

No. 2008-13

AN ACT

HB 1152

Amending Title 13 (Commercial Code) of the Pennsylvania Consolidated Statutes, extensively revising preliminary provisions and provisions relating to warehouse receipts, bills of lading and documents of title; further providing, in secured transactions, for definitions, for perfection and priority in deposit accounts and for perfection upon attachment; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Division 1 of Title 13 of the Pennsylvania Consolidated Statutes is amended to read:

**[DIVISION 1
GENERAL PROVISIONS**

Chapter

- 11. Short Title, Construction, Application and Subject Matter of Title**
12. General Definitions and Principles of Interpretation

CHAPTER 11

**SHORT TITLE, CONSTRUCTION, APPLICATION
AND SUBJECT MATTER OF TITLE**

Sec.

- 1101. Short title of title.**
1102. Purposes; rules of construction; variation by agreement.
1103. Supplementary general principles of law applicable.
1104. Construction against implicit repeal.
1105. Territorial application of title; power of parties to choose applicable law.
1106. Remedies to be liberally administered.
1107. Waiver or renunciation of claim or right after breach.
1108. (Reserved).
1109. Section and subsection captions.

§ 1101. Short title of title.

This title shall be known and may be cited as the Uniform Commercial Code.

§ 1102. Purposes; rules of construction; variation by agreement.

(a) Title to be liberally construed.—This title shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Purposes and policies of title.—Underlying purposes and policies of this title are:

(1) To simplify, clarify and modernize the law governing commercial transactions.

(2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties.

(3) To make uniform the law among the various jurisdictions.

(c) Variation of title by agreement.—The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(d) Effect of “unless otherwise agreed”.—The presence in certain provisions of this title of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (c).

§ 1103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

§ 1104. Construction against implicit repeal.

This title being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 1105. Territorial application of title; power of parties to choose applicable law.

(a) General rule.—Except as otherwise provided in this section, when a transaction bears a reasonable relation to this Commonwealth and also to another state or nation the parties may agree that the law either of this Commonwealth or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this Commonwealth.

(b) Limitations on power of parties to choose applicable law.—Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Section 2402 (relating to rights of creditors of seller against sold goods).

Sections 2A105 (relating to territorial application of division to goods covered by certificate of title) and 2A106 (relating to limitation on power of parties to consumer lease to choose applicable law and judicial forum).

Section 4102 (relating to applicability of division on bank deposits and collections).

Section 4A507 (relating to choice of law).

Section 5116 (relating to choice of law and forum).

Section 8110 (relating to applicability; choice of law).

Subchapter A of Chapter 93 (relating to law governing perfection and priority).

§ 1106. Remedies to be liberally administered.

(a) General rule.—The remedies provided by this title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this title or by other rule of law.

(b) Enforceability of rights and obligations by action.—Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 1107. Waiver or renunciation of claim or right after breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§ 1108. (Reserved).

§ 1109. Section and subsection captions.

Notwithstanding 1 Pa.C.S. § 1101(b) (relating to enumeration and use of unofficial provisions), section captions are parts of this title but subsection captions are not parts of this title.

CHAPTER 12 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec.

1201. General definitions.

1202. Prima facie evidence by third party documents.

1203. Obligation of good faith.

1204. Time; reasonable time; “seasonably.”

1205. Course of dealing and usage of trade.

1206. Statute of frauds for kinds of personal property not otherwise covered.

1207. Performance or acceptance under reservation of rights.

1208. Option to accelerate at will.

1209. Subordinated obligations.

§ 1201. General definitions.

Subject to additional definitions contained in the subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have,

unless the context clearly indicates otherwise, the meanings given to them in this section:

“Action.” In the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

“Aggrieved party.” A party entitled to resort to a remedy.

“Agreement.” The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 1205 and 2208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 1103 (relating to supplementary general principles of law applicable)). (Compare definition of “contract”.)

“Airbill.” A document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

“Bank.” Any person engaged in the business of banking.

“Bearer.” The person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

“Bill of lading.” A document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

“Branch.” Includes a separately incorporated foreign branch of a bank.

“Burden of establishing a fact.” The burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

“Buyer in ordinary course of business.” A person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Division 2 (relating to sales) may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

“Conspicuous.” A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

A printed heading in capitals (as: **NONNEGOTIABLE BILL OF LADING**) is conspicuous.

Language in the body of a form is conspicuous if it is in larger or other contrasting type or color. But in a telegram any stated term is conspicuous.

Whether a term or clause is conspicuous or not is for decision by the court.

“Contract.” The total legal obligation which results from the agreement of the parties as affected by this title and any other applicable rules of law. (Compare definition of “agreement”.)

“Creditor.” Includes:

- a general creditor;
- a secured creditor;
- a lien creditor; and

any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor’s or assignor’s estate.

“Defendant.” Includes a person in the position of defendant in a cross-action or counterclaim.

“Delivery.” With respect to instruments, documents of title, chattel paper or certificated securities, means voluntary transfer of possession.

“Discover.” See definition of “notice.”

“Document of title.” Includes:

- a bill of lading;
- a dock warrant;
- a dock receipt;
- a warehouse receipt or order for the delivery of goods; and

any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the possession of the bailee which are either identified or are fungible portions of an identified mass.

“Fault.” Wrongful act, omission or breach.

“Fungible.” With respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purpose of this title to the extent that under a

particular agreement or document unlike units are treated as equivalents.

“Genuine.” Free of forgery or counterfeiting.

“Good faith.” Honesty in fact in the conduct or transaction concerned.

“Holder.”

(1) With respect to a negotiable instrument, the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession.

(2) With respect to a document of title, the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

“Honor.” To pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

“Insolvency proceedings.” Includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

“Insolvent.” A person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal bankruptcy law.

“Knows” or “knowledge.” See definition of “notice.”

“Learn.” See definition of “notice.”

“Money.” A medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

“Notice.” A person has “notice” of a fact when:

- (1) he has actual knowledge of it;
- (2) he has received a notice or notification of it; or
- (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

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

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

- (1) it comes to his attention; or

(2) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

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

“Organization.” Includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

“Party.” As distinct from “third party,” means a person who has engaged in a transaction or made an agreement within this title.

“Person.” Includes an individual or an organization. See section 1102 (relating to purposes; rules of construction; variation by agreement).

“Presumption” or “presumed.” Either means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

“Purchase.” Includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

“Purchaser.” A person who takes by purchase.

“Remedy.” Any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

“Representative.” Includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

“Rights.” Includes remedies.

“Security interest.”

(1) **General definition.**—A security interest means an interest in personal property or fixtures which secures payment or performance of an obligation.

(2) **Interest of consignor or buyer under Division 9.**—The term “security interest” also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a

promissory note in a transaction that is subject to Division 9 (relating to secured transactions).

(3) **Buyer's interest in identified goods.**—The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2401 (relating to passing of title; reservation for security; limited application of section) is not a “security interest,” but a buyer may also acquire a “security interest” by complying with Division 9.

(4) **Sellers and lessors of goods.**—Except as otherwise provided in section 2505 (relating to shipment by seller under reservation), the right of a seller or lessor of goods under Division 2 (relating to sales) or 2A (relating to leases) to retain or acquire possession of the goods is not a “security interest,” but a seller or lessor may also acquire a “security interest” by complying with Division 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2401) is limited in effect to a reservation of a “security interest.”

(5) **Determination of lease or security interest.**—Whether a transaction creates a lease or security interest is determined by the facts of each case; however:

(i) A transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(A) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(B) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(C) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(D) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(ii) A transaction does not create a security interest merely because it provides that:

(A) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(B) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees, or service or maintenance costs with respect to the goods;

(C) the lessee has an option to renew the lease or to become the owner of the goods;

(D) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(E) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(iii) For purposes of determining whether the transaction is a lease or a security interest:

(A) Additional consideration is not nominal if:

(I) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(II) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(B) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(C) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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

"Signed." Includes any symbol executed or adopted by a party with present intention to authenticate a writing.

“Surety.” Includes guarantor.

“Telegram.” Includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

“Term.” That portion of an agreement which relates to a particular matter.

“Unauthorized signature.” A signature made without actual, implied or apparent authority and includes a forgery.

“Value.” Except as otherwise provided with respect to negotiable instruments (section 3303) and bank collections (sections 4210 and 4211), a person gives “value” for rights if he acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(2) as security for or in total or partial satisfaction of a preexisting claim;

(3) by accepting delivery pursuant to a preexisting contract for purchase; or

(4) generally, in return for any consideration sufficient to support a simple contract.

“Warehouse receipt.” A receipt issued by a person engaged in the business of storing goods for hire.

“Written” or “writing.” Includes printing, typewriting or any other intentional reduction to tangible form.

§ 1202. Prima facie evidence by third party documents.

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

§ 1203. Obligation of good faith.

Every contract or duty within this title imposes an obligation of good faith in its performance or enforcement.

§ 1204. Time; reasonable time; “seasonably.”

(a) Time fixed by agreement.—Whenever this title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) Reasonable time.—What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(c) Definition of “seasonably”.—An action is taken “seasonably” when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

§ 1205. Course of dealing and usage of trade.

(a) **Definition of course of dealing.**—A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(b) **Usage of trade.**—A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(c) **Effect on agreements.**—A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(d) **Construction.**—The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(e) **Applicable usage of trade.**—An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(f) **Admissibility of evidence.**—Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

§ 1206. Statute of frauds for kinds of personal property not otherwise covered.

(a) **General rule.**—Except in the cases described in subsection (b), a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(b) **Exceptions.**—Subsection (a) does not apply to contracts for the sale of goods (section 2201) nor of securities (section 8113) nor to security agreements (section 9203). Furthermore, subsection (a) does not apply to qualified financial contracts to the extent provided in subsection (c).

(c) **Qualified financial contracts.**—

(1) As used in this section and in section 2201(d) (relating to formal requirements; statute of frauds), “qualified financial

contract” means an agreement to which each party is other than a natural person and which is:

(i) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;

(ii) a contract (other than a contract for the purchase and sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale or transfer of any commodity or any similar good, article, service, right or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or any product or by-product thereof, with a maturity date more than two days after the date the contract is entered into;

(iii) for the purchase and sale of currency, or interbank deposits denominated in United States dollars;

(iv) for a currency option, currency swap or cross-currency rate swap;

(v) for a commodity swap or a commodity option (other than an option contract traded on or subject to the rules of a contract market or board of trade);

(vi) for a rate swap, basis swap, forward rate transaction or an interest rate option;

(vii) for a security-index swap or option or a security or securities price swap or option;

(viii) an agreement which involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of agreements described in subparagraphs (i) through (vii), and any cap, floor, collar or similar transaction with respect to a rate, commodity price, commodity index, security or securities price, security-index or other price index); or

(ix) an option with respect to any agreement described in subparagraphs (i) through (viii).

(2) Subsection (a) does not apply to a qualified financial contract if either:

(i) there is, as provided in paragraph (3), sufficient evidence to indicate that a contract has been made; or

(ii) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages or otherwise) on those terms.

(3) For purposes of this subsection and section 2201(d), there is sufficient evidence that a contract has been made if any of the following applies:

(i) There is evidence of electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval) sufficient to indicate that in the communication a contract was made between the parties.

(ii) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after the contract is made (or such other period of time as the parties may agree in writing) and the sender does not receive, on or before the third business day after receipt (or such other period of time as the parties may agree in writing), written objection to a material term of the confirmation. For purposes of this subparagraph, a confirmation or an objection thereto is received at the time there has been actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt, which is the time actual receipt by such an individual would have occurred if the receiving party, as an organization, had exercised reasonable diligence. For purposes of this subparagraph, a "business day" is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract which is the subject of the confirmation. The confirmation and notice of objection referred to in this subparagraph may be communicated by means of telex, telefacsimile, computer or other similar process by which electronic signals are transmitted by telephone or otherwise, but a party claiming to have communicated in such manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other party as set forth in this subparagraph.

(iii) The party against whom enforcement is sought admits in its pleading, testimony or otherwise in court that a contract was made.

(iv) There is a note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

(4) For purposes of this subsection and section 2201(d):

(i) Evidence of an electronic communication indicating the making therein of a contract or a confirmation, admission, note, memorandum or writing is not insufficient merely because it omits or incorrectly states one or more material terms agreed upon, so long as such evidence provides a reasonable basis for concluding that a contract was made.

(ii) The tangible written text produced by telex, telefacsimile, computer retrieval or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing.

(5) Nothing in this subsection shall be construed to affect in any respect the construction or interpretation of any provision of this title, other than this subsection and section 2201(d). Without limiting the generality of the foregoing, nothing in this subsection shall be construed to limit the generality of the term "writing" as defined in section 1201 (relating to general definitions), to affect the interpretation of subsection (a) or section 2201(a) insofar as they relate to the sufficiency of a writing or to affect the construction of any other provision of this title relating to the time when a communication is deemed received, given or effective. Nothing in this subsection or in section 2201(d) shall be construed to imply that a qualified financial contract would be subject to subsection (a) or section 2201(a) but for this subsection or section 2201(d).

(6) Nothing in this subsection or in section 2201(d) shall be construed to affect or limit the application to a qualified financial contract of any other law validating records, signatures or transactions made or evidenced by nontraditional media.

§ 1207. Performance or acceptance under reservation of rights.

(a) General rule.—A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.

(b) Exception.—Subsection (a) does not apply to an accord and satisfaction.

§ 1208. Option to accelerate at will.

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

§ 1209. Subordinated obligations.

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the effective date of this section and not as modifying it.]

Section 1.1. Title 13 is amended by adding a division to read:

DIVISION 1
GENERAL PROVISIONS

Chapter

- 11. General Provisions***
- 12. General Definitions and Principles of Interpretation***
- 13. Territorial Applicability and General Rules***

CHAPTER 11
GENERAL PROVISIONS

Sec.

- 1101. Short titles.***
- 1102. Scope of division.***
- 1103. Construction of title to promote its purposes policies; applicability of supplemental principles of law.***
- 1104. Construction against implied repeal.***
- 1105. (Reserved).***
- 1106. Use of singular and plural; gender.***
- 1107. Section captions.***
- 1108. Relation to Electronic Signatures in Global and National Commerce Act.***

§ 1101. Short titles.

(a) Title.—*This title may be cited as the Uniform Commercial Code.*

(b) Division.—*This division may be cited as the Uniform Commercial Code-General Provisions.*

§ 1102. Scope of division.

This division applies to a transaction to the extent that it is governed by another division of this title.

§ 1103. Construction of title to promote its purposes and policies; applicability of supplemental principles of law.

(a) Liberal construction.—*This title must be liberally construed and applied to promote its underlying purposes and policies, which are:*

- (1) to simplify, clarify and modernize the law governing commercial transactions;***
- (2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and***
- (3) to make uniform the law among the various jurisdictions.***

(b) Law and equity.—*Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other validating or invalidating cause, supplement its provisions.*

§ 1104. Construction against implied repeal.

This title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 1105. (Reserved).

§ 1106. Use of singular and plural; gender (Reserved).

§ 1107. Section captions.

Notwithstanding 1 Pa.C.S. § 1924 (relating to construction of titles, preambles, provisos, exceptions and headings), section captions are part of this title.

§ 1108. *Relation to Electronic Signatures in Global and National Commerce Act.*

This division modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.), but does not modify, limit or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

CHAPTER 12 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec.

1201. *General definitions.*

1202. *Notice; knowledge.*

1203. *Lease distinguished from security interest.*

1204. *Value.*

1205. *Reasonable time; seasonableness.*

1206. *Presumptions.*

§ 1201. *General definitions.*

(a) *Definition provisions.*—Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other divisions of this title that apply to particular divisions or chapters of this title, have the meanings stated.

(b) *Definitions.*—Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

(1) “Action.” In the sense of a judicial proceeding, the term includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined.

(2) “Aggrieved party.” A party entitled to pursue a remedy.

(3) “Agreement.” As distinguished from “contract” under paragraph (12), the term means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing or usage of trade as provided

in section 1303 (relating to course of performance, course of dealing and usage of trade).

(4) **“Bank.”** *A person engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union and trust company.*

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

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

(7) **“Branch.”** *The term includes a separately incorporated foreign branch of a bank.*

(8) **“Burden of establishing.”** *As to a fact, the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.*

(9) **“Buyer in ordinary course of business.”** *A person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind.*

(i) *A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices.*

(ii) *A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind.*

(iii) *A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale.*

(iv) *Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Division 2 (relating to sales) may be a buyer in ordinary course of business.*

The term does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

(i) *A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size.*

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

(11) *“Consumer.” An individual who enters into a transaction primarily for personal, family or household purposes.*

(12) *“Contract.” As distinguished from “agreement” in paragraph (3), the total legal obligation that results from the parties’ agreement as determined by this title as supplemented by any other applicable laws.*

(13) *“Creditor.” The term includes a general creditor; a secured creditor; a lien creditor; a representative of creditors, including an assignee for the benefit of creditors; a trustee in bankruptcy; a receiver in equity and an executor or administrator of an insolvent debtor’s or assignor’s estate.*

(14) *“Defendant.” Includes a person in the position of defendant in a counterclaim, cross-claim or third-party claim.*

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

(16) *“Document of title.” A record that:*

(i) *in the regular course of business or financing is 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; or*

(ii) *purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.*

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods.

(16.1) *“Electronic document of title.” A document of title evidenced by a record consisting of information stored in an electronic medium.*

(17) *“Fault.” A default, breach or wrongful act or omission.*

(18) *“Fungible goods.” As follows:*

(i) *goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or*

(ii) *goods that by agreement are treated as equivalent.*

(19) *“Genuine.” Free of forgery or counterfeiting.*

(20) *“Good faith.” Except as otherwise provided in Division 5 (relating to letters of credit), honesty in fact and the observance of reasonable commercial standards of fair dealing.*

(21) *“Holder.” As follows:*

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

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

(iii) *the person in control of a negotiable electronic document of title.*

(22) *“Insolvency proceeding.” Includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.*

(23) *“Insolvent.” As follows:*

(i) *having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;*

(ii) *being unable to pay debts as they become due; or*

(iii) *being insolvent within the meaning of Federal bankruptcy law.*

(24) *“Money.” A medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.*

(25) *“Organization.” A person other than an individual.*

(26) *“Party.” As distinguished from “third party,” a person that has engaged in a transaction or made an agreement subject to this title.*

(27) *“Person.” Any individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality, public corporation or other legal or commercial entity.*

(28) *“Present value.” The amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either:*

(i) *an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into; or*

(ii) *if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.*

(29) *“Purchase.” Taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or other voluntary transaction creating an interest in property.*

(30) *“Purchaser.” A person that takes by purchase.*

(31) *“Record.” Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

(32) **“Remedy.”** Any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) **“Representative.”** A person empowered to act for another, including an agent; an officer of a corporation or association; and a trustee, executor or administrator of an estate.

(34) **“Right.”** Includes remedy.

(35) **“Security interest.”** An interest in personal property or fixtures which secures payment or performance of an obligation.

(i) The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note, in a transaction that is subject to Division 9 (relating to secured transactions).

(ii) The term does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2401 (relating to passing of title; reservation for security; limited application of section), but a buyer may also acquire a “security interest” by complying with Division 9 (relating to secured transactions).

(iii) Except as otherwise provided in section 2505 (relating to shipment by seller under reservation), the right of a seller or lessor of goods under Division 2 (relating to sales) or 2A (relating to leases) to retain or acquire possession of the goods is not a “security interest”; but a seller or lessor may also acquire a “security interest” by complying with Division 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2401 is limited in effect to a reservation of a “security interest.”

(iv) Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 1203 (relating to lease distinguished from security interest).

(36) **“Send.”** In connection with a writing, record or notice:

(i) to deposit in the mail or deliver for transmission by any other usual means of communication:

(A) with postage or cost of transmission provided for;

(B) properly addressed; and

(C) in the case of an instrument:

(I) to an address specified thereon or otherwise agreed upon; or

(II) if no address is specified or agreed upon, to any address reasonable under the circumstances; or

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

(37) **“Signed.”** Includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) *“State.” A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.*

(39) *“Surety.” Includes a guarantor or other secondary obligor.*

(39.1) *“Tangible document of title.” A document of title evidenced by a record consisting of information that is inscribed on a tangible medium.*

(40) *“Term.” A portion of an agreement that relates to a particular matter.*

(41) *“Unauthorized signature.” A signature made without actual, implied or apparent authority. The term includes a forgery.*

(42) *“Warehouse receipt.” A document of title issued by a person engaged in the business of storing goods for hire.*

(43) *“Writing.” Includes printing, typewriting or any other intentional reduction to tangible form.*

(44) *“Written.” Includes printing, typewriting or any other intentional reduction to tangible form.*

§ 1202. Notice; knowledge.

(a) *Notice.*—Subject to subsection (f), a person has notice of a fact if the person:

(1) *has actual knowledge of it;*

(2) *has received a notice or notification of it; or*

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

(b) *Knowledge.*—“Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) *Reason to know distinguished.*—“Discover,” “learn” or words of similar import refer to knowledge rather than to reason to know.

(d) *Notify.*—A person notifies or gives a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) *Be notified.*—Subject to subsection (f), a person receives a notice or notification when:

(1) *it comes to that person’s attention; or*

(2) *it is duly delivered in a form reasonable under the circumstances*

at:

(i) *the place of business through which the contract was made; or*

(ii) *another location held out by that person as the place for receipt of such communications.*

(f) *Communication to organizations.*—Notice, knowledge or notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised

due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§ 1203. Lease distinguished from security interest.

(a) Factual determination.—Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) Sufficient attributes for security interest.—A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) Insufficient attributes for security interest.—A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording or registration fees or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) *the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.*

(d) *Nominal consideration.—Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:*

(1) *when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or*

(2) *when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.*

(e) *Remaining economic life and reasonable predictability.—The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value or cost of performing under the lease agreement shall be determined with reference to the facts and circumstances at the time the transaction is entered into.*

§ 1204. Value.

Except as otherwise provided in Divisions 3 (relating to negotiable instruments), 4 (relating to bank deposits and collections) and 5 (relating to letters of credit), a person gives value for rights if the person acquires them:

(1) *in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;*

(2) *as security for or in total or partial satisfaction of a preexisting claim;*

(3) *by accepting delivery under a preexisting contract for purchase;*
or

(4) *in return for any consideration sufficient to support a simple contract.*

§ 1205. Reasonable time; seasonableness.

(a) *Reasonable time.—Whether a time for taking an action required by this title is reasonable depends on the nature, purpose and circumstances of the action.*

(b) *Seasonableness.—An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.*

§ 1206. Presumptions.

Whenever this title creates a "presumption" with respect to a fact or provides that a fact is "presumed," the trier of fact must find the existence

of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

CHAPTER 13
TERRITORIAL APPLICABILITY AND GENERAL RULES

Sec.

- 1301. Territorial applicability; parties' power to choose applicable law.*
- 1302. Variation by agreement.*
- 1303. Course of performance, course of dealing and usage of trade.*
- 1304. Obligation of good faith.*
- 1305. Remedies to be liberally administered.*
- 1306. Waiver or renunciation of claim or right after breach.*
- 1307. Prima facie evidence by third-party documents.*
- 1308. Performance or acceptance under reservation of rights.*
- 1309. Option to accelerate at will.*
- 1310. Subordinated obligations.*

§ 1301. Territorial applicability; parties' power to choose applicable law.

(a) Agreement; reasonable relation requirement.—Except as otherwise provided in this section, when a transaction bears a reasonable relation to this Commonwealth and also to another state or nation, the parties may agree that the law either of this Commonwealth or of such other state or nation shall govern their rights and duties.

(b) Absence of agreement; approved relation requirement.—In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), this title applies to transactions bearing an appropriate relation to this Commonwealth.

(c) Mandatory applicability of title.—If one of the following provisions of this title specifies the applicable law, that provision governs, and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Section 2402 (relating to rights of creditors of seller against sold goods).*
- (2) Sections 2A105 (relating to territorial application of division to goods covered by certificate of title) and 2A106 (relating to limitation on power of parties to consumer lease to choose applicable law and judicial forum).*
- (3) Section 4102 (relating to applicability).*
- (4) Section 4A507 (relating to choice of law).*
- (5) Section 5116 (relating to choice of law and forum).*
- (6) Section 8110 (relating to applicability; choice of law).*
- (7) Ch. 93 Subch. A (relating to law governing perfection and priority).*

§ 1302. Variation by agreement.

(a) *General rule.*—Except as otherwise provided in subsection (b) or elsewhere in this title, the effect of provisions of this title may be varied by agreement.

(b) *Exceptions.*—The obligations of good faith, diligence, reasonableness and care prescribed by this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) *Effect of terminology.*—The presence in certain provisions of this title of the phrase “unless otherwise agreed,” or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

§ 1303. Course of performance, course of dealing and usage of trade.

(a) *Course of performance.*—A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) *Course of dealing.*—A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) *Usage of trade.*—A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as fact. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) *Evidentiary effect.*—A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) *Construction in general.*—Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) *express terms prevail over course of performance, course of dealing and usage of trade;*

(2) *course of performance prevails over course of dealing and usage of trade; and*

(3) *course of dealing prevails over usage of trade.*

(f) *Waiver or modification.*—Subject to section 2209 (relating to modification, rescission and waiver), a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) *Evidence.*—Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

§ 1304. *Obligation of good faith.*

Every contract or duty within this title imposes an obligation of good faith in its performance and enforcement.

§ 1305. *Remedies to be liberally administered.*

(a) *Administration.*—The remedies provided by this title must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in this title or by other rule of law.

(b) *Enforceability.*—Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 1306. *Waiver or renunciation of claim or right after breach.*

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

§ 1307. *Prima facie evidence by third-party documents.*

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

§ 1308. *Performance or acceptance under reservation of rights.*

(a) *General rule.*—Except as set forth in subsection (b), a party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. The words “without prejudice,” “under protest” and the like are sufficient.

(b) *Exception.*—Subsection (a) does not apply to an accord and satisfaction.

§ 1309. *Option to accelerate at will.*

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

§ 1310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Section 2. Section 2103(a) of Title 13 is amended and subsection (c) is amended by adding a definition to read:

§ 2103. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“Buyer.” A person who buys or contracts to buy goods.

["Good faith." In the case of a merchant, good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.]

“Receipt.” Receipt of goods means taking physical possession of them.

“Seller.” A person who sells or contracts to sell goods.

(c) Index of definitions in other divisions.—The following definitions in other divisions apply to this division:

“Control.” Section 7106.

Section 3. The definition of “financing agency” in section 2104 of Title 13 is amended to read:

§ 2104. Definitions: “merchant”; “between merchants”; “financing agency.”

The following words and phrases when used in this division shall have the meanings given to them in this section:

“Financing agency.” [A] *Any* 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 draft of the seller 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**"] *The term* includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (see section 2707).

* * *

Section 4. Sections 2202, 2208, 2310(3), 2323(b), 2401(3)(i), 2503(d)(2) and (e)(2), 2505(a)(2) and (b), 2506(b), 2509(b)(1) and (3), 2605(b) and 2705(b)(3) and (c)(3) of Title 13 are amended to read:

§ 2202. Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by *course of performance*, course of dealing or usage of trade (section [1205] 1303) [or by *course of performance* (section 2208)]; and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[§ 2208. **Course of performance or practical construction.**

(a) **Relevancy of accepted performance.**—Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(b) **Construction of express terms and performance.**—The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 1205).

(c) **Waiver or modification of terms inconsistent with performance.**—Subject to the provisions of section 2209 (relating to modification, rescission and waiver), such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.]

§ 2310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

* * *

(3) If delivery is authorized and made by way of documents of title otherwise than by paragraph (2), then payment is due, *regardless of where the goods are to be received:*

(i) at the time and place at which the buyer is to receive *delivery of the tangible* documents [regardless of where the goods are to be received.]; or

(ii) at the time the buyer is to receive *delivery of the electronic documents and at the seller's place of business or, if none, at the seller's residence.*

§ 2323. Form of bill of lading required in overseas shipment; "overseas."

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

(1) due tender of a single part is acceptable within the provisions of this division on cure of improper delivery (section 2508(a)); and

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

§ 2401. Passing of title; reservation for security; limited application of section.

Each provision of this division 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 division and matters concerning title become material the following rules apply:

(3) Delivery without moving goods.—Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(i) 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

§ 2503. Manner of tender of delivery by seller.

(d) Goods in possession of bailee and deliverable without being moved.—Where goods are in the possession of a bailee and are to be delivered without being moved:

(2) tender to the buyer of a nonnegotiable document of title or of a [written direction to] *record directing* the bailee to deliver is sufficient

tender unless the buyer seasonably objects, and *except as otherwise provided in Division 9 (relating to secured transactions)* receipt by the bailee of notification of the rights of the buyer fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(e) Form and manner of delivering documents.—Where the contract requires the seller to deliver documents:

* * *

(2) tender through customary banking channels is sufficient and dishonor of a draft accompanying *or associated with* the documents constitutes nonacceptance or rejection.

§ 2505. Shipment by seller under reservation.

(a) General rule.—Where the seller has identified goods to the contract by or before shipment:

* * *

(2) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security, but except in a case of conditional delivery (section 2507(b)) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession *or control* of the bill of lading.

(b) Shipment in violation of contract.—When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within section 2504 (relating to shipment by seller) but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the powers of the seller as a holder of a negotiable document *of title*.

§ 2506. Rights of financing agency.

* * *

(b) Right to reimbursement unimpaired by latent defect.—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]**.

§ 2509. Risk of loss in absence of breach.

* * *

(b) Goods held by bailee.—Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

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

* * *

(3) after his receipt, *possession or control* of a nonnegotiable document of title or other **[written]** direction to deliver *in a record*, as

provided in section 2503(d)(2) (relating to manner of tender of delivery by seller).

§ 2605. Waiver of objections of buyer by failure to particularize.

(b) Payment against defective documents.—Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent **[on the face of]** *in* the documents.

§ 2705. Stoppage by seller of delivery in transit or otherwise.

(b) When seller loses right.—As against such buyer the seller may stop delivery until:

(3) such acknowledgment to the buyer by a carrier by reshipment or as **[warehouseman]** *a warehouse*; or

(c) Notice and compliance.—

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

Section 5. The definitions of “buyer in ordinary course of business” and “lessee in ordinary course of business” in section 2A103(a) of Title 13 and the definition of “good faith” in subsection (c) are amended to read:

§ 2A103. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“Buyer in ordinary course of business.” A person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes **[receiving]** ***acquiring*** goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“Lessee in ordinary course of business.” A person who, in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and

includes [receiving] *acquiring* goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

* * *

(c) Index of definitions in other divisions.—The following definitions in other divisions apply to this division:

* * *

[“Good faith.” Section 2103(a).]

* * *

Section 6. Sections 2A207, 2A501(d), 2A514(b), 2A518(b) introductory paragraph, 2A519(a), 2A526(b)(3), 2A527(b) introductory paragraph and 2A528(a) introductory paragraph of Title 13 are amended to read:

[§ 2A207. Course of performance or practical construction.

(a) **Relevancy of accepted performance.**—If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(b) **Construction of express terms and performance.**—The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(c) **Waiver or modification of terms inconsistent with performance.**—Subject to the provisions of section 2A208 (relating to modification, rescission and waiver), course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.]

§ 2A501. Default: procedure.

* * *

(d) **Rights and remedies cumulative.**—Except as otherwise provided in section [1106(a)] 1305(a) (relating to remedies to be liberally administered) or this division or the lease agreement, the rights and remedies referred to in subsections (b) and (c) are cumulative.

* * *

§ 2A514. Waiver of lessee’s objections.

* * *

(b) **Payment against defective documents.**—A lessee’s failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent [on the face of] *in* the documents.

§ 2A518. Cover; substitute goods.

* * *

(b) Damages recoverable.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections [1102(c)] 1302 and 2A503), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

* * *

§ 2A519. Lessee's damages for nondelivery, repudiation, default and breach of warranty in regard to accepted goods.

(a) Measure of damages for nondelivery or rejection.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections [1102(c)] 1302 and 2A503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A518(b) (relating to cover; substitute goods), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

* * *

§ 2A526. Lessor's stoppage of delivery in transit or otherwise.

* * *

(b) When lessor loses right.—In pursuing its remedies under subsection (a), the lessor may stop delivery until:

* * *

(3) such an acknowledgment to the lessee by a carrier via reshipment or as [warehouseman] a *warehouse*.

* * *

§ 2A527. Lessor's rights to dispose of goods.

* * *

(b) Damages recoverable.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections [1102(c)] 1302 and 2A503), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

* * *

§ 2A528. Lessor's damages for nonacceptance, failure to pay, repudiation or other default.

(a) General rule.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections [1102(c)] 1302 and 2A523), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A527(b) (relating to lessor's rights to dispose of goods), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A523(a) or (c)(1) (relating to lessor's remedies) or, if agreed, for other default of the lessee:

* * *

Section 7. The definitions of "good faith" and "prove" in section 3103(a) of Title 13 are amended to read:

§ 3103. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have the meanings given to them in this subsection:

* * *

["Good faith." Honesty in fact and the observance of reasonable commercial standards of fair dealing.]

* * *

"Prove." With respect to a fact means to meet the burden of establishing the fact (section 1201(b)(8)).

* * *

Section 8. The definition of "good faith" in section 4104(c) of Title 13 is amended and the subsection is amended by adding a definition to read:

§ 4104. Definitions and index of definitions.

* * *

(c) Index of definitions in other divisions.—The following definitions in other divisions apply to this division:

* * *

"Control." Section 7106.

["Good faith." Section 3103.]

* * *

Section 9. Section 4210(c) introductory paragraph of Title 13 is amended to read:

§ 4210. Security interest of collecting bank in items, accompanying documents and proceeds.

* * *

(c) Satisfaction and continuation of security interest.—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 Division 9 (relating to secured transactions), but:

* * *

Section 10. The definitions of “good faith” and “prove” in section 4A105(a) of Title 13 are amended to read:

§ 4A105. Other definitions.

(a) Definitions.—The following words and phrases when used in this division shall have the meanings given to them in this subsection:

* * *

“Good faith.” Honesty in fact and the observance of reasonable commercial standards of fair dealing.]

“Prove.” With respect to a fact, means to meet the burden of establishing the fact (section 1201**(b)(8)**).

* * *

Section 11. Sections 4A106(a), 4A204(b) and 5103(c) of Title 13 are amended to read:

§ 4A106. Time payment order is received.

(a) General rule.—The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section [1201 (relating to general definitions)] *1202 (relating to notice; knowledge)*. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations or amendments or to different categories of payment orders, cancellations or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

* * *

§ 4A204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

* * *

(b) Reasonable time.—Reasonable time under subsection (a) may be fixed by agreement as stated in section [1204**(b)** (relating to time;)] *1205(a)* (relating to reasonable time; [**“seasonably”**] *seasonableness*), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

§ 5103. Scope.

* * *

(c) Variation by agreement or undertaking.—With the exception of this subsection, subsections (a) and (d), the definitions of “issuer” and “letter of credit” under section 5102(a) (relating to definitions) and sections 5106(d) (relating to perpetual letters of credit) and 5114(d) (relating to assignment of proceeds), and except to the extent prohibited under sections [1102**(c)**] *1302*

(relating to variation [of title] by agreement) and 5117(d) (relating to time at which subrogation rights arise), the effect of this division may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this division.

* * *

Section 12. Division 7 of Title 13 is amended to read:

**[DIVISION 7
WAREHOUSE RECEIPTS, BILLS OF LADING
AND OTHER DOCUMENTS OF TITLE**

Chapter

- 71. General**
- 72. Warehouse Receipts: Special Provisions**
- 73. Bills of Lading: Special Provisions**
- 74. Warehouse Receipts and Bills of Lading: General Obligations**
- 75. Warehouse Receipts and Bills of Lading: Negotiation and Transfer**
- 76. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions**

**CHAPTER 71
GENERAL**

Sec.

- 7101. Short title of division.**
- 7102. Definitions and index of definitions.**
- 7103. Relation of division to treaty, statute, tariff, classification or regulation.**
- 7104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.**
- 7105. Construction against negative implication.**

§ 7101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Article 7, Documents of Title.

§ 7102. Definitions and index of definitions.

(a) **Definitions.**—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“**Bailee.**” The person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

“**Consignee.**” The person named in a bill to whom or to whose order the bill promises delivery.

“**Consignor.**” The person named in a bill as the person from whom the goods have been received for shipment.

“Delivery order.” A written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

“Document.” Document of title as defined in section 1201 (relating to general definitions).

“Goods.” All things which are treated as movable for the purposes of a contract of storage or transportation.

“Issuer.” A bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

“Warehouseman.” A person engaged in the business of storing goods for hire.

(b) Index of other definitions in division.—Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

“Duly negotiate.” Section 7501.

“Person entitled under the document.” Section 7403(d).

(c) Index of definitions in other divisions.—Definitions in other divisions applying to this division and the sections in which they appear are:

“Contract for sale.” Section 2106.

“Overseas.” Section 2323.

“Receipt” of goods. Section 2103.

(d) Applicability of general definitions and principles.—In addition Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 7103. Relation of division to treaty, statute, tariff, classification or regulation.

To the extent that any treaty or statute of the United States, regulatory statute of this Commonwealth or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this division are subject thereto.

§ 7104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.

(a) Negotiable document of title.—A warehouse receipt, bill of lading or other document of title is negotiable:

(1) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(2) where recognized in overseas trade, if it runs to a named person or assigns.

(b) **Nonnegotiable document of title.**—Any other document is nonnegotiable. A bill of lading in which it is stated 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 a written order signed by the same or another named person.

§ 7105. **Construction against negative implication.**

The omission from either Chapter 72 (relating to warehouse receipts: special provisions) or Chapter 73 (relating to bills of lading: special provisions) of a provision corresponding to a provision made in the other chapter does not imply that a corresponding rule of law is not applicable.

CHAPTER 72 WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec.

7201. **Who may issue warehouse receipt; storage under government bond.**

7202. **Form of warehouse receipt; essential terms; optional terms.**

7203. **Liability for nonreceipt or misdescription.**

7204. **Duty of care; contractual limitation of liability of warehouseman.**

7205. **Title under warehouse receipt defeated in certain cases.**

7206. **Termination of storage at option of warehouseman.**

7207. **Goods must be kept separate; fungible goods.**

7208. **Altered warehouse receipts.**

7209. **Lien of warehouseman.**

7210. **Enforcement of lien of warehouseman.**

§ 7201. **Who may issue warehouse receipt; storage under government bond.**

(a) **Who may issue warehouse receipt.**—A warehouse receipt may be issued by any warehouseman.

(b) **Storage under government bond.**—Where 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 has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

§ 7202. **Form of warehouse receipt; essential terms; optional terms.**

(a) **Form of warehouse receipt.**—A warehouse receipt need not be in any particular form.

(b) **Essential terms.**—Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(1) The location of the warehouse where the goods are stored.

(2) The date of issue of the receipt.

(3) The consecutive number of the receipt.

(4) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(5) The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt.

(6) A description of the goods or of the packages containing them.

(7) The signature of the warehouseman, which may be made by his authorized agent.

(8) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership.

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 7209 (relating to lien of warehouseman)). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(c) **Optional terms.**—A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this title and do not impair his obligation of delivery (section 7403) or his duty of care (section 7204). Any contrary provisions shall be ineffective.

§ 7203. **Liability for nonreceipt or misdescription.**

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods, may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where 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 the like, if such indication be true, or the party or purchaser otherwise has notice.

§ 7204. **Duty of care; contractual limitation of liability of warehouseman.**

(a) **Duty of care.**—A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(b) **Contractual limitation of liability.**—Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the tariff of the warehouseman, if any. No such limitation is effective with respect to the liability of the warehouseman for conversion to his own use.

(c) **Provisions for presenting claims and instituting actions.**—Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

§ 7205. Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

§ 7206. Termination of storage at option of warehouseman.

(a) **General rule.**—A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of section 7210 (relating to enforcement of lien of warehouseman).

(b) **Goods about to decline in value.**—If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (a) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) **Hazardous goods.**—If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known

to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(d) **Delivery of goods upon demand.**—The warehouseman must deliver the goods to any person entitled to them under this division upon due demand made at any time prior to sale or other disposition under this section.

(e) **Disposition of proceeds of sale.**—The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

§ 7207. **Goods must be kept separate; fungible goods.**

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

(b) **Commingled fungible goods.**—Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for the share of that owner. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

§ 7208. **Altered warehouse receipts.**

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

§ 7209. **Lien of warehouseman.**

(a) **Charges and expenses covered by lien.**—A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated the lien of a warehouseman is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a

reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(b) **Reservation of security interest for other charges.**—The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. Such a security interest is governed by Division 9 (relating to secured transactions).

(c) **Other persons against whom lien or security interest effective.**—

(1) The lien of a warehouseman for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 7503 (relating to document of title to goods defeated in certain cases).

(2) The lien of a warehouseman on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. “Household goods” means furniture, furnishings and personal effects used by the depositor in a dwelling.

(d) **Loss of lien.**—A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 7210. Enforcement of lien of warehouseman.

(a) **Sale of goods to enforce lien.**—Except as provided in subsection (b), the lien of a warehouseman may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such 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 warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) Procedure for enforcement of lien.—The lien of a warehouseman on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

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

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

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

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

(5) The sale must be held at the nearest suitable place to that where the goods are held or stored.

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

(c) Satisfaction of lien prior to sale.—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 under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this division.

(d) Warehouseman may purchase at public sale.—The warehouseman may buy at any public sale pursuant to this section.

(e) Rights acquired by good faith purchaser.—A purchaser in good faith of goods sold to enforce the lien of a warehouseman takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(f) Disposition of proceeds of sale.—The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(g) **Rights under section not exclusive.**—The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(h) **Lien on goods stored by merchant in course of business.**—Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (a) or (b).

(i) **Liability of warehouseman for noncompliance.**—The warehouseman 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.

CHAPTER 73 BILLS OF LADING: SPECIAL PROVISIONS

Sec.

7301. **Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.**

7302. **Through bills of lading and similar documents.**

7303. **Diversions; reconsignment; change of instructions.**

7304. **Bills of lading in a set.**

7305. **Destination bills.**

7306. **Altered bills of lading.**

7307. **Lien of carrier.**

7308. **Enforcement of lien of carrier.**

7309. **Duty of care; contractual limitation of liability of carrier.**

§ 7301. **Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.**

(a) **Liability of issuer for nonreceipt or misdescription.**—A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, 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 that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown,” “said to contain,” “shipper’s weight, load and count” or the like, if such indication be true.

(b) **Duty of carrier issuer loading goods.**—When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases “shipper’s weight, load and count” or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(c) **Duty of carrier issuer when freight loaded by shipper.**—When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases “shipper’s weight” or other words of like purport are ineffective.

(d) **Liability of issuer for improper loading.**—The issuer may by inserting in the bill the words “shipper’s weight, load and count” or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

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

§ 7302. Through bills of lading and similar documents.

(a) **Liability of issuer for acts of other persons.**—The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(b) **Other person subjected to obligation of issuer.**—Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(c) **Recovery by issuer against other persons.**—The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment,

or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

§ 7303. Diversion; reconsignment; change of instructions.

(a) **General rule.**—Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

- (1) the holder of a negotiable bill;
- (2) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee;
- (3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or
- (4) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(b) **Liability of bailee when instructions not on document.**—Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

§ 7304. Bills of lading in a set.

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

(b) **Set of parts constitutes one bill.**—Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(c) **Negotiation of parts of set to different persons.**—Where a 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 whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the obligation of the carrier by surrender of his part.

(d) **Liability for negotiation of single part of set.**—Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(e) **Duty of bailee upon presentation of part of set.**—The bailee is obliged to deliver in accordance with Chapter 74 (relating to warehouse receipts and bills of lading: general obligations) against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the obligation of the bailee on the whole bill.

§ 7305. Destination bills.

(a) **Destination bill procured by carrier.**—Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(b) **Substitute bill procured by issuer.**—Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

§ 7306. Altered bills of lading.

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

§ 7307. Lien of carrier.

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

(b) **Persons against whom lien effective.**—A lien for charges and expenses under subsection (a) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(c) **Loss of lien.**—A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 7308. Enforcement of lien of carrier.

(a) **Sale of goods to enforce lien.**—The lien of a carrier may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price

current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) **Satisfaction of lien prior to sale.**—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 under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this division.

(c) **Carrier may purchase at public sale.**—The carrier may buy at any public sale pursuant to this section.

(d) **Rights acquired by good faith purchaser.**—A purchaser in good faith of goods sold to enforce the lien of a carrier takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(e) **Disposition of proceeds of sale.**—The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(f) **Rights under section not exclusive.**—The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(g) **Alternative methods of enforcing lien.**—The lien of a carrier may be enforced in accordance with either subsection (a) or the procedure set forth in section 7210(b) (relating to enforcement of lien of warehouseman).

(h) **Liability of carrier for noncompliance.**—The 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.

§ 7309. Duty of care; contractual limitation of liability of carrier.

(a) **Duty of care.**—A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(b) **Contractual limitation of liability.**—Damages may be limited by a provision that the liability of the carrier shall not exceed a value stated in the document if the rates of the carrier are dependent upon value and the consignor by the tariff of the carrier is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but

no such limitation is effective with respect to the liability of the carrier for conversion to its own use.

(c) Provisions for presenting claims and instituting actions.—Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

CHAPTER 74
WAREHOUSE RECEIPTS AND BILLS OF LADING:
GENERAL OBLIGATIONS

Sec.

7401. Irregularities in issue of receipt or bill or conduct of issuer.

7402. Duplicate receipt or bill; overissue.

7403. Obligation of warehouseman or carrier to deliver; excuse.

7404. No liability for good faith delivery pursuant to receipt or bill.

§ 7401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this division on an issuer apply to a document of title regardless of the fact that:

(1) the document may not comply with the requirements of this division or of any other law or regulation regarding its issue, form or content;

(2) the issuer may have violated laws regulating the conduct of his business;

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

(4) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

§ 7402. Duplicate receipt or bill; overissue.

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

§ 7403. Obligation of warehouseman or carrier to deliver; excuse.

(a) General rule.—The bailee must deliver the goods to a person entitled under the document who complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

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

(2) Damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in such cases is on the person entitled under the document.

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on lawful termination of storage by a warehouseman.

(4) The exercise by a seller of his right to stop delivery pursuant to the provisions of Division 2 (section 2705).

(5) A diversion, reconsignment or other disposition pursuant to the provisions of this division (section 7303) or tariff regulating such right.

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

(7) Any other lawful excuse.

(b) Satisfaction of lien.—A person claiming goods covered by a document of title must satisfy the lien of the bailee where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Surrender of negotiable document.—Unless the person claiming is one against whom the document confers no right under section 7503(a) (relating to document of title to goods defeated in certain cases), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(d) Definition of “person entitled under the document”.—“Person entitled under the document” means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

§ 7404. No liability for good faith delivery pursuant to receipt or bill.

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this division is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

CHAPTER 75

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

Sec.

7501. Form of negotiation and requirements of “due negotiation.”

7502. Rights acquired by due negotiation.

7503. Document of title to goods defeated in certain cases.

7504. Rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery.

7505. Indorser not guarantor for other parties.

7506. Delivery without indorsement: right to compel indorsement.

7507. Warranties on negotiation or transfer of receipt or bill.

7508. Warranties of collecting bank as to documents.

7509. Receipt or bill: when adequate compliance with commercial contract.

§ 7501. Form of negotiation and requirements of “due negotiation.”

(a) **Negotiation by indorsement and delivery.**—A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(b) **Negotiation by delivery.**—

(1) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(2) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(c) **Negotiation by special indorsee.**—Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(d) **Definition of “duly negotiated.”**—A negotiable document of title is “duly negotiated” when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(e) **Indorsement of nonnegotiable document.**—Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the rights of the transferee.

(f) **Naming person to be notified of arrival of goods.**—The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

§ 7502. Rights acquired by due negotiation.

(a) **General rule.**—Subject to section 7205 (relating to title under warehouse receipt defeated in certain cases) on fungible goods and section 7503 (relating to document of title to goods defeated in certain cases), a holder to whom 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 him except those arising under the terms of the document or under this division. In the case of a delivery order the obligation of the bailee accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Rights acquired unaffected by certain matters.—Subject to section 7503, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

§ 7503. Document of title to goods defeated in certain cases.

(a) Prior legal or perfected security interest.—A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(1) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this division (section 7403 (relating to obligation of warehouseman or carrier to deliver; excuse)) or with power of disposition under this title (section 2403 (relating to power to transfer; good faith purchase of goods; “entrusting”) and section 9320 (relating to buyer of goods)) or other statute or rule of law; nor

(2) acquiesced in the procedure by the bailor or his nominee of any document of title.

(b) Subordination of title based upon unaccepted delivery order.—Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading governing the goods has been duly negotiated. Such a title may be defeated under section 7504 (relating to rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery) to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Subordination of title based upon bill to freight forwarder.—Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder covering such goods has been duly negotiated; but delivery by the carrier in accordance with Chapter 74 (relating to warehouse

receipts and bills of lading: general obligations) pursuant to its own bill of lading discharges the obligation of the carrier to deliver.

§ 7504. Rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery.

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

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

(1) by those creditors of the transferor who could treat the sale as void under section 2402 (relating to rights of creditors of seller against sold goods);

(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 his rights; or

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

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

(d) **Stoppage by seller of delivery under nonnegotiable document.**—Delivery pursuant to a nonnegotiable document may be stopped by a seller under section 2705 (relating to stoppage by seller of delivery in transit or otherwise) and subject to the requirement of due notification there provided. A bailee honoring the instructions of the seller is entitled to be indemnified by the seller against any resulting loss or expense.

§ 7505. Indorser not guarantor for other parties.

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

§ 7506. Delivery without indorsement: right to compel indorsement.

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

§ 7507. Warranties on negotiation or transfer of receipt or bill.

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under section 7508 (relating to

warranties of collecting bank as to documents), then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(1) that the document is genuine;

(2) that he has no knowledge of any fact which would impair its validity or worth; and

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

§ 7508. Warranties of collecting bank as to documents.

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

§ 7509. Receipt or bill: when adequate compliance with commercial contract.

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by Division 2 (relating to sales) and Division 5 (relating to letters of credit).

CHAPTER 76 WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

Sec.

7601. Lost and missing documents.

7602. Attachment of goods covered by negotiable document.

7603. Conflicting claims; interpleader.

§ 7601. Lost and missing documents.

(a) Delivery of substitute document under court order.—If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the reasonable costs and counsel fees of the bailee.

(b) Liability for delivery without court order.—A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, 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 who files a notice of claim within one year after the delivery.

§ 7602. Attachment of goods covered by negotiable document.

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

§ 7603. Conflicting claims; interpleader.

If more than one person claims title or possession of the goods, the bailee is excused from delivering until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.]

Section 13. Title 13 is amended by adding a division to read:

***DIVISION 7
WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER
DOCUMENTS OF TITLE***

Chapter

71. General

72. Warehouse Receipts: Special Provisions

73. Bills of Lading: Special Provisions

74. Warehouse Receipts and Bills of Lading: General Obligations

75. Warehouse Receipts and Bills of Lading: Negotiation and Transfer

76. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

CHAPTER 71

GENERAL

Sec.

7101. Short title of division.

7102. Definitions and index of definitions.

7103. Relation of division to treaty or statute.

7104. Negotiable and nonnegotiable document of title.

7105. Reissuance in alternative medium.

7106. Control of electronic document of title.

§ 7101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code-Documents of Title.

§ 7102. Definitions and index of definitions.

(a) *Division 7 definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:*

“Bailee.” A person that by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

“Carrier.” A person that issues a bill of lading.

“Consignee.” A person named in a bill of lading to which or to whose order the bill promises delivery.

“Consignor.” A person named in a bill of lading as the person from which the goods have been received for shipment.

“Delivery order.” 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.

“Goods.” All things that are treated as movable for the purposes of a contract for storage or transportation.

“Issuer.” 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.

“Person entitled under the document.” 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.

“Shipper.” A person that enters into a contract of transportation with a carrier.

“Sign.” With present intent to authenticate or adopt a record:

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

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

“Warehouse.” A person engaged in the business of storing goods for hire.

(b) *Definitions in other divisions.—Definitions in other divisions applying to this division and the sections in which they appear are:*

(1) “Contract for sale.” Section 2106 (relating to definitions: “contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming” to contract; “termination”; “cancellation”).

(2) “Lessee in ordinary course of business.” Section 2A103 (relating to definitions and index of definitions).

(3) "Receipt." Section 2103 (relating to definitions and index of definitions).

(c) Division 1 definitions and principles.—In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 7103. Relation of division to treaty or statute.

(a) Hierarchy.—This division is subject to any treaty or statute of the United States or a regulatory statute of this Commonwealth to the extent the treaty, statute or regulatory statute is applicable.

(b) No repeal or modification.—This division does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this division. However, violation of these laws does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) Electronic Signatures in Global and National Commerce Act.—This title modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.) but does not modify, limit or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(d) Conflict.—To the extent there is a conflict between Chapter 1, 3 or 5 of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act, and this division, this division governs.

§ 7104. Negotiable and nonnegotiable document of title.

(a) Negotiable.—Except as otherwise provided in subsection (c), document of title is negotiable if, by its terms, the goods are to be delivered to the bearer or to the order of a named person.

(b) Nonnegotiable.—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) Legend determinative.—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.

§ 7105. Reissuance in alternative medium.

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

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

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

(b) Effect of electronic to tangible.—Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

- (1) the electronic document ceases to have any effect or validity; and*
- (2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.*

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

- (1) the person entitled under the tangible document surrenders possession of the document to the issuer; and*
- (2) the electronic document, when issued, contains a statement that it is issued in substitution for the tangible document.*

(d) Effect of tangible to electronic.—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.*

§ 7106. Control of electronic document of title.

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

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

- (1) a single authoritative copy of the document exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5) and (6), unalterable;*
- (2) the authoritative copy identifies the person asserting control as:*
 - (i) the person to which the document was issued; or*
 - (ii) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;*
- (3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;*

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

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

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

CHAPTER 72 WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec.

7201. Person that may issue a warehouse receipt; storage under bond.

7202. Form of warehouse receipt; effect of omission.

7203. Liability for nonreceipt or misdescription.

7204. Duty of care; contractual limitation of warehouse's liability.

7205. Title under warehouse receipt defeated in certain cases.

7206. Termination of storage at warehouse's option.

7207. Goods must be kept separate; fungible goods.

7208. Altered warehouse receipts.

7209. Lien of warehouse.

7210. Enforcement of warehouse's lien.

§ 7201. Person that may issue a warehouse receipt; storage under bond.

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

(b) Storage under bond.—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.

§ 7202. Form of warehouse receipt; effect of omission.

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

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

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

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

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

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

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

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

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

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

(c) *Permissible terms.*—A warehouse may insert in its receipt any terms that are not contrary to this title and do not impair its obligation of delivery under section 7403 (relating to obligation of bailee to deliver; excuse) or its duty of care under section 7204 (relating to duty of care; contractual limitation of warehouse's liability). Any contrary provision is ineffective.

§ 7203. *Liability for nonreceipt or misdescription.*

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

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

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

§ 7204. *Duty of care; contractual limitation of warehouse's liability.*

(a) *Duty of care.*—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. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

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

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

§ 7205. 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.

§ 7206. Termination of storage at warehouse's option.

(a) Payment and removal.—A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 7210 (relating to enforcement of warehouse's lien).

(b) Perishable goods.—If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 7210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

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

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

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

§ 7207. Goods must be kept separate; fungible goods.

(a) Separation.—

(1) Unless the warehouse receipt provides otherwise, except as set forth in paragraph (2), a warehouse shall keep separate the goods

covered by each receipt so as to permit at all times identification and delivery of those goods.

(2) Different lots of fungible goods may be commingled.

(b) Fungible goods.—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.

§ 7208. 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.

§ 7209. Lien of warehouse.

(a) Existence.—

(1) 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, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.

(2) The warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse if:

(i) the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited; and

(ii) it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods.

(3) However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) Security interest.—A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. A security interest is governed by Division 9 (relating to secured transactions).

(c) Effectiveness against entrustors.—

(1) *Except as set forth in paragraph (2), a warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid.*

(2) *The lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:*

(i) *deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with:*

(A) *actual or apparent authority to ship, store or sell;*

(B) *power to obtain delivery under section 7403 (relating to obligation of bailee to deliver; excuse); or*

(C) *power of disposition under section 2403 (relating to power to transfer; good faith purchase of goods; "entrusting"), 2A304(a)(2) (relating to subsequent lease of goods by lessor), 2A305(a)(2) (relating to sale or sublease of goods by lessee), 9320 (relating to buyer of goods) or 9321(c) (relating to licensee of general intangible and lessee of goods in ordinary course of business) or other statute or rule of law; or*

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

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

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

§ 7210. *Enforcement of warehouse's lien.*

(a) *Sale.—*

(1) *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.*

(2) *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.*

(3) *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.*

(4) *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 commercially reasonable practices among dealers in the type of goods sold.

(5) A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by paragraph (4).

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

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

(2) The notification must include:

(i) an itemized statement of the claim;

(ii) a description of the goods subject to the lien;

(iii) a demand for payment within a specified time not less than ten days after receipt of the notification; and

(iv) a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold at auction at a specified time and place.

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

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

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

(c) Satisfaction.—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 division.

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

(e) Purchaser in good faith.—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) Proceeds of sale.—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) Additional rights.—The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) Goods stored by merchant.—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) Liability of warehouse.—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.

CHAPTER 73 BILLS OF LADING: SPECIAL PROVISIONS

Sec.

7301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.

7302. Through bills of lading and similar documents of title.

7303. Diversion; reconsignment; change of instructions.

7304. Tangible bills of lading in a set.

7305. Destination bills.

7306. Altered bills of lading.

7307. Lien of carrier.

7308. Enforcement of carrier’s lien.

7309. Duty of care; contractual limitation of carrier’s liability.

§ 7301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.

(a) Liability.—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 that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in 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 or condition of contents of packages unknown,” “said to contain,” “shipper’s weight, load and count” or words of similar import, if that indication is true.

(b) Package count.—If goods are loaded by the issuer of the bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) words such as “shipper’s weight, load and count,” or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

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

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

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

§ 7302. *Through bills of lading and similar documents of title.*

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

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

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

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

§ 7303. Diversion; reconsignment; change of instructions.

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

(1) the holder of a negotiable bill;

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

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

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

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

§ 7304. Tangible bills of lading in a set.

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

(e) Bailee.—The bailee shall deliver in accordance with this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

§ 7305. Destination bills.

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

(b) Substitute.—Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7105 (relating to reissuance in alternative medium), may procure a substitute bill to be issued at any place designated in the request.

§ 7306. Altered bills of lading.

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

§ 7307. Lien of carrier.

(a) Establishment.—

(1) Except as set forth in paragraph (2), a carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.

(2) Against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

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

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

§ 7308. Enforcement of carrier's lien.

(a) Sale.—

(1) Except as otherwise provided in subsection (b), a carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods.

(2) 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.

(3) *The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.*

(4) *The carrier has sold goods in a commercially reasonable manner if the carrier 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 commercially reasonable practices among dealers in the type of goods sold.*

(5) *A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by paragraph (4).*

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

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

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

(e) *Proceeds of sale.*—*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) *Additional rights.*—*The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.*

(g) *Enforcement.*—*A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in section 7210(b) (relating to enforcement of warehouse's lien).*

(h) *Liability.*—*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.*

§ 7309. *Duty of care; contractual limitation of carrier's liability.*

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

(b) *Limitation of damages.*—

(1) *Except as set forth in paragraph (2), damages may be limited by a term in the bill of lading or in a transportation agreement that the*

carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity.

(2) A limitation under paragraph (1) is not effective with respect to the carrier's liability for conversion to its own use.

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

CHAPTER 74
WAREHOUSE RECEIPTS AND BILLS OF LADING:
GENERAL OBLIGATIONS

Sec.

7401. Irregularities in issue of receipt or bill or conduct of issuer.

7402. Duplicate document of title; overissue.

7403. Obligation of bailee to deliver; excuse.

7404. No liability for good faith delivery pursuant to document of title.

§ 7401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this division on an issuer apply to a document of title even if:

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

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

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

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

§ 7402. 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 7105 (relating to reissuance in alternative medium). The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

§ 7403. Obligation of bailee to deliver; excuse.

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

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

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

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

(4) *the exercise by a seller of its right to stop delivery pursuant to section 2705 (relating to stoppage by seller of delivery in transit or otherwise) or by a lessor of its right to stop delivery pursuant to section 2A526 (relating to lessor's stoppage of delivery in transit or otherwise);*

(5) *a diversion, reconsignment or other disposition pursuant to section 7303 (relating to diversion; reconsignment; change of instructions);*

(6) *release, satisfaction or any other personal defense against the claimant; or*

(7) *any other lawful excuse.*

(b) *Satisfaction of bailee's lien.—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) *Document.—Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7503(a) (relating to document of title to goods defeated in certain cases):*

(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 the bailee liable to any person to which the document is duly negotiated.*

§ 7404. *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 division 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.*

CHAPTER 75
WAREHOUSE RECEIPTS AND BILLS OF LADING:
NEGOTIATION AND TRANSFER

Sec.

7501. Form of negotiation and requirements of due negotiation.

7502. Rights acquired by due negotiation.

7503. Document of title to goods defeated in certain cases.

7504. *Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.*
7505. *Indorser not guarantor for other parties.*
7506. *Delivery without indorsement; right to compel indorsement.*
7507. *Warranties on negotiation or delivery of document of title.*
7508. *Warranties of collecting bank as to documents of title.*
7509. *Adequate compliance with commercial contract.*

§ 7501. *Form of negotiation and requirements of due negotiation.*

(a) Tangible documents.—The following rules apply to a negotiable tangible document of title:

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

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

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

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

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

(b) Electronic documents.—The following rules apply to a negotiable electronic document of title:

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

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

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

(c) *Nonnegotiable documents.*—Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

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

§ 7502. *Rights acquired by due negotiation.*

(a) *Rights.*—Subject to sections 7205 (relating to title under warehouse receipt defeated in certain cases) and 7503 (relating to document of title to goods defeated in certain cases), a holder to which a negotiable document of title has been duly negotiated acquires thereby all of the following:

(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.*

(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 division. 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) *Effect of stoppage or surrender.*—Subject to section 7503, 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.*

§ 7503. *Document of title to goods defeated in certain cases.*

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

(1) *deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell; with power to obtain delivery under section 7403 (relating to obligation of bailee to deliver; excuse); or with power of disposition under section 2403 (relating to power to transfer;*

good faith purchase of goods; “entrusting”), 2A304(a)(2) (relating to subsequent lease of goods by lessor), 2A305(a)(2) (relating to sale or sublease of goods by lessee), 9320 (relating to buyer of goods), 9321(c) (relating to licensee of general intangible and lessee of goods in ordinary course of business) or other statute or rule of law; or

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

(b) Negotiable warehouse receipt or bill of lading.—Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 7504 (relating to rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery) to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Freight forwarder.—Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Chapter 74 (relating to warehouse receipts and bills of lading: general obligations) pursuant to its own bill of lading discharges the carrier’s obligation to deliver.

§ 7504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) Transferee.—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) Third parties.—In the case of a transfer 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 2402 (relating to rights of creditors of seller against sold goods) or 2A308 (relating to special rights of creditors);

(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) Diversion or change by consignor.—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 course of business or a lessee in ordinary course of business; and*

(2) *in any event defeats the consignee's rights against the bailee.*

(d) *Stopping delivery.—Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 2705 (relating to stoppage by seller of delivery in transit or otherwise) or a lessor under section 2A526 (relating to lessor's stoppage of delivery in transit or otherwise), subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.*

§ 7505. *Indorser not guarantor for other parties.*

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

§ 7506. *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.

§ 7507. *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 7508 (relating to warranties of collecting bank as to documents of title), 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.*

§ 7508. *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.

§ 7509. *Adequate compliance with commercial contract.*

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Division 2 (relating to sales), 2A (relating to leases) or 5 (relating to letters of credit).

CHAPTER 76
WAREHOUSE RECEIPTS AND BILLS OF LADING:
MISCELLANEOUS PROVISIONS

Sec.

7601. Lost, stolen or destroyed documents of title.

7602. Judicial process against goods covered by negotiable document of title.

7603. Conflicting claims; interpleader.

§ 7601. Lost, stolen or destroyed documents of title.

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

(b) Bailee delivery.—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.

§ 7602. Judicial process against goods covered by negotiable document of title.

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

§ 7603. 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.

Section 14. The definition of "good faith" in section 8102(a) of Title 13 is amended to read:

§ 8102. Definitions.

(a) Definitions.—The following words and phrases when used in this division shall have the meanings given to them in this subsection:

* * *

["Good faith." For purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this division, honesty in fact and the observance of reasonable commercial standards of fair dealing.]

* * *

Section 15. Section 8103 of Title 13 is amended by adding a subsection to read:

§ 8103. Rules for determining whether certain obligations and interests are securities or financial assets.

* * *

(g) Financial asset.—A document of title, as defined in section 1201 (relating to general definitions), is not a financial asset unless paragraph (3) of the definition of "financial asset" in section 8102 (relating to definitions) applies.

Section 16. The definitions of "agricultural lien," "document," "good faith" and "health-care-insurance receivable" in section 9102(a) of Title 13 are amended and subsection (b) is amended by adding definitions to read:

§ 9102. Definitions and index of definitions.

(a) Division 9 definitions.—The following words and phrases when used in this division shall have the meanings given to them in this subsection:

* * *

"Agricultural lien." An interest[, other than a security interest,] in farm products:

(1) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(2) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(3) whose effectiveness does not depend on the person's possession of the personal property.

* * *

“Document.” A document of title or a receipt of the type described in section 7201(b) (relating to *person that may issue a warehouse receipt*; storage under [government] bond).

“Good faith.” Honesty in fact and the observance of reasonable commercial standards of fair dealing.]

“Health-care-insurance receivable.” An interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided *or to be provided*.

(b) Definitions in other divisions.—The following definitions in other divisions apply to this division:

“Control.” *With respect to a document of title, section 7106.*

“Issuer.” *With respect to a document of title, section 7102.*

Section 17. Sections 9203(b)(3)(iv) and 9207(c) introductory paragraph of Title 13 are amended to read:

§ 9203. 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 all of the following apply:

(3) One of the following conditions is met:

(iv) 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 7106 (*relating to control of electronic document of title*), 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right) pursuant to the debtor’s security agreement.

§ 9207. Rights and duties of secured party having possession or control of collateral.

(c) Duties and rights when secured party in possession or control.—Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 7106 (*relating to control of electronic document of title*), 9104 (relating to control

of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right):

* * *

Section 18. Section 9208(b) of Title 13 is amended by adding a paragraph to read:

§ 9208. Additional duties of secured party having control of collateral.

* * *

(b) Duties of secured party after receiving demand from debtor.—Within ten days after receiving an authenticated demand by the debtor:

* * *

(6) A secured party having control of an electronic document shall:

(i) give control of the electronic document to the debtor or its designated custodian;

(ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(iii) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

Section 19. Sections 9301(c)(3) and 9304(b)(1) of Title 13 are amended to read:

§ 9301. Law governing perfection and priority of security interests.

* * *

(c) Fixture filings, timber to be cut, priority of nonpossessory tangible personal property security interests; location of collateral.—Except as otherwise provided in subsection (d), while collateral is located in a jurisdiction, the local law of that jurisdiction governs:

* * *

(3) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in *tangible* negotiable documents, goods, instruments, money or tangible chattel paper.

* * *

§ 9304. Law governing perfection and priority of security interests in deposit accounts.

* * *

(b) Bank's jurisdiction.—The following rules determine a bank's jurisdiction for purposes of this chapter:

(1) If an agreement between the bank and [the debtor] *its customer* governing the deposit account expressly provides that a particular

jurisdiction is the bank's jurisdiction for purposes of this chapter[,] *or* this division [or this title], that jurisdiction is the bank's jurisdiction.

* * *

Section 20. Section 9309 of Title 13 is amended by adding a paragraph to read:

§ 9309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

* * *

(14) *A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.*

Section 21. Sections 9310(b)(5) introductory paragraph and (8), 9312(e), 9313(a), 9314(a) and (b), 9317(b) and (d), 9338(2) and 9601(b) of Title 13 are amended to read:

§ 9310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

* * *

(b) Exceptions: filing not necessary.—The filing of a financing statement is not necessary to perfect a security interest:

* * *

(5) in certificated securities, documents, goods or instruments which is perfected without filing, *control* or possession under section:

* * *

(8) in deposit accounts, electronic chattel paper, *electronic documents*, investment property or letter-of-credit rights which is perfected by control under section 9314 (relating to perfection by control);

* * *

§ 9312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

* * *

(e) Temporary perfection: new value.—A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession *or control* for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

* * *

§ 9313. 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 under section 8301 (relating to delivery).

* * *

§ 9314. 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 7106 (relating to control of electronic document of title), 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right).

(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 7106, 9104, 9105 or 9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

* * *

§ 9317. Interests which take priority over or take free of security interest or agricultural lien.

* * *

(b) Buyers that receive delivery.—Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, *tangible* documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

* * *

(d) Licensees and buyers of certain collateral.—A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, *electronic documents*, general intangibles or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

* * *

§ 9338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9516(b)(5) (relating to what constitutes filing; effectiveness of filing) which is incorrect at the time the financing statement is filed:

* * *

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable

reliance upon the incorrect information, the purchaser gives value and, in the case of *tangible* chattel paper, *tangible* documents, goods, instruments or a security certificate, receives delivery of the collateral.

§ 9601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

* * *

(b) Rights and duties of secured party in possession or control.—A secured party in possession of collateral or control of collateral under section 7106 (*relating to control of electronic document of title*), 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right) has the rights and duties provided in section 9207 (relating to rights and duties of secured party having possession or control of collateral).

* * *

Section 22. This act shall apply as follows:

(1) This act applies to a document of title that is issued or a bailment that arises on or after the effective date of this section.

(2) This act does not apply to a document of title that is issued or a bailment that arises before the effective date of this section even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen after the effective date of this section.

(3) This act does not apply to a right of action that has accrued before the effective date of this section.

Section 23. A document of title issued or a bailment that arises before the effective date of this section and the rights, obligations and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if the amendment or repeal had not occurred and may be terminated, completed, consummated or enforced under that statute or other rule.

Section 24. This act shall take effect in 60 days.

APPROVED—The 16th day of April, A.D. 2008.

EDWARD G. RENDELL