable.

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

34 5. Article 7 has historically provided for rights under documents of title and rights of transferees of
35 documents of title as those rights relate to the goods covered by the document. Third parties may possess or have
36 control of documents of title. While misfeasance or negligence in failure to transfer or misdelivery of the **document**
37 by those third parties may create serious issues, this Article has never dealt with those issues as it relates to tangible
38 documents of title, preferring to leave those issues to the law of contracts, agency and tort law. In the electronic
39 document of title regime, third party registry systems are just beginning to develop. It is very difficult to write rules
40 regulating those third parties without some definitive sense of how the third party registry systems will be structured.
41 Systems that are evolving to date tend to be “closed” systems in which all participants must sign on to the master
42 agreement which provides for rights as against the registry system as well as rights among the members. In those
43 closed systems, the document of title never leaves the system so the parties rely upon the master agreement as to
44 rights against the registry in its failures in dealing with the document. This article contemplates that those “closed”
45 systems will continue to evolve and that the control mechanism in this statute provides a method for the participants
46 in the closed system to achieve the benefits of obtaining control allowed by this article.

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

Cross Reference: Section 7-105.

SECTION 7-107. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

PRELIMINARY COMMENT

Source: Revised Article 1, Section 1-108.

This section is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article. See the comments to Revised Article 1, Section 1-108.

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.

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-201.

Changes: Update for style only.

Purposes:

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

6
7 **Cross References:** Sections 7-103, 7-401.

8
9 **Definitional Cross References:**
10 "Warehouse receipt". Section 1-201.
11 "Warehouse". Section 7-102.

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

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

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

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

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

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

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

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

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

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

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

27 (9) a statement of the amount of advances made and of liabilities incurred for
28 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 **PRELIMINARY COMMENT**

8
9 **Prior Uniform Statutory Provision:** Former Section 7-202.

10
11 **Changes:** Language is updated to accommodate electronic commerce and to reflect modern style.

12
13 **Purposes:**

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

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

23
24 **Cross References:** Sections 7-103 and 7-401.

25
26 **Definitional Cross References:**

27 "Bearer". Section 1-201.

28 "Delivery". Section 1-201.

29 "Goods". Section 7-102.

30 "Person". Section 1-201.

31 "Security interest". Section 1-201.

32 "Sign". Section 7-102.

33 "Term". Section 1-201.

34 "Warehouse receipt". Section 1-201.

35 "Warehouse". Section 7-102.

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

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

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-203.

Changes: Changes to this section are for style only.

Purpose:

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

Cross Reference: Section 7-301.

Definitional Cross References:

"Conspicuous". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

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

"Issuer". Section 7-102.

"Notice". Section 1-202.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt of goods". Section 2-103.

"Value". Section 1-204.

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

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

1 damages that could not have been avoided by the exercise of that care.

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

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

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

15 **PRELIMINARY COMMENT**

16 **Prior Uniform Statutory Provision:** Former Section 7-204.

17 **Changes:** Updated to reflect modern, standard commercial practices.

18 **Purposes of Changes:**

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

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

27 3. Former Section 7-204(2) also provided that an increased rate can not be charged if contrary to a tariff.
28 That language has been deleted. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the
29 tariff would control over the rule of this section allowing an increased rate. The provisions of a non-mandatory tariff

may be incorporated by reference in the parties' agreement. See Comment 2 to Section 7-103. Subsections (c) deletes the reference to tariffs for the same reason that the reference has been omitted in subsection (b).

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

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

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

Definitional Cross References:

"Goods". Section 7-102.

"Reasonable time". Section 1-204.

"Sign". Section 7-102.

"Term". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-205.

Changes: Changes for style only.

Purposes:

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

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

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 obtain the goods under Article 2 in order to
3 be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary
4 course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. See amended Section
5 2-103. This section is 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 1-204.

16 "Warehouse receipt". Section 1-201.

17 "Warehouse". Section 7-102.

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

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

25 (b) If a warehouse in good faith believes that goods are about to deteriorate or decline in
26 value to less than the amount of its lien within the time provided in subsection (a) and Section 7-
27 210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter
28 time for removal of the goods and, if the goods are not removed, may sell them at public sale
29 held not less than one week after a single advertisement or posting.

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

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

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

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

10 PRELIMINARY COMMENT

11 **Prior Uniform Statutory Provision:** Former Section 7-206.

12 **Changes:** Changes for style.

13 **Purposes:**

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

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

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

28 4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of
29 some states forbidding warehouses from discriminating among customers. Nor does the section relieve the
30 warehouse of any obligation under the state laws to secure the approval of a public official before disposing of
31 deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Sections
32 7-103.

33
34 **Cross References:** Sections 7-103 and 7-403.

35
36 **Definitional Cross References:**

"Delivery". Section 1-201.
"Document of title". Section 1-102.
"Good faith". Section 1-201 [7-102].
"Goods". Section 7-102.
"Notice". Section 1-202.
"Notification". Section 1-202.
"Person". Section 1-201.
"Reasonable time". Section 1-205.
"Value". Section 1-204.
"Warehouse". Section 7-102.

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

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-207.

Changes: Changes for style only.

Purposes:

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

Definitional Cross References:

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

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

SECTION 7-208. ALTERED WAREHOUSE RECEIPTS. If a blank in a negotiable

tangible warehouse receipt has been filled in without authority, a good faith purchaser for value

and without notice of the lack of authority may treat the insertion as authorized. Any other

unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against

the issuer according to its original tenor.

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-208.

Changes: To accommodate electronic documents of title.

Purpose:

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

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

Definitional Cross References:

“Good faith”. Section 1-201 [7-102].

"Issuer". Section 7-102.

"Notice". Section 1-202.

"Purchaser". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

SECTION 7-209. LIEN OF WAREHOUSE.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt

or storage agreement or on the proceeds thereof in its possession for charges for storage or

transportation, including demurrage and terminal charges, insurance, labor, or other charges,

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

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

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

22 (1) deliver or entrust the goods or any document covering the goods to the bailor

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

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

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

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

11 **PRELIMINARY COMMENT**

12
13 **Prior Uniform Statutory Provision:** Former Sections 7-209 and 7-503.

14
15 **Changes:** Expanded to recognize warehouse lien when a warehouse receipt is not issued but goods are covered by a
16 storage agreement.

17
18 **Purposes:**

19
20 1. Subsection (a) defines the warehouse's statutory lien. Other than allowing a warehouse to claim a lien
21 under this section when there is a storage agreement and not a warehouse receipt, this section remains unchanged
22 from former Section 7-209(1). Under the first sentence, a specific lien attaches automatically without express
23 notation on the receipt or storage agreement with regard to goods stored under the receipt or the storage agreement.
24 That lien is limited to the usual charges arising out of a storage transaction.

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

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

33 Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a warehouse receipt for
34 those goods. In the warehouse receipt it is stated that the warehouse will also have a lien on goods covered by the
35 warehouse receipt for storage charges and the other expenses for any other goods that are stored with the warehouse
36 by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored
37 other goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien on the specific
38 goods (Lot A) covered by the warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on

1 the goods in lot A for the storage charges and the other expenses arising from the goods in lot B. That lien is
2 enforceable as against the bailor regardless of whether the receipt is negotiable or nonnegotiable.

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

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

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

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

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

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

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

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

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

52 Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt.

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

8 As against third parties who have interests in the goods prior to the storage with the warehouse, subsection
9 (c)(1) continues the rule under the prior uniform statutory provision that to validate the lien or security interest of the
10 warehouse, the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a
11 pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not
12 be subjected to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be
13 protected because of the actual, implied or apparent authority of the depositor, because of a Factor's Act, or because
14 of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under
15 the second sentence of subsection (c). The language of Section 7-503 is brought into subsection (c) for purposes of
16 clarity. The comments to Section 7-503 are helpful in interpreting delivery, entrustment or acquiescence.

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

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

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

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

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

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

50 6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the bailment have a
51 storage agreement or a warehouse receipt is issued. In the modern warehouse, the bailor and the bailee may enter
52 into a master contract governing the bailment with the bailee and bailor keeping track of the goods stored pursuant to

the master contract by notation on their respective books and records and the parties send notification via electronic communication as to what goods are covered by the master contract. Warehouse receipts are not issued. See Comment 4 to Section 7-204. There is no particular form for a warehouse receipt and failure to contain any of the terms listed in Section 7-202 does not deprive the warehouse of its lien that arises under subsection (a).

Cross References:

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

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

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

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

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

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

Definitional Cross References:

"Deliver". Section 1-201.

"Document of Title". Section 1-201

"Goods". Section 7-102.

"Money". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Right". Section 1-201.

"Security interest". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

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

(a) Except as otherwise provided in subsection (b), a warehouse's lien 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 warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-210.

Changes: Update to accommodate electronic commerce and for style.

Purposes:

1. Subsection (a) makes "commercial reasonableness" the standard for foreclosure proceedings in all cases except non-commercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale are

retained in subsection (b) with one change. The requirement in former Section 7-210(2)(b) that the notification must be sent in person or by registered or certified mail has been deleted. Notification may be sent by any reasonable means as provided in Section 1-202. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Compare seller's power of resale on breach by buyer under the provisions of the Article on Sales (Section 2-706). Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

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

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

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

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

Definitional Cross References:

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document of Title". Section 1-201.

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

"Goods". Section 7-102.

"Notification". Section 1-202.

"Notifies". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Warehouse". Section 7-102.

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

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

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent

1 that the document of title indicates that the issuer does not know whether any part or all of the
2 goods in fact were received or conform to the description, such as in a case in which the
3 description is in terms of marks or labels or kind, quantity, or condition or the receipt or
4 description is qualified by "contents or condition of contents of packages unknown", "said to
5 contain", "shipper's weight, load and count" or words of similar import, if that indication is true.

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

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

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

20 (e) A shipper guarantees to the issuer the accuracy at the time of shipment of the
21 description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the
22 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 or liability under the contract of carriage to any person other than the shipper.

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-301.

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

Purposes:

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

2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself 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 was some question whether under pre-Code law a carrier 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. Subsection (d) 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 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 the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood in the transportation industry. The reasons for this wording are as important in 2002 as when the prior section initially was approved. The issuer is liable on documents issued by an agent, contrary to instructions of his principal, without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the care of the goods or their description.

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

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

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

Definitional Cross References:

"Bill of lading". Section 1-201.

"Consignee". Section 7-102.

"Document of Title". Section 1-201.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Notice". Section 1-202.

1 "Party". Section 1-201.
2 "Purchaser." Section 1-201.
3 "Receipt of Goods". Section 2-103.
4 "Value". Section 1-204.

5 **SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS**
6 **OF TITLE.**

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

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

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

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-302.

Changes: To conform to current terminology and for style.

Purposes:

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

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

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

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

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

Cross reference: Section 7-103

Definitional Cross References:

"Agreement". Section 1-201.

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Party". Section 1-201.

"Person". Section 1-201.

SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF

1 **INSTRUCTIONS.**

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

5 (1) the holder of a negotiable bill;

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

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

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

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

16 **PRELIMINARY COMMENT**

17
18 **Prior Uniform Statutory Provision:** Former Section 7-303.

19
20 **Changes:** To accommodate electronic documents and for style.

21
22 **Purposes:**

23
24 1. Diversion is a very common commercial practice which defeats delivery to the consignee originally
25 named in a bill of lading. This section continues former Section 7-303's safe harbor rules for carriers in situations
26 involving diversion and adapts those rules to electronic documents of title. This section works compatibly with
27 Section 2-705. Carriers may as a business matter be willing to accept instructions from consignees in which case the
28 carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the
29 goods under subsection (a)(4). The section imposes no duty on carriers to undertake diversion. The carrier is of
30 course subject to the provisions of mandatory filed tariffs as provided in Section 7-103.

31 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 rights that arise between consignor-seller and the consignee-buyer out of a contract for the sale of goods is governed by Article 2.

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 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Term". Section 1-201.

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

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

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

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

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in

1 a set is liable to holders of that part as if it were the whole set.

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

5 PRELIMINARY COMMENT

6
7 **Prior Uniform Statutory Provision:** Former Section 7-304.

8
9 **Changes:** To limit bills in a set to tangible bills of lading and to use terminology more consistent with modern usage.

10 **Purposes:**

11
12
13 1. Tangible bills of lading in a set are still used in some nations in international trade. Consequently, a
14 tangible bill of lading part of a set could be at issue in a lawsuit that might come within Article 7. The statement of
15 the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other
16 international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions and in the
17 Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are
18 recognized by this Article. Tangible bills of lading in a set are prohibited in domestic trade.

19 2. Electronic bills of lading in domestic or international trade will not be issued in a set given the
20 requirements of control necessary to deliver the bill to another person. An electronic bill of lading will be a single,
21 authoritative copy. Section 7-106. Hence, this section differentiates between electronic bills of lading and tangible
22 bills of lading. This section does not prohibit electronic data messages about goods in transit because these
23 electronic data messages are not the issued bill of lading. Electronic data messages contain information for the
24 carrier's management and handling of the cargo but this information for the carrier's use is not the issued bill of
25 lading.

26
27 **Cross Reference:** Section 7-103, 7-303 and 7-106.

28 **Definitional Cross References:**

29 "Bailee". Section 7-102.

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

31 "Delivery". Section 1-201.

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

33 "Duly negotiate". Section 7-501.

34 "Good faith". Section 1-201.

35 "Goods". Section 7-102.

36 "Holder". Section 1-201.

37 "Issuer". Section 7-102.

38 "Person". Section 1-201.

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

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

41
42
43 (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier ,
44 at the request of the consignor, may procure the bill to be issued at destination or at any other

1 place designated in the request.

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

6 **PRELIMINARY COMMENT**

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

9
10 **Changes:** To accommodate electronic bills of lading and for style.

11
12 **Purposes:**

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

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

31
32 **Cross Reference:** Section 7-105.

33
34 **Definitional Cross References:**

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

36 "Consignor". Section 7-102.

37 "Goods". Section 7-102.

38 "Issuer". Section 7-102.

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

40
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.

1 **PRELIMINARY COMMENT**

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

3 **Changes:** None

4 **Purposes:**

5 An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not
6 relieve the issuer of his liability on the document as originally executed. This section applies to both tangible and
7 electronic bills of lading, applying the same rule to both types of bills of lading. The control concept of Section 7-
8 106 requires that any changes to the electronic document of title be readily identifiable as authorized or
9 unauthorized. Section 7-306 should be compared to Section 7-208 where a different rule applies to the unauthorized
10 filling in of a blank for tangible warehouse receipts.

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

12 **Definitional Cross References:**

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

14 "Issuer". Section 7-102.

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

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

23 (b) A lien for charges and expenses under subsection (a) on goods that the carrier was
24 required by law to receive for transportation is effective against the consignor or any person
25 entitled to the goods unless the carrier had notice that the consignor lacked authority to subject
26 the goods to those charges and expenses. Any other lien under subsection (a) is effective against
27 the consignor and any person that permitted the bailor to have control or possession of the goods

1 unless the carrier had notice that the bailor lacked authority.

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

4 PRELIMINARY COMMENT

5
6 **Prior Uniform Statutory Provision:** Former Section 7-307.

7
8 **Changes:** Expanded to cover proceeds of the goods transported.

9 10 **Purposes:**

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

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

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

34 35 **Cross References:**

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

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

38 39 **Definitional Cross References:**

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

41 "Carrier". Section 7-102.

42 "Consignor". Section 7-102.

43 "Delivery". Section 1-201.

44 "Goods". Section 7-102.

45 "Person". Section 1-201.

46 "Purchaser". Section 1-201.

47 "Value". Section 1-204.

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

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

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

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

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

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

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

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-308.

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

Purposes:

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

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. [7-102]

"Goods". Section 7-102.

"Notification". Section 1-202.

"Notifies". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF

1 **CARRIER'S LIABILITY.**

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

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

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

14 **PRELIMINARY COMMENT**

15
16 **Prior Uniform Statutory Provision:** Former Section 7-309.

17
18 **Changes:** References to tariffs eliminated because of deregulation and for style.

19
20 **Purposes:**

21
22 1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract
23 should be able to limit the amount of damages for breach of that contract including breach of the duty to take
24 reasonable care of the goods. Whether a term limiting liability for damages is enforceable is determined by contract
25 law principles. The parties cannot disclaim by contract the carrier's obligation of care. Section 1-302.

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

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

1 disclaimer of responsibility for undeclared articles of extraordinary value.

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

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

8
9 **Cross Reference:** Sections 1-302, 7-103, 7-204, 7-403.

10
11 **Definitional Cross References:**

12 "Action". Section 1-201.

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

14 "Carrier". Section 7-102.

15 "Consignor". Section 7-102.

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

17 "Goods". Section 7-102.

18 "Value". Section 1-204.

19
20 **PART 4**

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

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

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

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

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

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

32 **PRELIMINARY COMMENT**

33
34 **Prior Uniform Statutory Provision:** Former Section 7-401.
35

Changes: Changes for style only.

Purposes:

The bailee's liability on 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 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 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. See Sections 7-103.

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

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-402.

Changes: Changes to accommodate electronic documents.

Purposes:

1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. But parts of a tangible bill lawfully

1 issued in a set of parts are not "overissue" (Section 7-304). Of course, if the issuer has clearly indicated that a
2 document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the
3 original, the issuer is not liable for preparing and delivering such a duplicate copy.

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

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

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

21 **Cross References:**

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

23 Point 3: Section 7-503.

25 **Definitional Cross References:**

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

27 "Conspicuous". Section 1-201.

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

29 "Fungible goods." Section 1-201.

30 "Goods". Section 7-102.

31 "Issuer". Section 7-102.

32 "Right". Section 1-201.

33 **SECTION 7-403. OBLIGATION OF WAREHOUSE OR CARRIER TO** 34 **DELIVER; EXCUSE.**

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

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

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

liable;

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

or on a warehouse's lawful termination of storage;

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

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

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

(7) any other lawful excuse.

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

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

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-403.

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

Purposes:

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

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

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

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

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

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

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

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

Cross References:

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

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

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

Point 5: Section 7-503(1).

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

Definitional Cross References:

"Bailee". Section 7-102.

"Conspicuous". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.
"Duly negotiate". Section 7-501.
"Goods". Section 7-102.
"Lessor". Section 2A-103.
"Person". Section 1-201.
"Receipt of goods". Section 2-103.
"Right". Section 1-201.
"Terms". Section 1-201.
"Warehouse". Section 7-102.

SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT 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 did not have 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.

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-404.

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

Purposes:

This section uses the test of good faith, as defined in Section 1-201 [7-102], to continue the policy of former Section 7-404. Good faith now means "honesty in fact and the observance of reasonable commercial standards of fair dealing." The section states explicitly 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 that in good faith perform obligations that they have assumed and that 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 interpleader or other dispute resolution process. See 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.

1 "Good faith". Section 1-201 [7-102].
2 "Goods". Section 7-102.
3 "Person". Section 1-201.
4 "Receipt of goods". Section 2-103.
5 "Term". Section 1-201.

6 **PART 5**

7 **WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND** 8 **TRANSFER**

9 **SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE** 10 **NEGOTIATION.**

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

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

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

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

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

22 (5) A document is duly negotiated if it is negotiated in the manner stated in this
23 subsection to a holder that purchases it in good faith without notice of any defense against or
24 claim to it on the part of any person and for value, unless it is established that the negotiation is

1 not in the regular course of business or financing or involves receiving the document in
2 settlement or payment of a monetary obligation.

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

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

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

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

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

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

20 **PRELIMINARY COMMENT**

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

22 **Changes:** To accommodate negotiable electronic documents of title.

23 **Purpose:**

1 1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise remains
2 unchanged in substance from the rules in former Section 7-501. Subsection (b) is new and applies to negotiable
3 electronic documents of title. Delivery of a negotiable electronic document is through voluntary transfer of control.
4 Section 1-201 definition of "delivery." The control concept as applied to negotiable electronic documents of title is
5 the substitute for both possession and indorsement as applied to negotiable tangible documents of title. Section 7-
6 106.

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

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

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

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

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

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

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

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

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

50
51 **Cross References:** Sections 1-307, 7-502 and 7-503.
52

Definitional Cross References:

"Bearer". Section 1-201.
"Control". Section 7-106.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Good faith". Section 1-201 [7-102].
"Holder". Section 1-201.
"Notice". Section 1-202.
"Person". Section 1-201.
"Purchase". Section 1-201.
"Rights". Section 1-201.
"Term". Section 1-201.
"Value". Section 1-204.

SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.

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

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

(b) Subject to Section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by 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.

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-502.

Changes: Style changes only.

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 (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 (a)(4) of the bailee's direct obligation to the holder precludes the defense 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 document. 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(b) and Comment.

4. Subsection (b) continues the law 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 (a), but it has been included since such explicit reference was provided under former Section 7-502 to preserve the right of a purchaser by due negotiation. The listing is not exhaustive. 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.

"Control". Section 7-106.

"Delivery". Section 1-201.

"Delivery order". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Rights". Section 1-201.

1 "Term". Section 1-201.

2 "Warehouse receipt". Section 1-201.

3 **SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN**
4 **CASES.**

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

7 (1) deliver or entrust the goods or any document covering the goods to the bailor
8 or the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to
9 obtain delivery under Section 7-403; or with power of disposition under Section 2-403, 2A-
10 304(2), 2A-305(2), or 9-320 or other statute or rule of law; or

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

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

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

20 **PRELIMINARY COMMENT**

21 **Prior Uniform Statutory Provision:** Former Section 7-503.

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

23 **Purposes:**
24
25

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

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in its duty to sell for cash, the goods are "entrusted" to the factor "with actual . . . authority . . . to sell" under subsection (a)(1), and if the factor procures a negotiable document of title 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 it simply for safekeeping or storage may be entrusted under circumstances which give the factor "apparent authority to ship, store or sell" under subsection (a)(1), 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. 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 the agent's own order and then proceed to misappropriate 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 (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 (a) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (a)(1) or (2). Thus the rights of a transferee of a non-negotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee "delivers or entrusts" to the "person procuring" the delivery order or "acquiesces" in that person's procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under Section 7-402. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way that the rights of a transferee may be defeated under Section 7-504. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer's rights before notification of the holder's rights. Section 7-504(b)(2). But an accepted delivery order has the same effect as a document issued by the bailee.

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

Cross References:

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

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

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

Definitional Cross References:

"Bill of lading". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Delivery order". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Person". Section 1-201.

"Right". Section 1-201.

"Warehouse receipt". Section 1-201.

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

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

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

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

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

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

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

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee

1 defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary
2 course of business or a lessee in ordinary course of business and in any event defeats the
3 consignee's rights against the bailee.

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

8 PRELIMINARY COMMENT

9 **Prior Uniform Statutory Provision:** Former Section 7-504.

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

11 **Purposes:**

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

18 A necessary part of the price for the protection of regular dealings with negotiable documents of title is an
19 insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document
20 or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a
21 requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the
22 anomalous position of having less rights, in part, than if the purchaser had purchased the goods themselves. True,
23 the purchaser's rights are not subject to defeat by attachment of the goods or surrender of them to the purchaser's
24 transferor (contrast subsection (b)); but on the other hand, the purchaser cannot acquire enforceable rights to control
25 or receive the goods over the bailee's objection merely by giving notice to the bailee. Similarly, a consignee who
26 makes payment to its consignor against a straight bill of lading can thereby acquire the position of a good faith
27 purchaser of goods under provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment
28 made in good faith against an unendorsed order bill would not have such effect. The appropriate remedy of a
29 purchaser in such a situation is to regularize its status by compelling indorsement of the document (see Section
30 7-506).

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

38 3. Subsection (c) is in part a reiteration of the carrier's immunity from liability if it honors instructions of the
39 consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a

1 buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of
2 standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under
3 pre-Code passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no consideration
4 of commercial policy supports this involvement of an innocent third party in the default of the manufacturer on his
5 contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in
6 accordance with this subsection. The same result should obtain if the substituted consignee is a lessee in ordinary
7 course. The extent of the lessee's interest in the goods is less than a buyer's interest in the goods. However, as
8 against the first consignee and the lessee in ordinary course as the substituted consignee, the lessee's rights in the
9 goods as granted under the lease are superior to the first consignee's rights.

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

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

14 **Cross References:**

15 Point 1: Sections 2-403 and 7-506.

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

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

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

19 Point 5: Section 1-202.

20 **Definitional Cross References:**

21 "Bailee". Section 7-102.

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

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

24 "Consignee". Section 7-102.

25 "Consignor". Section 7-102.

26 "Creditor". Section 1-201.

27 "Delivery". Section 1-201.

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

29 "Duly negotiate". Section 7-501.

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

31 "Goods". Section 7-102.

32 "Honor". Section 1-201.

33 "Lessee in ordinary course". Section 2A-103.

34 "Notification". Section 1-202.

35 "Purchaser". Section 1-201.

36 "Rights". Section 1-201.

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

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

40 **PRELIMINARY COMMENT**

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

42 **Changes:** Limited to tangible documents of title.

Purposes:

This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. 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(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: Sections 7-106 and 7-502.

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Party". Section 1-201.

SECTION 7-506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-506.

Changes: Limited to tangible documents of title.

Purposes:

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

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

Cross References:

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

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

Definitional Cross References:

"Document of title". Section 1-201.

"Rights". Section 1-201.

SECTION 7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF

DOCUMENT OF TITLE. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 7-508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

(1) the document is genuine;

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

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-507.

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

Purposes:

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

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

Cross References:

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

Point 2: Section 7-508.

Definitional Cross References:

"Delivery". Section 1-201.

"Document of title". Section 1-201.
"Genuine". Section 1-201.
"Goods". Section 7-102.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Value". Section 1-204.

SECTION 7-508. WARRANTIES OF COLLECTING BANK AS TO

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provision: Former Section 7-508.

Changes: Changes for style only.

Purposes:

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.
2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See Section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7-507.
3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5. On the meaning of draft, see Section 4-104 and Section 5-103, comment 11.

Cross References:

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

Definitional Cross References:

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

SECTION 7-509. ADEQUATE COMPLIANCE WITH COMMERCIAL

CONTRACT. Whether a document of title is adequate to fulfill the obligations of a contract for

1 sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or
2 5.

3 **PRELIMINARY COMMENT**

4 **Prior Uniform Statutory Provision:** Former Section 7-509.

5 **Changes:** To reference Article 2A.

6 **Purposes:**

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

9 **Cross References:** Articles 2, 2A and 5.

10 **Definitional Cross References:**

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

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

13 "Lease". Section 2A-103.

14 **PART 6**

15 **WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS**
16 **PROVISIONS**

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

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

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

Preliminary Comment

Prior Uniform Statutory Provision: Former Section 7-601.

Changes: To accommodate electronic documents; to provide flexibility to courts similar to the flexibility in Section 3-309; to update to the modern era of deregulation; and for style.

Purposes:

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

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

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

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

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

Cross References:

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

Point 2: Section 7-105.

Point 3: Section 7-403.

Point 4: Section 7-403.
Point 5: Sections 7-209 and 7-307.

Definitional Cross References:

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

SECTION 7-602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE

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

PRELIMINARY COMMENT

Prior Uniform Statutory Provisions: Former Section 7-602.

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

Purposes:

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

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

Cross Reference:

Sections 7-106 and 7-503.

Definitional Cross References:

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Notice". Section 1-202.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Value". Section 1-204.

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

person claims title to 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 for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

PRELIMINARY COMMENT

Prior Uniform Statutory Provisions: Former Section 7-603.

Changes: Changes for style only.

Purposes:

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 the bailee. 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, state or federal interpleader statutes or rules 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.

Definitional Cross References:

"Action". Section 1-201.

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

1 "Person". Section 1-201.
2 "Reasonable time". Section 1-205.

3 **PART 7**

4 **TRANSITION PROVISIONS**

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

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

8 **PRELIMINARY COMMENT**

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

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

19 **PRELIMINARY COMMENT**

20 This Act will apply prospectively only to documents of title issued or bailments that arise after the effective
21 date of the Act.
22

23 **SECTION 7-704. SAVINGS CLAUSE.** A document of title issued or a bailment that
24 arises before the effective date of this [Act] and the rights, obligations, and interests flowing from
25 that document or bailment are governed by any statute or other rule amended or repealed by this
26 [Act] as if amendment or repeal had not occurred and may be terminated, completed,
27 consummated, or enforced under that statute or other rule.

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PRELIMINARY COMMENT

This Act will apply prospectively only to documents of title issued or bailments that arise after the effective date of the Act. To the extent that issues arise based upon documents of title or rights or obligations that arise prior to the effective date of this Act, prior law will apply to resolve those issues.

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

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

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

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

13 * * * *

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

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

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

8 * * * *

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

14 “Holder” means:

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

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

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

20 * * * *

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

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

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

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

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

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

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

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

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

1 organization to communicate information unless such communication is part of the individual's
2 his regular duties or the individual ~~unless he~~ has reason to know of the transaction and that the
3 transaction would be materially affected by the information.

4 * * * *

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

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

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

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

18 * * * *

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

21 OFFICIAL COMMENT

22 * * * *

23 5. "Bearer". From Section 191, Uniform Negotiable Instruments Law. The prior definition has been

1 broadened. The term bearer applies to negotiable documents of title and has been broadened to include a person in
2 control of an electronic negotiable document of title. Control in the context of an electronic document of title is
3 defined in Article 7 (Section 7-106).

4 6. "Bill of Lading". See similar definitions in Section 1, Uniform Bills of Lading Act. The definition has
5 been enlarged to include freight forwarders' bills and bills issued by contract carriers as well as those issued by
6 common carriers. The definition of airbill is new. A bill of lading is one type of document of title as defined in
7 subsection (15). This definition should be read in conjunction with the definition of carrier in Article 7 (Section 7-
8 102).

9 * * * *

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

19 * * * *

20 14. "Delivery". Section 76, Uniform Sales Act, Section 191, Uniform Negotiable Instruments Law, Section
21 58, Uniform Warehouse Receipts Act and Section 53, Uniform Bills of Lading Act. The definition has been revised
22 to accommodate electronic documents of title. Control in the context of an electronic document of title is defined in
23 Article 7 (Section 7-106).

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

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

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

51 A document of title may be either tangible or electronic. Tangible documents of title should be construed to
52 mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic

1 medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include
2 electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to
3 reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control for electronic
4 documents of title is defined in Article 7 (Section 7-106).

5 * * * *

6 19. "Good faith". See Section 76(2), Uniform Sales Act; Section 58(2), Uniform Warehouse Receipts Act;
7 Section 53(2), Uniform Bills of Lading Act; Section 22(2), Uniform Stock Transfer Act. "Good faith", whenever it
8 is used in the Code, means at least what is here stated. In certain Articles, by specific provision, additional
9 requirements are made applicable. See, e.g., Secs. 2-103(1)(b), ~~7-404~~. To illustrate, in the Article on Sales, Section
10 2-103, good faith is expressly defined as including in the case of a merchant observance of reasonable commercial
11 standards of fair dealing in the trade, so that throughout that Article wherever a merchant appears in the case an
12 inquiry into his observance of such standards is necessary to determine his good faith.

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

16 * * * *

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

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

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

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

33 * * * *

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

36 * * * *

37 45. "Warehouse receipt". See Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts
38 Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods
39 are different persons. The definition makes clear that the receipt must qualify as a document of title under subsection
40 (15).

41 **ALTERNATIVE B**

42
43 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is enacting*
44 *at the same time as this Act the provisions of Revised Article 1 as approved in 2001 .*

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

46 * * *

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

3 * * *

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

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

10 * * *

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

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

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

5 * * *

6 (21) "Holder" means:

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

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

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

12 * * *

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

15 **OFFICIAL COMMENT**

16 5. "Bearer". Unchanged, except in one respect, from former section 1-201, which was derived from Section
17 191, Uniform Negotiable Instruments Law. The term bearer applies to negotiable documents of title and has been
18 broadened to include a person in control of an electronic negotiable document of title. Control in the context of an
19 electronic document of title is defined in Article 7 (Section 7-106).

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

23 * * * *

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

28 16. "Document of title". ~~Unchanged~~ Derived from former Section 1-201, which was derived from Section
29 76, Uniform Sales Act. This definition makes explicit ~~Thus, by making it explicit~~ that the obligation or designation
30 of a third party as "bailee" is essential to a document of title; ~~this definition and~~ clearly rejects any such result as
31 obtained in *Hixson v. Ward*, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of
32 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 Draft Instrument on Transport Law. 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 kind of interim certificate issued by ~~steamship~~ shipping companies upon delivery of the goods at the dock, entitling a designated person ~~to have issued to him at the company's office~~ to be issued a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this Section regardless of the name given to the instrument.

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

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

* * * *

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

* * * *

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

Amendments to Uniform Commercial Code Article 2

ALTERNATIVE A

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

SECTION 2-103. DEFINITIONS AND INDEX OF DEFINITIONS.

* * * *

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

"Check". Section 3-104.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Consumer Goods". Section 9-102.

"Control". Section 7-106.

"Dishonor". Section 3-507.

"Draft". Section 3-104.

OFFICIAL COMMENT

* * * *

2. "Receipt" must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to "deliver" even though the buyer may never "receive" the goods. Delivery with respect to documents of title is defined in Article 1 and requires transfer of physical delivery of a tangible document of title and transfer of control of an electronic document of title. Otherwise the many divergent incidents of delivery are handled incident by incident.

SECTION 2-104. DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING AGENCY".

* * * *

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

1 buyer in respect to the goods (Section 2-707).

2 * * * *

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

4 **OFFICIAL COMMENT**

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

13 **SECTION 2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT;**

14 **AUTHORITY TO SHIP UNDER RESERVATION.**

15 Unless otherwise agreed

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

18 (b) if the seller is authorized to send the goods he may ship them under reservation, and
19 may tender the documents of title, but the buyer may inspect the goods after their arrival before
20 payment is due unless such inspection is inconsistent with the terms of the contract (Section
21 2-513); and

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

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

OFFICIAL COMMENT

* * * *

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

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

* * * *

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

OFFICIAL COMMENT

* * * *

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

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

* * * *

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

* * * *

SECTION 2-323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS

1 **SHIPMENT; "OVERSEAS".**

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

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

10 (a) due tender of a single part is acceptable within the provisions of this Article on
11 cure of improper delivery (subsection (1) of Section 2-508); and

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

15 * * * *

16 **OFFICIAL COMMENT**

17 * * * *

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

24 * * * *

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

26 **APPLICATION OF THIS SECTION.** Each provision of this Article with regard to the rights,

obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

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

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

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

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

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

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

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

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

OFFICIAL COMMENT

* * * *

4. The factual situations in subsections (2) and (3) upon which passage of title turn actually base the test upon the time when the seller has finally committed himself in regard to specific goods. Thus in a "shipment" contract he commits himself by the act of making the shipment. If shipment is not contemplated subsection (3) turns on the seller's final commitment, i.e. the delivery of documents or the making of the contract. As to delivery of an electronic document of title, see definition of delivery in Article 1, Section 1-201. This Article does not state a rule as to the place of title passage as to goods covered by an electronic document of title.

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

OFFICIAL COMMENT

* * * *

2. The many particular situations in which a buyer in ordinary course of business from a dealer has been protected against reservation of property or other hidden interest are gathered by subsections (2)-(4) into a single principle protecting persons who buy in ordinary course out of inventory. Consignors have no reason to complain, nor have lenders who hold a security interest in the inventory, since the very purpose of goods in inventory is to be turned into cash by sale.

The principle is extended in subsection (3) to fit with the abolition of the old law of "cash sale" by subsection (1)(c). It is also freed from any technicalities depending on the extended law of larceny; such extension of the concept of theft to include trick, particular types of fraud, and the like is for the purpose of helping conviction of the offender; it has no proper application to the long-standing policy of civil protection of buyers from persons guilty of such trick or fraud. Finally, the policy is extended, in the interest of simplicity and sense, to any entrusting by a bailor; this is in consonance with the explicit provisions of Section 7-205 on the powers of a warehouseman who is also in the business of buying and selling fungible goods of the kind he ~~warehouses~~ stores. As to entrusting by a secured party, subsection (2) is limited by the more specific provisions of Section 9-320, which deny protection to a person buying farm products from a person engaged in farming operations.

* * * *

1 **SECTION 2-503. MANNER OF SELLER’S TENDER OF DELIVERY.**

2 * * * *

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

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

8 (b) tender to the buyer of a non-negotiable document of title or of a ~~written~~
9 ~~direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably
10 objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the
11 buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the
12 goods and of any failure by the bailee to honor the non-negotiable document of title or to obey
13 the direction remains on the seller until the buyer has had a reasonable time to present the
14 document or direction, and a refusal by the bailee to honor the document or to obey the direction
15 defeats the tender.

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

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

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

21 **OFFICIAL COMMENT**

22 1. The major general rules governing the manner of proper or due tender of delivery are gathered in this
23 section. The term "tender" is used in this Article in two different senses. In one sense it refers to "due tender" which

1 contemplates an offer coupled with a present ability to fulfill all the conditions resting on the tendering party and
2 must be followed by actual performance if the other party shows himself ready to proceed. Unless the context
3 unmistakably indicates otherwise this is the meaning of "tender" in this Article and the occasional addition of the
4 word "due" is only for clarity and emphasis. At other times it is used to refer to an offer of goods or documents
5 under a contract as if in fulfillment of its conditions even though there is a defect when measured against the contract
6 obligation. Used in either sense, however, "tender" connotes such performance by the tendering party as puts the
7 other party in default if he fails to proceed in some manner. These concepts of tender would apply to tender of either
8 tangible or electronic documents of title.

9 * * * *

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

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

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

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

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

28 (b) a non-negotiable bill of lading to himself or his nominee reserves possession
29 of the goods as security but except in a case of conditional delivery (subsection (2) of Section
30 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest
31 even though the seller retains possession or control of the bill of lading.

32 (2) When shipment by the seller with reservation of a security interest is in violation of
33 the contract for sale it constitutes an improper contract for transportation within the preceding
34 section but impairs neither the rights given to the buyer by shipment and identification of the

goods to the contract nor the seller's powers as a holder of a negotiable document of title.

OFFICIAL COMMENT

* * * *

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

SECTION 2-506. RIGHTS OF FINANCING AGENCY.

* * * *

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

OFFICIAL COMMENT

* * * *

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

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

* * * *

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

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

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

(c) after his receipt of possession or control of a non-negotiable document of title

1 or other ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

2 * * * *

3 OFFICIAL COMMENT

4 * * * *

5 4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal
6 from the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer
7 of risk. Due delivery of a negotiable document of title covering the goods or acknowledgment by the bailee that he
8 holds for the buyer completes the "delivery" and passes the risk. See definition of delivery in Article 1, Section 1-
9 201 and the definition of control in Article 7, Section 7-106.

10 * * * *

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

12 OFFICIAL COMMENT

13 * * * *

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

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

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

27 * * * *

28
29 SECTION 2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO
30 PARTICULARIZE.

31 * * * *

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

34 OFFICIAL COMMENT

35 * * * *

36 4. Subsection (2) applies to the particular case of documents the same principle which the section on effects
37 of acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" of objections

1 rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods
2 and partly because defects in documents which are not taken as grounds for rejection are generally minor ones. The
3 only defects concerned in the present subsection are defects in the documents which are apparent. ~~on their face.~~ This
4 rule applies to both tangible and electronic documents of title. Where payment is required against the documents
5 they must be inspected before payment, and the payment then constitutes acceptance of the documents. Under the
6 section dealing with this problem, such acceptance of the documents does not constitute an acceptance of the goods
7 or impair any options or remedies of the buyer for their improper delivery. Where the documents are delivered
8 without requiring such contemporary action as payment from the buyer, the reason of the next section on what
9 constitutes acceptance of goods, applies. Their acceptance by non-objection is therefore postponed until after a
10 reasonable time for their inspection. In either situation, however, the buyer "waives" only ~~what is~~ the defects
11 apparent ~~on the face of~~ in the documents.

12 **SECTION 2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR**
13 **OTHERWISE.**

14 * * * *

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

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

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

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

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

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

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

28 (c) If a negotiable document of title has been issued for goods the bailee is not

1 obliged to obey a notification to stop until surrender of possession or control of the document.

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

4 **OFFICIAL COMMENT**

5 * * * *

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

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

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

13 * * * *

14 **ALTERNATIVE B**

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

20 **SECTION 2-103. DEFINITIONS AND INDEX OF DEFINITIONS.**

21 * * * *

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

23 "Check". Section 3–104(f).

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

25 "Control". Section 7-106.

26 "Dishonor". Section 3–502.

27 "Draft". Section 3–104(e).

1 “Injunction against honor”. Section 5-109(b).

2 “Letter of credit”. Section 5-102(a)(10).

3 * * * *

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

6 * * * *

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

15 * * * *

16 **SECTION 2–310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT**
17 **AUTHORITY TO SHIP UNDER RESERVATION.**

18 Unless otherwise agreed

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

21 (b) if the seller is required or authorized to send the goods the seller may ship
22 them under reservation, and may tender the documents of title, but the buyer may inspect the

1 goods after their arrival before payment is due unless such inspection is inconsistent with the
2 terms of the contract (Section 2–513); and

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

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

12 **SECTION 2–401. PASSING OF TITLE; RESERVATION FOR SECURITY;**
13 **LIMITED APPLICATION OF THIS SECTION.**

14 * * * *

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

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

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

22 * * * *

1 **SECTION 2-503. MANNER OF SELLER’S TENDER OF DELIVERY.**

2 * * * *

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

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

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

8 **SECTION 2-505. SELLER’S SHIPMENT UNDER RESERVATION.**

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

10 (a) the seller’s procurement of a negotiable bill of lading to the seller’s own order
11 or otherwise reserves in the seller a security interest in the goods. The seller’s procurement of
12 the bill to the order of a financing agency or of the buyer indicates in addition only the seller's
13 expectation of transferring that interest to the person named.

14 (b) a non-negotiable bill of lading to the seller or the seller’s nominee reserves
15 possession of the goods as security but except in a case when a seller has a right to reclaim the
16 goods under subsection (2) of Section 2-507 a non-negotiable bill of lading naming the buyer as
17 consignee reserves no security interest even though the seller retains possession or control of the
18 bill of lading.

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

1 **SECTION 2-506. RIGHTS OF FINANCING AGENCY.**

2 * * * *

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

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

8 * * * *

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

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

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

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

17 * * * *

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

20 * * * *

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

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

3 * * * *

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

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

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

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

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

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

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

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

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

21 **Amendments to Uniform Commercial Code Article 2A**

22 **ALTERNATIVE A**

1 *Legislative Note: These amendments should be used if the jurisdiction has not yet adopted*
2 *Amended Article 2A as approved in 2003.*

3 **SECTION 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

5 (a) "Buyer in ordinary course of business" means a person who in good faith and
6 without knowledge that the sale to him [or her] is in violation of the ownership rights or security
7 interest or leasehold interest of a third party in the goods, buys in ordinary course from a person
8 in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be
9 for cash or by exchange of other property or on secured or unsecured credit and includes
10 ~~receiving~~ acquiring goods or documents of title under a pre-existing contract for sale but does
11 not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

12 * * * *

13 (o) "Lessee in ordinary course of business" means a person who in good faith and
14 without knowledge that the lease to him [or her] is in violation of the ownership rights or security
15 interest or leasehold interest of a third party in the goods leases in ordinary course from a person
16 in the business of selling or leasing goods of that kind but does not include a pawnbroker.
17 "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and
18 includes ~~receiving~~ acquiring goods or documents of title under a pre-existing lease contract but
19 does not include a transfer in bulk or as security for or in total or partial satisfaction of a money
20 debt.

21 * * * *

22 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

1 * * * *

2 (2) A lessee's failure to reserve rights when paying rent or other consideration against
3 documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the
4 documents.

5 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR**
6 **OTHERWISE.**

7 * * * *

8 (2) In pursuing its remedies under subsection (1), the lessor may stop delivery until
9 (a) receipt of the goods by the lessee;
10 (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that
11 the bailee holds the goods for the lessee; or
12 (c) such an acknowledgment to the lessee by a carrier via reshipment or as a
13 warehouseman.

14 * * * *

15 **ALTERNATIVE B**

16 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is*
17 *enacting at the same time as this Act the provisions of Amended Article 2A as approved in 2003.*

18 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

19 * * * *

20 (2) A lessee's failure to reserve rights when paying rent or other consideration
21 against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the
22 documents.

1 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR**
2 **OTHERWISE.**

3 * * * *

4 (2) In pursuing its remedies under subsection (1), the lessor may stop delivery
5 until

6 (a) receipt of the goods by the lessee;

7 (b) acknowledgment to the lessee by any bailee of the goods, except a
8 carrier, that the bailee holds the goods for the lessee; or

9 (c) such an acknowledgment to the lessee by a carrier via reshipment or as
10 a warehouseman.

11 * * * *

12 **Amendments to Uniform Commercial Code Article 4**

13 **SECTION 4-104. DEFINITIONS AND INDEX OF DEFINITIONS.**

14 * * * *

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

16 "Acceptance" Section 3-409

17 "Alteration" Section 3-407

18 "Cashier's check" Section 3-104

19 "Certificate of deposit" Section 3-104

20 "Certified check" Section 3-409

21 "Check" Section 3-104

22 "Control" Section 7-106

1	"Good faith"	Section 3-103
2	"Holder in due course"	Section 3-302
3	"Instrument"	Section 3-104
4	"Notice of dishonor"	Section 3-503
5	"Order"	Section 3-103
6	"Ordinary care"	Section 3-103
7	"Person entitled to enforce"	Section 3-301
8	"Presentment"	Section 3-501
9	"Promise"	Section 3-103
10	"Prove"	Section 3-103
11	"Teller's check"	Section 3-104
12	"Unauthorized signature"	Section 3-403

13 **OFFICIAL COMMENT**

14 * * * *

15 5. Paragraph (a)(6): "Documentary draft" applies even though the documents do not accompany the draft
16 but are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be
17 either in electronic or tangible form. See Article 5, Section 5-102, Comment 2 and Article 1, Section 1-201
18 (definition of "document of title").

19 * * * *

20 **SECTION 4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,**
21 **ACCOMPANYING DOCUMENTS AND PROCEEDS.**

22 (a) A collecting bank has a security interest in an item and any accompanying documents
23 or the proceeds of either:

24 (1) in case of an item deposited in an account, to the extent to which credit given
25 for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (Section 9-203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

SECTION 4-501. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

* * * *

OFFICIAL COMMENT

1 This section states the duty of a bank handling a documentary draft for a customer. "Documentary draft" is
2 defined in Section 4-104. The duty stated exists even if the bank has bought the draft. This is because to the
3 customer the draft normally represents an underlying commercial transaction, and if that is not going through as
4 planned the customer should know it promptly. An electronic document of title may be presented through allowing
5 access to the document or delivery of the document. Article 1, Section 1-201 (definition of "delivery").

6 **SECTION 4-503. RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS**
7 **AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF**
8 **NEED.**

9 * * * *

10 **OFFICIAL COMMENT**

11 1. This section states the rules governing, in the absence of instructions, the duty of the presenting bank in
12 case either of honor or of dishonor of a documentary draft. The section should be read in connection with Section
13 2-514 on when documents are deliverable on acceptance, when on payment. In the case of a dishonor of the draft,
14 the bank, subject to Section 4-504, must return possession or control of the documents to its principal.

15 2. If the draft is drawn under a letter of credit, Article 5 controls. See Sections 5-109 through 5-114.

16 **Amendments to Uniform Commercial Code Article 5**

17 **SECTION 5-102. DEFINITIONS.**

18 * * * *

19 **OFFICIAL COMMENT**

20 * * * *

21 2. The definition of "document" contemplates and facilitates the growing recognition of electronic and
22 other nonpaper media as "documents," however, for the time being, data in those media constitute documents only in
23 certain circumstances. For example, a facsimile received by an issuer would be a document only if the letter of
24 credit explicitly permitted it, if the standard practice authorized it and the letter did not prohibit it, or the agreement
25 of the issuer and beneficiary permitted it. The fact that data transmitted in a nonpaper (unwritten) medium can be
26 recorded on paper by a recipient's computer printer, facsimile machine, or the like does not under current practice
27 render the data so transmitted a "document." A facsimile or S.W.I.F.T. message received directly by the issuer is in
28 an electronic medium when it crosses the boundary of the issuer's place of business. One wishing to make a
29 presentation by facsimile (an electronic medium) will have to procure the explicit agreement of the issuer (assuming
30 that the standard practice does not authorize it). Article 5 contemplates that electronic documents may be presented
31 under a letter of credit and the provisions of this Article should be read to apply to electronic documents as well as
32 tangible documents. An electronic document of title is delivered through the voluntary transfer of control. Article 1,
33 Section 1-201 (definition of "delivery"). See Article 7, Section 7-106 on control of an electronic document. Where
34 electronic transmissions are authorized neither by the letter of credit nor by the practice, the beneficiary may transmit
35 the data electronically to its agent who may be able to put it in written form and make a conforming presentation. Cf.
36 Article 7, Section 7-105 on reissuing an electronic document in a tangible medium.

37 * * * *

1 **SECTION 5-108. ISSUER'S RIGHTS AND OBLIGATIONS.**

2 * * * *

3 **OFFICIAL COMMENT**

4 * * * *

5 2. Section 5-108(a) balances the need of the issuer for time to examine the documents against the
6 possibility that the examiner (at the urging of the applicant or for fear that it will not be reimbursed) will take
7 excessive time to search for defects. What is a "reasonable time" is not extended to accommodate an issuer's
8 procuring a waiver from the applicant. See Article 14c of the UCP.

9 Under both the UCC and the UCP the issuer has a reasonable time to honor or give notice. The outside
10 limit of that time is measured in business days under the UCC and in banking days under the UCP, a difference that
11 will rarely be significant. Neither business nor banking days are defined in Article 5, but a court may find useful
12 analogies in Regulation CC, 12 CFR 229.2, in state law outside of the Uniform Commercial Code, and in Article 4.

13 Examiners must note that the seven-day period is not a safe harbor. The time within which the issuer must
14 give notice is the lesser of a reasonable time or seven business days. Where there are few documents (as, for
15 example, with the mine run standby letter of credit), the reasonable time would be less than seven days. If more than
16 a reasonable time is consumed in examination, no timely notice is possible. What is a "reasonable time" is to be
17 determined by examining the behavior of those in the business of examining documents, mostly banks. Absent prior
18 agreement of the issuer, one could not expect a bank issuer to examine documents while the beneficiary waited in the
19 lobby if the normal practice was to give the documents to a person who had the opportunity to examine those
20 together with many others in an orderly process. That the applicant has not yet paid the issuer or that the applicant's
21 account with the issuer is insufficient to cover the amount of the draft is not a basis for extension of the time period.

22 This section does not preclude the issuer from contacting the applicant during its examination; however, the
23 decision to honor rests with the issuer, and it has no duty to seek a waiver from the applicant or to notify the
24 applicant of receipt of the documents. If the issuer dishonors a conforming presentation, the beneficiary will be
25 entitled to the remedies under Section 5-111, irrespective of the applicant's views.

26 Even though the person to whom presentation is made cannot conduct a reasonable examination of
27 documents within the time after presentation and before the expiration date, presentation establishes the parties'
28 rights. The beneficiary's right to honor or the issuer's right to dishonor arises upon presentation at the place provided
29 in the letter of credit even though it might take the person to whom presentation has been made several days to
30 determine whether honor or dishonor is the proper course. The issuer's time for honor or giving notice of dishonor
31 may be extended or shortened by a term in the letter of credit. The time for the issuer's performance may be
32 otherwise modified or waived in accordance with Section 5-106.

33 The issuer's time to inspect runs from the time of its "receipt of documents." Documents are considered to
34 be received only when they are received at the place specified for presentation by the issuer or other party to whom
35 presentation is made. "Receipt of documents" when documents of title are presented must be read in light of the
36 definition of "delivery" in Article 1, Section 1-201 and the definition of "presentment" in Section 5-102(a)(12).

37 Failure of the issuer to act within the time permitted by subsection (b) constitutes dishonor. Because of the
38 preclusion in subsection (c) and the liability that the issuer may incur under Section 5-111 for wrongful dishonor, the
39 effect of such a silent dishonor may ultimately be the same as though the issuer had honored, i.e., it may owe
40 damages in the amount drawn but unpaid under the letter of credit.

41 * * * *

42 13. The last clause of Section 5-108(i)(5) deals with a special case in which the fraud is not committed by
43 the beneficiary, but is committed by a stranger to the transaction who forges the beneficiary's signature. If the issuer
44 pays against documents on which a required signature of the beneficiary is forged, it remains liable to the true
45 beneficiary. This principal is applicable to both electronic and tangible documents.

46 * * * *

47 **SECTION 5-113. TRANSFER BY OPERATION OF LAW.**

1 * * * *

2 **OFFICIAL COMMENT**

3 This section affirms the result in *Pastor v. Nat. Republic Bank of Chicago*, 76 Ill.2d 139, 390 N.E.2d 894
4 (Ill. 1979) and *Federal Deposit Insurance Co. v. Bank of Boulder*, 911 F.2d 1466 (10th Cir. 1990). Both electronic
5 and tangible documents may be signed.

6 An issuer's requirements for recognition of a successor's status might include presentation of a certificate of
7 merger, a court order appointing a bankruptcy trustee or receiver, a certificate of appointment as bankruptcy trustee,
8 or the like. The issuer is entitled to rely upon such documents which on their face demonstrate that presentation is
9 made by a successor of a beneficiary. It is not obliged to make an independent investigation to determine the fact of
10 succession.

11 **Amendments to Uniform Commercial Code Article 8**

12 **SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS**
13 **AND INTERESTS ARE SECURITIES OF FINANCIAL ASSETS.**

14 * * * *

15 (g) A document of title, as defined in Section 1-201 (15) [16], is not a financial asset
16 unless Section 8-102(a)(9)(iii) applies.

17 **OFFICIAL COMMENT**

18 * * * *

19 8. Subsection (g) allows a document of title to be a financial asset and thus subject to the indirect holding
20 system rules of Part 5 only to the extent that the intermediary and the person entitled under the document agree to do so.
21 This is to prevent the inadvertent application of the Part 5 rules to intermediaries who may hold either electronic or
22 tangible documents of title.

23 **Amendments to Uniform Commercial Code Article 9**

24 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

25 (a) [Article 9 definitions.] In this article:

26 * * * *

27 (30) "Document" means a document of title or a receipt of the type described in
28 Section ~~7-201(2)~~ 7-201(b).

29 * * * *

(b) [Definitions in other articles.] The following definitions in other articles apply to this

article:

"Applicant". Section 5-102.

"Beneficiary". Section 5-102.

"Broker". Section 8-102.

"Certificated security". Section 8-102.

"Check". Section 3-104.

"Clearing corporation". Section 8-102.

"Contract for sale". Section 2-106.

"Control" (with respect to a document of title) Section 7-106.

"Customer". Section 4-104.

"Entitlement holder". Section 8-102.

"Financial asset". Section 8-102.

"Holder in due course". Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right). Section 5-102.

"Issuer" (with respect to a security). Section 8-201.

"Lease". Section 2A-103.

"Lease agreement". Section 2A-103.

"Lease contract". Section 2A-103.

"Leasehold interest". Section 2A-103.

"Lessee". Section 2A-103.

"Lessee in ordinary course of business". Section 2A-103.

"Lessor". Section 2A-103.

"Lessor's residual interest". Section 2A-103.

"Letter of credit". Section 5-102.

"Merchant". Section 2-104.

"Negotiable instrument". Section 3-104.

"Nominated person". Section 5-102.

"Note". Section 3-104.

"Proceeds of a letter of credit". Section 5-114.

"Prove". Section 3-103.

"Sale". Section 2-106.

"Securities account". Section 8-501.

"Securities intermediary". Section 8-102.

"Security". Section 8-102.

"Security certificate". Section 8-102.

"Security entitlement". Section 8-102.

"Uncertificated security". Section 8-102.

OFFICIAL COMMENT

* * * *

16. **"Document."** The definition of "document" ~~is unchanged in substance from the corresponding definitions in former Section 9-105;~~ incorporates both tangible and electronic documents of title. See Section 1-201(15)[16] and Comment 15 [16].

**SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;
PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.**

* * * *

(b) **[Enforceability.]** Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, or electronic documents, and the secured party has control under Section 9-104, 9-105, 9-106, ~~or~~ 9-107, or 7-106 pursuant to the debtor's security agreement.

* * * *

OFFICIAL COMMENT

* * * *

4. Possession, Delivery, or Control Pursuant to Security Agreement. The other alternatives in subsection (b)(3) dispense with the requirement of an authenticated security agreement and provide alternative evidentiary tests. Under paragraph (3)(B), the secured party's possession substitutes for the debtor's authentication under paragraph (3)(A) if the secured party's possession is "pursuant to the debtor's security agreement." That phrase refers to the debtor's agreement to the secured party's possession for the purpose of creating a security interest. The phrase should not be confused with the phrase "debtor has authenticated a security agreement," used in paragraph (3)(A), which contemplates

1 the debtor's authentication of a record. In the unlikely event that possession is obtained without the debtor's agreement,
2 possession would not suffice as a substitute for an authenticated security agreement. However, once the security interest
3 has become enforceable and has attached, it is not impaired by the fact that the secured party's possession is maintained
4 without the agreement of a subsequent debtor (e.g., a transferee). Possession as contemplated by Section 9-313 is
5 possession for purposes of subsection (b)(3)(B), even though it may not constitute possession "pursuant to the debtor's
6 agreement" and consequently might not serve as a substitute for an authenticated security agreement under subsection
7 (b)(3)(A). Subsection (b)(3)(C) provides that delivery of a certificated security to the secured party under Section 8-301
8 pursuant to the debtor's security agreement is sufficient as a substitute for an authenticated security agreement. Similarly,
9 under subsection (b)(3)(D), control of investment property, a deposit account, electronic chattel paper, ~~or~~ a letter-of-
10 credit right, or electronic documents satisfies the evidentiary test if control is pursuant to the debtor's security agreement.
11 * * * *

12 **SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION**
13 **OR CONTROL OF COLLATERAL.**

14 * * * *

15 (c) **[Duties and rights when secured party in possession or control.]** Except as otherwise
16 provided in subsection (d), a secured party having possession of collateral or control of collateral
17 under Section 9-104, 9-105, 9-106, ~~or~~ 9-107, or 7-106:

18 (1) may hold as additional security any proceeds, except money or funds, received
19 from the collateral;

20 (2) shall apply money or funds received from the collateral to reduce the secured
21 obligation, unless remitted to the debtor; and

22 (3) may create a security interest in the collateral.

23 * * * *

24 **SECTION 9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF**
25 **COLLATERAL.**

26 (a) **[Applicability of section.]** This section applies to cases in which there is no outstanding
27 secured obligation and the secured party is not committed to make advances, incur obligations, or
28 otherwise give value.

1 (b) **[Duties of secured party after receiving demand from debtor.]** Within 10 days after
2 receiving an authenticated demand by the debtor:

3 (1) a secured party having control of a deposit account under Section 9- 104(a)(2)
4 shall send to the bank with which the deposit account is maintained an authenticated statement that
5 releases the bank from any further obligation to comply with instructions originated by the secured
6 party;

7 (2) a secured party having control of a deposit account under Section 9- 104(a)(3)
8 shall:

9 (A) pay the debtor the balance on deposit in the deposit account; or

10 (B) transfer the balance on deposit into a deposit account in the debtor's name;

11 (3) a secured party, other than a buyer, having control of electronic chattel paper
12 under Section 9-105 shall:

13 (A) communicate the authoritative copy of the electronic chattel paper to the
14 debtor or its designated custodian;

15 (B) if the debtor designates a custodian that is the designated custodian with
16 which the authoritative copy of the electronic chattel paper is maintained for the secured party,
17 communicate to the custodian an authenticated record releasing the designated custodian from any
18 further obligation to comply with instructions originated by the secured party and instructing the
19 custodian to comply with instructions originated by the debtor; and

20 (C) take appropriate action to enable the debtor or its designated custodian to
21 make copies of or revisions to the authoritative copy which add or change an identified assignee of
22 the authoritative copy without the consent of the secured party;

1 (4) a secured party having control of investment property under Section 8- 106(d)(2)
2 or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the
3 security entitlement or commodity contract is maintained an authenticated record that releases the
4 securities intermediary or commodity intermediary from any further obligation to comply with
5 entitlement orders or directions originated by the secured party;~~and~~

6 (5) a secured party having control of a letter-of-credit right under Section 9-107 shall
7 send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit
8 to the secured party an authenticated release from any further obligation to pay or deliver proceeds
9 of the letter of credit to the secured party; and

10 (6) a secured party having control of an electronic document shall:

11 (A) give control of the electronic document to the debtor or its designated
12 custodian;

13 (B) if the debtor designates a custodian that is the designated custodian with
14 which the authoritative copy of the electronic document is maintained for the secured party,
15 communicate to the custodian an authenticated record releasing the designated custodian from any
16 further obligation to comply with instructions originated by the secured party and instructing the
17 custodian to comply with instructions originated by the debtor; and

18 (C) take appropriate action to enable the debtor or its designated custodian to
19 make copies of or revisions to the authoritative copy which add or change an identified assignee of
20 the authoritative copy without the consent of the secured party.

21 **OFFICIAL COMMENT**

22 * * * *

23 2. **Scope and Purpose.** This section imposes duties on a secured party who has control of a deposit account,

1 electronic chattel paper, investment property, ~~or~~ a letter-of-credit right, or electronic documents of title. The duty to
2 terminate the secured party's control is analogous to the duty to file a termination statement, imposed by Section 9-513.
3 Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not
4 committed to give value. The requirements of this section can be varied by agreement under Section 1-102(3). For
5 example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control
6 more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the
7 collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured
8 party with control to make an early withdrawal of the funds (assuming that were possible) in order to pay them over to
9 the debtor or put them in an account in the debtor's name.

10 * * * *

11 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY** 12 **INTERESTS.**

13 Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine
14 the law governing perfection, the effect of perfection or nonperfection, and the priority of a security
15 interest in collateral:

16 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction,
17 the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and
18 the priority of a security interest in collateral.

19 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs
20 perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest
21 in that collateral.

22 (3) Except as otherwise provided in paragraph (4), while tangible negotiable documents,
23 goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that
24 jurisdiction governs:

25 (A) perfection of a security interest in the goods by filing a fixture filing;

26 (B) perfection of a security interest in timber to be cut; and

27 (C) the effect of perfection or nonperfection and the priority of a nonpossessory

1 security interest in the collateral.

2 (4) The local law of the jurisdiction in which the wellhead or minehead is located governs
3 perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-
4 extracted collateral.

5 **OFFICIAL COMMENT**

6 * * * *

7 **5. Law Governing Perfection: Exceptions.** The general rule is subject to several exceptions. It does not apply
8 to goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property
9 (see Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e.,
10 security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security
11 interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph
12 (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

13 **a. Possessory Security Interests.** Paragraph (2) applies to possessory security interests and provides that
14 perfection is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former
15 Section 9-103(1)(b), except paragraph (2) eliminates the troublesome "last event" test of former law.

16 The distinction between nonpossessory and possessory security interests creates the potential for the same
17 jurisdiction to apply two different choice-of-law rules to determine perfection in the same collateral. For example, were
18 a secured party in possession of an instrument or a tangible document to relinquish possession in reliance on temporary
19 perfection, the applicable law immediately would change from that of the location of the collateral to that of the location
20 of the debtor. The applicability of two different choice-of-law rules for perfection is unlikely to lead to any material
21 practical problems. The perfection rules of one Article 9 jurisdiction are likely to be identical to those of another.
22 Moreover, under paragraph (3), the relative priority of competing security interests in tangible collateral is resolved by
23 reference to the law of the jurisdiction in which the collateral is located, regardless of how the security interests are
24 perfected.

25 * * * *

26 **7. Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable**
27 **Documents, and Tangible Chattel Paper.** Under former Section 9-103, the law of a single jurisdiction governed both
28 questions of perfection and those of priority. This Article generally adopts that approach. See paragraph (1). But the
29 approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a
30 security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If the
31 law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien on
32 goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

33 To address this problem, paragraph (3)(C) divorces questions of perfection from questions of "the effect of
34 perfection or nonperfection and the priority of a security interest." Under paragraph (3)(C), the rights of competing
35 claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located.
36 A similar bifurcation applied to security interests in investment property under former Section 9-103(6). See Section 9-
37 305.

38 Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including
39 fixtures), instruments, money, tangible negotiable documents, and tangible chattel paper. Compare former Section 9-
40 103(1), which applied the law of the location of the collateral to documents, instruments, and "ordinary" (as opposed
41 to "mobile") goods. This Article does not distinguish among types of goods. The ordinary/mobile goods distinction
42 appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to
43 preserve this distinction under the bifurcated approach.

44 Particularly serious confusion may arise when the choice-of-law rules of a given jurisdiction result in each of
45 two competing security interests in the same collateral being governed by a different priority rule. The potential for this
46 confusion existed under former Section 9-103(4) with respect to chattel paper: Perfection by possession was governed

1 by the law of the location of the paper, whereas perfection by filing was governed by the law of the location of the debtor.
2 Consider the mess that would have been created if the language or interpretation of former Section 9-308 were to differ
3 in the two relevant States, or if one of the relevant jurisdictions (e.g., a foreign country) had not adopted Article 9. The
4 potential for confusion could have been exacerbated when a secured party perfected both by taking possession in the
5 State where the collateral is located (State A) and by filing in the State where the debtor is located (State B)--a common
6 practice for some chattel paper financiers. By providing that the law of the jurisdiction in which the collateral is located
7 governs priority, paragraph (3) substantially diminishes this problem.

8 * * * *

9 **SECTION 9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS**
10 **PERFECTED; CONTINUITY OF PERFECTION.**

11 **OFFICIAL COMMENT**

12 * * * *

13 **4. Continuous Perfection.** The following example illustrates the operation of subsection (c):

14 **Example 1:** Debtor, an importer, creates a security interest in goods that it imports and the documents of title
15 that cover the goods. The secured party, Bank, takes possession of a tangible negotiable bill of lading covering certain
16 imported goods and thereby perfects its security interest in the bill of lading and the goods. See Sections 9-313(a), 9-
17 312(c)(1). Bank releases the bill of lading to the debtor for the purpose of procuring the goods from the carrier and
18 selling them. Under Section 9-312(f), Bank continues to have a perfected security interest in the document and goods
19 for 20 days. Bank files a financing statement covering the collateral before the expiration of the 20-day period. Its
20 security interest now continues perfected for as long as the filing is good.

21 If the successive stages of Bank's security interest succeed each other without an intervening gap, the security
22 interest is "perfected continuously," and the date of perfection is when the security interest first became perfected (i.e.,
23 when Bank received possession of the tangible bill of lading). If, however, there is a gap between stages--for example,
24 if Bank does not file until after the expiration of the 20-day period specified in Section 9-312(f) and leaves the collateral
25 in the debtor's possession--then, the chain being broken, the perfection is no longer continuous. The date of perfection
26 would now be the date of filing (after expiration of the 20-day period). Bank's security interest would be vulnerable to
27 any interests arising during the gap period which under Section 9-317 take priority over an unperfected security interest.

28 * * * *

29 **SECTION 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR**
30 **AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO**
31 **WHICH FILING PROVISIONS DO NOT APPLY.**

32 * * * *

33 (b) [Exceptions: filing not necessary.] The filing of a financing statement is not necessary
34 to perfect a security interest:

35 (1) that is perfected under Section 9-308(d), (e), (f), or (g);

- 1 (2) that is perfected under Section 9-309 when it attaches;
- 2 (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);
- 3 (4) in goods in possession of a bailee which is perfected under Section 9- 312(d)(1)
- 4 or (2);
- 5 (5) in certificated securities, documents, goods, or instruments which is perfected
- 6 without filing, control, or possession under Section 9-312(e), (f), or (g);
- 7 (6) in collateral in the secured party's possession under Section 9-313;
- 8 (7) in a certificated security which is perfected by delivery of the security certificate
- 9 to the secured party under Section 9-313;
- 10 (8) in deposit accounts, electronic chattel paper, electronic documents, investment
- 11 property, or letter-of-credit rights which is perfected by control under Section 9-314;
- 12 (9) in proceeds which is perfected under Section 9-315; or
- 13 (10) that is perfected under Section 9-316.

14 * * * *

15 **SECTION 9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER,**

16 **DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS,**

17 **INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND**

18 **MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION**

19 **WITHOUT FILING OR TRANSFER OF POSSESSION.**

20 * * * *

21 (e) [Temporary perfection: new value.] A security interest in certificated securities,

22 negotiable documents, or instruments is perfected without filing or the taking of possession or

1 control for a period of 20 days from the time it attaches to the extent that it arises for new value
2 given under an authenticated security agreement.

3 * * * *

4 **OFFICIAL COMMENTS**

5 * * * *

6 **3. Chattel Paper; Negotiable Documents.** Subsection (a) further provides that filing is available as a method
7 of perfection for security interests in chattel paper and negotiable documents. Tangible chattel paper is sometimes
8 delivered to the assignee, and sometimes left in the hands of the assignor for collection. Subsection (a) allows the
9 assignee to perfect its security interest by filing in the latter case. Alternatively, the assignee may perfect by taking
10 possession. See Section 9-313(a). An assignee of electronic chattel paper may perfect by taking control. See Sections
11 9-314(a), 9-105. The security interest of an assignee who takes possession or control may qualify for priority over a
12 competing security interest perfected by filing. See Section 9-330.

13 Negotiable documents may be, and usually are, delivered to the secured party. See Article 1, Section 1-201
14 (definition of "delivery"). The secured party's taking possession of a tangible document or control of an electronic
15 document will suffice as a perfection step. See Sections 9-313(a), 9-314 and 7-106. However, as is the case with chattel
16 paper, a security interest in a negotiable document may be perfected by filing.

17 * * * *

18 **7. Goods Covered by Document of Title.** Subsection (c) applies to goods in the possession of a bailee who
19 has issued a negotiable document covering the goods. Subsection (d) applies to goods in the possession of a bailee who
20 has issued a nonnegotiable document of title, including a document of title that is "non-negotiable" under Section 7-104.
21 Section 9-313 governs perfection of a security interest in goods in the possession of a bailee who has not issued a
22 document of title.

23 Subsection (c) clarifies the perfection and priority rules in former Section 9-304(2). Consistently with the
24 provisions of Article 7, subsection (c) takes the position that, as long as a negotiable document covering goods is
25 outstanding, title to the goods is, so to say, locked up in the document. Accordingly, a security interest in goods covered
26 by a negotiable document may be perfected by perfecting a security interest in the document. The security interest also
27 may be perfected by another method, e.g., by filing. The priority rule in subsection (c) governs only priority between (i)
28 a security interest in goods which is perfected by perfecting in the document and (ii) a security interest in the goods which
29 becomes perfected by another method while the goods are covered by the document.

30 **Example 1:** While wheat is in a grain elevator and covered by a negotiable warehouse receipt, Debtor creates
31 a security interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects by filing a financing statement covering "wheat."
32 Thereafter, SP-2 perfects by filing a financing statement describing the warehouse receipt. Subsection (c)(1) provides
33 that SP-2's security interest is perfected. Subsection (c)(2) provides that SP-2's security interest is senior to SP-1's.

34 **Example 2:** The facts are as in Example 1, but SP-1's security interest attached and was perfected before the
35 goods were delivered to the grain elevator. Subsection (c)(2) does not apply, because SP-1's security interest did not
36 become perfected during the time that the wheat was in the possession of a bailee. Rather, the first-to-file-or-perfect
37 priority rule applies. See Sections 9-322 and 7-503.

38 A secured party may become "a holder to whom a negotiable document of title has been duly negotiated" under
39 Section 7-501. If so, the secured party acquires the rights specified by Article 7. Article 9 does not limit those rights,
40 which may include the right to priority over an earlier-perfected security interest. See Section 9-331(a).

41 Subsection (d) takes a different approach to the problem of goods covered by a nonnegotiable document. Here,
42 title to the goods is not looked on as being locked up in the document, and the secured party may perfect its security
43 interest directly in the goods by filing as to them. The subsection provides two other methods of perfection: issuance of
44 the document in the secured party's name (as consignee of a straight bill of lading or the person to whom delivery would
45 be made under a non-negotiable warehouse receipt) and receipt of notification of the secured party's interest by the bailee.
46 Perfection under subsection (d) occurs when the bailee receives notification of the secured party's interest in the goods,
47 regardless of who sends the notification. Receipt of notification is effective to perfect, regardless of whether the bailee

responds. Unlike former Section 9-304(3), from which it derives, subsection(d) does not apply to goods in the possession of a bailee who has not issued a document of title. Section 9-313(c) covers that case and provides that perfection by possession as to goods not covered by a document requires the bailee's acknowledgment.

8. **Temporary Perfection Without Having First Otherwise Perfected.** Subsection (e) follows former Section 9-304(4) in giving perfected status to security interests in certificated securities, instruments, and negotiable documents for a short period (reduced from 21 to 20 days, which is the time period generally applicable in this Article), although there has been no filing and the collateral is in the debtor's possession or control. The 20-day temporary perfection runs from the date of attachment. There is no limitation on the purpose for which the debtor is in possession, but the secured party must have given "new value" (defined in Section 9-102) under an authenticated security agreement.

9. **Maintaining Perfection After Surrendering Possession.** There are a variety of legitimate reasons--many of them are described in subsections (f) and (g)--why certain types of collateral must be released temporarily to a debtor. No useful purpose would be served by cluttering the files with records of such exceedingly short term transactions.

Subsection (f) affords the possibility of 20-day perfection in negotiable documents and goods in the possession of a bailee but not covered by a negotiable document. Subsection (g) provides for 20-day perfection in certificated securities and instruments. These subsections derive from former Section 9-305(5). However, the period of temporary perfection has been reduced from 21 to 20 days, which is the time period generally applicable in this Article, and "enforcement" has been added in subsection (g) as one of the special and limited purposes for which a secured party can release an instrument or certificated security to the debtor and still remain perfected. The period of temporary perfection runs from the date a secured party who already has a perfected security interest turns over the collateral to the debtor. There is no new value requirement, but the turnover must be for one or more of the purposes stated in subsection (f) or (g). The 20-day period may be extended by perfecting as to the collateral by another method before the period expires. However, if the security interest is not perfected by another method until after the 20-day period expires, there will be a gap during which the security interest is unperfected.

Temporary perfection extends only to the negotiable document or goods under subsection (f) and only to the certificated security or instrument under subsection (g). It does not extend to proceeds. If the collateral is sold, the security interest will continue in the proceeds for the period specified in Section 9-315.

Subsections (f) and (g) deal only with perfection. Other sections of this Article govern the priority of a security interest in goods after surrender of possession or control of the document covering them. In the case of a purchase-money security interest in inventory, priority may be conditioned upon giving notification to a prior inventory financier. See Section 9-324.

SECTION 9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.

(a) **[Perfection by possession or delivery.]** Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

* * * *

OFFICIAL COMMENT

* * * *

2. **Perfection by Possession.** As under the common law of pledge, no filing is required by this Article to perfect a security interest if the secured party takes possession of the collateral. See Section 9-310(b)(6).

This section permits a security interest to be perfected by the taking of possession only when the collateral is goods, instruments, tangible negotiable documents, money, or tangible chattel paper. Accounts, commercial tort claims, deposit accounts, investment property, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction are excluded. (But see Comment 6, below, regarding certificated securities.) A security interest in accounts and payment intangibles--property not ordinarily represented by any writing whose delivery operates to transfer the right to payment--may under this Article be perfected only by filing. This rule would not be affected by the fact that a security agreement or other record described the assignment of such collateral as a "pledge." Section 9-309(2) exempts from filing certain assignments of accounts or payment intangibles which are out of the ordinary course of financing. These exempted assignments are perfected when they attach. Similarly, under Section 9-309(3), sales of payment intangibles are automatically perfected.

SECTION 9-314. PERFECTION BY CONTROL.

(a) **[Perfection by control.]** A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 9-104, 9-105, 9-106, ~~or~~ 9-107, or 7-106.

(b) **[Specified collateral: time of perfection by control; continuation of perfection.]** A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, or electronic documents is perfected by control under Section 9-104, 9-105, ~~or~~ 9-107, or 7-106 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **[Investment property: time of perfection by control; continuation of perfection.]** A security interest in investment property is perfected by control under Section 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or

1 registers the debtor as the registered owner; or

2 (C) if the collateral is a security entitlement, the debtor is or becomes the
3 entitlement holder.

4 **OFFICIAL COMMENT**

5 * * * *

6 2. **Control.** This section provides for perfection by control with respect to investment property, deposit
7 accounts, letter-of-credit rights, ~~and~~ electronic chattel paper, and electronic documents. For explanations of how a
8 secured party takes control of these types of collateral, see Sections 9-104 through 9-107 and Section 7-106. Subsection
9 (b) explains when a security interest is perfected by control and how long a security interest remains perfected by control.
10 Like Section 9-313(d) and for the same reasons, subsection (b) makes no reference to the doctrine of "relation back."
11 See Section 9-313, Comment 5. As to an electronic document that is reissued in a tangible medium, Section 7-105, a
12 secured party that is perfected by control in the electronic document should file as to the document before relinquishing
13 control in order to maintain continuous perfection in the document. See Section 9-308.

14 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF**
15 **SECURITY INTEREST OR AGRICULTURAL LIEN.**

16 * * * *

17 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer,
18 other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a
19 security certificate takes free of a security interest or agricultural lien if the buyer gives value and
20 receives delivery of the collateral without knowledge of the security interest or agricultural lien and
21 before it is perfected.

22 (c) **[Lessees that receive delivery.]** Except as otherwise provided in subsection (e), a lessee
23 of goods takes free of a security interest or agricultural lien if the lessee gives value and receives
24 delivery of the collateral without knowledge of the security interest or agricultural lien and before
25 it is perfected.

26 (d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a
27 buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general

1 intangibles, or investment property other than a certificated security takes free of a security interest
2 if the licensee or buyer gives value without knowledge of the security interest and before it is
3 perfected.

4 * * * *

5 **OFFICIAL COMMENT**

6 * * * *

7 **6. Purchasers Other Than Secured Parties.** Subsections (b), (c), and (d) afford priority over an unperfected
8 security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-
9 301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests
10 are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of
11 subordination in this context is that the purchaser takes free of the security interest. To avoid any possible
12 misinterpretation, subsections (b) and (d) of this section use the phrase "takes free."

13 Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery
14 of the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates).
15 To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing
16 security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer
17 would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer.
18 Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of
19 business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

20 Normally, there will be no question when a buyer of tangible chattel paper, tangible documents, instruments,
21 or security certificates "receives delivery" of the property. See Section 1-201 (defining "delivery"). However, sometimes
22 a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly
23 at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections
24 (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent
25 to a potential lender to the seller or lessor that another person might have an interest in the goods.

26 The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is
27 no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with
28 respect to such intangibles (accounts, electronic chattel paper, electronic documents, general intangibles, and investment
29 property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge,
30 and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security
31 interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary
32 course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if
33 perfected. See Section 9-321.

34 Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts, chattel paper, payment
35 intangibles, or promissory notes is a "secured party" (defined in Section 9-102), and subsections (b) and (d) do not
36 determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing
37 security interests apply. See Section 9-322.

38 * * * *

39 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND**
40 **AGRICULTURAL LIENS ON SAME COLLATERAL.**

41 **OFFICIAL COMMENT**

1 * * * *

2 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a tangible
3 negotiable document in the debtor's possession under Section 9-312(e). On October 5, B files and thereby perfects a
4 security interest that previously had attached to the same document. On October 10, A files. A has priority, even after
5 the 20-day period expires, regardless of whether A knows of B's security interest when A files. A was the first to perfect
6 and maintained continuous perfection or filing since the start of the 20-day period. However, the perfection of A's
7 security interest extends only "to the extent it arises for new value given." To the extent A's security interest secures
8 advances made by A beyond the 20-day period, its security interest would be subordinate to B's, inasmuch as B was the
9 first to file.

10 * * * *

11 **8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2) provides a baseline priority
12 rule for proceeds of non-filing collateral which applies if the secured party has taken the steps required for non- temporal
13 priority over a conflicting security interest in non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-
14 credit rights, ~~and~~ investment property, and in some cases, electronic negotiable documents, section 9-331). This rule
15 determines priority in proceeds of non-filing collateral whether or not there exists an actual conflicting security interest
16 in the original non-filing collateral. Under subsection (c)(2), the priority in the original collateral continues in proceeds
17 if the security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds "of the same
18 type" as the original collateral. As used in subsection (c)(2), "type" means a type of collateral defined in the Uniform
19 Commercial Code and should be read broadly. For example, a security is "of the same type" as a security entitlement
20 (i.e., investment property), and a promissory note is "of the same type" as a draft (i.e., an instrument).
21

22 * * * *

23 **SECTION 9-323. FUTURE ADVANCES.**

24 **OFFICIAL COMMENT**

25 * * * *

26 **Example 2:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a tangible
27 negotiable document in the debtor's possession under Section 9-312(e) or (f). The security interest secures an advance
28 made on that day as well as future advances. On October 5, B files and thereby perfects a security interest that previously
29 had attached to the same document. On October 8, A makes an additional advance. On October 10, A files. Under
30 Section 9-322(a)(1), because A was the first to perfect and maintained continuous perfection or filing since the start of
31 the 20-day period, A has priority, even after the 20-day period expires. See Section 9- 322, Comment 4, Example 3.
32 However, under this section, for purposes of Section 9-322(a)(1), to the extent A's security interest secures the October
33 8 advance, the security interest was perfected on October 8. Inasmuch as B perfected on October 5, B has priority over
34 the October 8 advance.

35 * * * *

36 **SECTION 9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN** 37 **PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN** 38 **INCORRECT INFORMATION.**

39 If a security interest or agricultural lien is perfected by a filed financing statement providing
40 information described in Section 9-516(b)(5) which is incorrect at the time the financing statement
is filed:

1 (1) the security interest or agricultural lien is subordinate to a conflicting perfected security
2 interest in the collateral to the extent that the holder of the conflicting security interest gives value
3 in reasonable reliance upon the incorrect information; and

4 (2) a purchaser, other than a secured party, of the collateral takes free of the security interest
5 or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the
6 purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods,
7 instruments, or a security certificate, receives delivery of the collateral.

8 **SECTION 9-601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR**
9 **OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR**
10 **PROMISSORY NOTES.**

11 * * * *

12 (b) **[Rights and duties of secured party in possession or control.]** A secured party in
13 possession of collateral or control of collateral under Section 9-104, 9-105, 9-106, ~~or 9-107,~~ or 7-106
14 has the rights and duties provided in Section 9-207.

15 * * * *

1 **Appendix II**

2 **Amendment to the Uniform Electronic Transactions Act**

3 *These amendments are necessary in order to make sure that the rules of Article 7 provide the*
4 *dominant set of rules governing electronic documents of title.*

5 **SECTION 16. TRANSFERABLE RECORD.**

6 (a) In this section, "transferable record" means an electronic record that:

7 (1) would be a note under [Article 3 of the Uniform Commercial Code]~~or a~~
8 ~~document under [Article 7 of the Uniform Commercial Code]~~ if the electronic record were in
9 writing; and

10 (2) the issuer of the electronic record expressly has agreed is a transferable record.

11 * * * *

12 (d) Except as otherwise agreed, a person having control of a transferable record is the
13 holder, as defined in [Section 1-201(20) of the Uniform Commercial Code], of the transferable
14 record and has the same rights and defenses as a holder of an equivalent record or writing under
15 [the Uniform Commercial Code], including, if the applicable statutory requirements under
16 [Section 3-302(a), ~~7-501~~, or 9-308 of the Uniform Commercial Code] are satisfied, the rights and
17 defenses of a holder in due course, a holder to which a negotiable document of title has been duly
18 negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required
19 to obtain or exercise any of the rights under this subsection.

20 **COMMENT**

21 1. Paper negotiable instruments ~~and documents~~ are unique in the fact that a tangible token - a piece of paper
22 - actually embodies intangible rights and obligations. The extreme difficulty of creating a unique electronic token
23 which embodies the singular attributes of a paper negotiable ~~document or~~ instrument dictates that the rules relating to
24 negotiable ~~documents and~~ instruments not be simply amended to allow the use of an electronic record for the

1 requisite paper writing. However, the desirability of establishing rules by which business parties might be able to
2 acquire some of the benefits of negotiability in an electronic environment is recognized by the inclusion of this
3 section on Transferable Records.

4 This section provides legal support for the creation, transferability and enforceability of an electronic note
5 ~~and document~~ equivalents, as against the issuer/obligor. The certainty created by the section provides the requisite
6 incentive for industry to develop the systems and processes, which involve significant expenditures of time and
7 resources, to enable the use of such electronic documents.

8 The importance of facilitating the development of systems which will permit electronic equivalents is a
9 function of cost, efficiency and safety for the records. The storage cost and space needed for the billions of paper
10 notes ~~and documents~~ is phenomenal. Further, natural disasters can wreak havoc on the ability to meet legal
11 requirements for retaining, retrieving and delivering paper instruments. The development of electronic systems
12 meeting the rigorous standards of this section will permit retention of copies which reflect the same integrity as the
13 original. As a result storage, transmission and other costs will be reduced, while security and the ability to satisfy
14 legal requirements governing such paper records will be enhanced.

15 Section 16 provides for the creation of an electronic record which may be controlled by the holder, who in
16 turn may obtain the benefits of holder in due course and good faith purchaser status. If the benefits and efficiencies
17 of electronic media are to be realized in this industry it is essential to establish a means by which transactions
18 involving paper promissory notes may be accomplished completely electronically. Particularly as other aspects of
19 such transactions are accomplished electronically, the drag on the transaction of requiring a paper note becomes
20 evident. In addition to alleviating the logistical problems of generating, storing and retrieving paper, the mailing and
21 transmission costs associated with such transactions will also be reduced.

22 2. The definition of transferable record is limited in two significant ways. First, only the equivalent of paper
23 promissory notes ~~and paper documents of title~~ can be created as transferable records. Notes ~~and Documents of Title~~
24 do not impact the broad systems that relate to the broader payments mechanisms related, for example, to checks.
25 Impacting the check collection system by allowing for "electronic checks" has ramifications well beyond the ability
26 of this Act to address. Accordingly, this Act excludes from its scope transactions governed by UCC Articles 3 and 4.
27 The limitation to promissory note equivalents in Section 16 is quite important in that regard because of the ability to
28 deal with many enforcement issues by contract without affecting such systemic concerns.

29 Second, not only is Section 16 limited to electronic records which would qualify as negotiable promissory
30 notes ~~or documents~~ if they were in writing, but the issuer of the electronic record must expressly agree that the
31 electronic record is to be considered a transferable record. The definition of transferable record as "an electronic
32 record that...the issuer of the electronic record expressly has agreed is a transferable record" indicates that the
33 electronic record itself will likely set forth the issuer's agreement, though it may be argued that a contemporaneous
34 electronic or written record might set forth the issuer's agreement. However, conversion of a paper note issued as
35 such would not be possible because the issuer would not be the issuer, in such a case, of an electronic record. The
36 purpose of such a restriction is to assure that transferable records can only be created at the time of issuance by the
37 obligor. The possibility that a paper note might be converted to an electronic record and then intentionally destroyed,
38 and the effect of such action, was not intended to be covered by Section 16.

39 The requirement that the obligor expressly agree in the electronic record to its treatment as a transferable
40 record does not otherwise affect the characterization of a transferable record (i.e., does not affect what would be a
41 paper note) because it is a statutory condition. Further, it does not obligate the issuer to undertake to do any other act
42 than the payment of the obligation evidenced by the transferable record. Therefore, it does not make the transferable
43 record "conditional" within the meaning of Section 3-104(a)(3) of the Uniform Commercial Code.

44 3. Under Section 16 acquisition of "control" over an electronic record serves as a substitute for "possession"
45 in the paper analog. More precisely, "control" under Section 16 serves as the substitute for delivery, indorsement and
46 possession of a negotiable promissory note ~~or negotiable document of title~~. Section 16(b) allows control to be found
47 so long as "a system employed for evidencing the transfer of interests in the transferable record reliably establishes
48 [the person claiming control] as the person to which the transferable record was issued or transferred." The key point
49 is that a system, whether involving third party registry or technological safeguards, must be shown to reliably
50 establish the identity of *the* person entitled to payment. Section 16(c) then sets forth a safe harbor list of very strict
51 requirements for such a system. The specific provisions listed in Section 16(c) are derived from Section 105 of
52 Revised Article 9 of the Uniform Commercial Code. Generally, the transferable record must be unique, identifiable,

1 and except as specifically permitted, unalterable. That "authoritative copy" must (i) identify the person claiming
2 control as the person to whom the record was issued or most recently transferred, (ii) be maintained by the person
3 claiming control or its designee, and (iii) be unalterable except with the permission of the person claiming control. In
4 addition any copy of the authoritative copy must be readily identifiable as a copy and all revisions must be readily
5 identifiable as authorized or unauthorized.

6 The control requirements may be satisfied through the use of a trusted third party registry system. Such
7 systems are currently in place with regard to the transfer of securities entitlements under Article 8 of the Uniform
8 Commercial Code, ~~and in the transfer of cotton warehouse receipts under the program sponsored by the United~~
9 ~~States Department of Agriculture.~~ This Act would recognize the use of such a system so long as the standards of
10 subsection (c) were satisfied. In addition, a technological system which met such exacting standards would also be
11 permitted under Section 16.

12 For example, a borrower signs an electronic record which would be a promissory note ~~or document~~ if it
13 were paper. The borrower specifically agrees in the electronic record that it will qualify as a transferable record
14 under this section. The lender implements a newly developed technological system which dates, encrypts, and stores
15 all the electronic information in the transferable record in a manner which lender can demonstrate reliably establishes
16 lender as the person to which the transferable record was issued. In the alternative, the lender may contract with a
17 third party to act as a registry for all such transferable records, retaining records establishing the party to whom the
18 record was issued and all subsequent transfers of the record. An example of this latter method for assuring control is
19 the system established for the issuance and transfer of electronic cotton warehouse receipts under 7 C.F.R. section
20 735 et seq.

21 Of greatest importance in the system used is the ability to securely and demonstrably be able to transfer the
22 record to others in a manner which assures that only one "holder" exists. The need for such certainty and security
23 resulted in the very stringent standards for a system outlined in subsection (c). A system relying on a third party
24 registry is likely the most effective way to satisfy the requirements of subsection (c) that the transferable record
25 remain unique, identifiable and unalterable, while also providing the means to assure that the transferee is clearly
26 noted and identified.

27 It must be remembered that Section 16 was drafted in order to provide sufficient legal certainty regarding
28 the rights of those in control of such electronic records, that legal incentives would exist to warrant the development
29 of systems which would establish the requisite control. During the drafting of Section 16, representatives from the
30 Federal Reserve carefully scrutinized the impact of any electronicization of any aspect of the national payment
31 system. Section 16 represents a compromise position which, as noted, serves as a bridge pending more detailed study
32 and consideration of what legal changes, if any, are necessary or appropriate in the context of the payment systems
33 impacted. Accordingly, Section 16 provides limited scope for the attainment of important rights derived from the
34 concept of negotiability, in order to permit the development of systems which will satisfy its strict requirements for
35 control.

36 4. It is important to note what the section does not provide. Issues related to enforceability against
37 intermediate transferees and transferors (i.e., indorser liability under a paper note), warranty liability that would
38 attach in a paper note, and issues of the effect of taking a transferable record on the underlying obligation, are NOT
39 addressed by this section. Such matters must be addressed, if at all, by contract between and among the parties in the
40 chain of transmission and transfer of the transferable record. In the event that such matters are not addressed by the
41 contract, the issues would need to be resolved under otherwise applicable law. Other law may include general
42 contract principles of assignment and assumption, or may include rules from Article 3 of the Uniform Commercial
43 Code applied by analogy.

44 For example, Issuer agrees to pay a debt by means of a transferable record issued to A. Unless there is
45 agreement between issuer and A that the transferable record "suspends" the underlying obligation (see Section 3-310
46 of the Uniform Commercial Code), A would not be prevented from enforcing the underlying obligation without the
47 transferable record. Similarly, if A transfers the transferable record to B by means granting B control, B may obtain
48 holder in due course rights against the obligor/issuer, but B's recourse against A would not be clear unless A agreed
49 to remain liable under the transferable record. Although the rules of Article 3 may be applied by analogy in an
50 appropriate context, in the absence of an express agreement in the transferable record or included by applicable
51 system rules, the liability of the transferor would not be clear.

52 5. Current business models exist which rely for their efficacy on the benefits of negotiability. A principal

1 example, and one which informed much of the development of Section 16, involves the mortgage backed securities
2 industry. Aggregators of commercial paper acquire mortgage secured promissory notes following a chain of transfers
3 beginning with the origination of the mortgage loan by a mortgage broker. In the course of the transfers of this paper,
4 buyers of the notes and lenders/secured parties for these buyers will intervene. For the ultimate purchaser of the
5 paper, the ability to rely on holder in due course and good faith purchaser status creates the legal security necessary
6 to issue its own investment securities which are backed by the obligations evidenced by the notes purchased. Only
7 through their HIDC status can these purchasers be assured that third party claims will be barred. Only through their
8 HIDC status can the end purchaser avoid the incredible burden of requiring and assuring that each person in the
9 chain of transfer has waived any and all defenses to performance which may be created during the chain of transfer.

10 6. This section is a stand-alone provision. Although references are made to specific provisions in Article 3;
11 ~~Article 7~~; and Article 9 of the Uniform Commercial Code, these provisions are incorporated into this Act and made
12 the applicable rules for purposes of this Act. The rights of parties to transferable records are established under
13 subsections (d) and (e). Subsection (d) provides rules for determining the rights of a party in control of a transferable
14 record. The subsection makes clear that the rights are determined under this section, and not under other law, by
15 incorporating the rules on the manner of acquisition into this statute. The last sentence of subsection (d) is intended
16 to assure that requirements related to notions of possession, which are inherently inconsistent with the idea of an
17 electronic record, are not incorporated into this statute.

18 If a person establishes control, Section 16(d) provides that that person is the "holder" of the transferable
19 record which is equivalent to a holder of an analogous paper negotiable instrument. More importantly, if the person
20 acquired control in a manner which would make it a holder in due course of an equivalent paper record, the person
21 acquires the rights of a HIDC. The person in control would therefore be able to enforce the transferable record
22 against the obligor regardless of intervening claims and defenses. However, by pulling these rights into Section 16,
23 this Act does NOT validate the wholesale electrification of promissory notes under Article 3 of the Uniform
24 Commercial Code.

25 Further, it is important to understand that a transferable record under Section 16, while having no
26 counterpart under Article 3 of the Uniform Commercial Code, would be an "account," "general intangible," or
27 "payment intangible" under Article 9 of the Uniform Commercial Code. Accordingly, two separate bodies of law
28 would apply to that asset of the obligee. A taker of the transferable record under Section 16 may acquire purchaser
29 rights under Article 9 of the Uniform Commercial Code, however, those rights may be defeated by a trustee in
30 bankruptcy of a prior person in control unless perfection under Article 9 of the Uniform Commercial Code by filing
31 is achieved. If the person in control also takes control in a manner granting it holder in due course status, of course
32 that person would take free of any claim by a bankruptcy trustee or lien creditor.

33 7. Subsection (e) accords to the obligor of the transferable record rights equal to those of an obligor under
34 an equivalent paper record. Accordingly, unless a waiver of defense clause is obtained in the electronic record, or the
35 transferee obtains HIDC rights under subsection (d), the obligor has all the rights and defenses available to it under a
36 contract assignment. Additionally, the obligor has the right to have the payment noted or otherwise included as part
37 of the electronic record.

38 8. Subsection (f) grants the obligor the right to have the transferable record and other information made
39 available for purposes of assuring the correct person to pay. This will allow the obligor to protect its interest and
40 obtain the defense of discharge by payment or performance. This is particularly important because a person receiving
41 subsequent control under the appropriate circumstances may well qualify as a holder in course who can enforce
42 payment of the transferable record.

43 9. Section 16 is a singular exception to the thrust of this Act to simply validate electronic media used in
44 commercial transactions. Section 16 actually provides a means for expanding electronic commerce. It provides
45 certainty to lenders and investors regarding the enforceability of a new class of financial services. It is hoped that the
46 legal protections afforded by Section 16 will engender the development of technological and business models which
47 will permit realization of the significant cost savings and efficiencies available through electronic transacting in the
48 financial services industry. Although only a bridge to more detailed consideration of the broad issues related to
49 negotiability in an electronic context, Section 16 provides the impetus for that broader consideration while allowing
50 continuation of developing technological and business models.