

1 **UNIFORM COMMERCIAL CODE - GENERAL**

2 **PROVISIONS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Fred R. Hunsaker

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the general provisions of the Uniform Commercial Code.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ repeals Title 70A, Chapter 1, General Provisions;
- 14 ▶ enacts the revised Article 1 of the Uniform Commercial Code as Title 70A, Chapter
- 15 1a, General Provisions, including provisions related to:
 - 16 • the construction and interpretation of the Uniform Commercial Code;
 - 17 • the relationship between the Uniform Commercial Code and other laws;
 - 18 • the applicability of the Uniform Commercial Code; and
 - 19 • defining terms;
- 20 ▶ amends other provisions of the Uniform Commercial Code, to conform with the
- 21 adoption of Title 70A, Chapter 1a, General Provisions; and
- 22 ▶ makes technical amendments.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **11-14-501**, as renumbered and amended by Chapter 105, Laws of Utah 2005

- 30 **15-8-4**, as last amended by Chapter 12, Laws of Utah 1994
- 31 **24-1-3**, as last amended by Chapter 296, Laws of Utah 2004
- 32 **32A-11a-102**, as last amended by Chapter 1, Laws of Utah 2000
- 33 **41-1a-601**, as last amended by Chapter 252, Laws of Utah 2000
- 34 **46-4-103**, as enacted by Chapter 74, Laws of Utah 2000
- 35 **46-4-403**, as last amended by Chapter 42, Laws of Utah 2006
- 36 **70A-2-103**, as last amended by Chapter 42, Laws of Utah 2006
- 37 **70A-2-202**, as enacted by Chapter 154, Laws of Utah 1965
- 38 **70A-2a-103**, as last amended by Chapter 42, Laws of Utah 2006
- 39 **70A-2a-501**, as last amended by Chapter 237, Laws of Utah 1993
- 40 **70A-2a-518**, as last amended by Chapter 237, Laws of Utah 1993
- 41 **70A-2a-519**, as last amended by Chapter 237, Laws of Utah 1993
- 42 **70A-2a-527**, as last amended by Chapter 237, Laws of Utah 1993
- 43 **70A-2a-528**, as last amended by Chapter 237, Laws of Utah 1993
- 44 **70A-3-103**, as last amended by Chapter 60, Laws of Utah 1998
- 45 **70A-4-104**, as last amended by Chapter 42, Laws of Utah 2006
- 46 **70A-4a-105**, as last amended by Chapter 237, Laws of Utah 1993
- 47 **70A-4a-106**, as last amended by Chapter 237, Laws of Utah 1993
- 48 **70A-4a-204**, as last amended by Chapter 237, Laws of Utah 1993
- 49 **70A-5-103**, as repealed and reenacted by Chapter 241, Laws of Utah 1997
- 50 **70A-8-101**, as last amended by Chapter 71, Laws of Utah 2005
- 51 **70A-7a-102**, as enacted by Chapter 42, Laws of Utah 2006
- 52 **70A-9a-102.1**, as last amended by Chapter 42, Laws of Utah 2006
- 53 **70A-10-104**, as last amended by Chapter 42, Laws of Utah 2006
- 54 **70C-2-204**, as enacted by Chapter 159, Laws of Utah 1985

55 ENACTS:

- 56 **70A-1a-101**, Utah Code Annotated 1953
- 57 **70A-1a-102**, Utah Code Annotated 1953

- 58 **70A-1a-103**, Utah Code Annotated 1953
- 59 **70A-1a-104**, Utah Code Annotated 1953
- 60 **70A-1a-105**, Utah Code Annotated 1953
- 61 **70A-1a-106**, Utah Code Annotated 1953
- 62 **70A-1a-107**, Utah Code Annotated 1953
- 63 **70A-1a-108**, Utah Code Annotated 1953
- 64 **70A-1a-201**, Utah Code Annotated 1953
- 65 **70A-1a-202**, Utah Code Annotated 1953
- 66 **70A-1a-203**, Utah Code Annotated 1953
- 67 **70A-1a-204**, Utah Code Annotated 1953
- 68 **70A-1a-205**, Utah Code Annotated 1953
- 69 **70A-1a-206**, Utah Code Annotated 1953
- 70 **70A-1a-301**, Utah Code Annotated 1953
- 71 **70A-1a-302**, Utah Code Annotated 1953
- 72 **70A-1a-303**, Utah Code Annotated 1953
- 73 **70A-1a-304**, Utah Code Annotated 1953
- 74 **70A-1a-305**, Utah Code Annotated 1953
- 75 **70A-1a-306**, Utah Code Annotated 1953
- 76 **70A-1a-307**, Utah Code Annotated 1953
- 77 **70A-1a-308**, Utah Code Annotated 1953
- 78 **70A-1a-309**, Utah Code Annotated 1953
- 79 **70A-1a-310**, Utah Code Annotated 1953
- 80 REPEALS:
- 81 **70A-1-101**, as enacted by Chapter 154, Laws of Utah 1965
- 82 **70A-1-102**, as enacted by Chapter 154, Laws of Utah 1965
- 83 **70A-1-103**, as enacted by Chapter 154, Laws of Utah 1965
- 84 **70A-1-104**, as enacted by Chapter 154, Laws of Utah 1965
- 85 **70A-1-105**, as last amended by Chapter 252, Laws of Utah 2000

- 86 **70A-1-106**, as enacted by Chapter 154, Laws of Utah 1965
- 87 **70A-1-107**, as enacted by Chapter 154, Laws of Utah 1965
- 88 **70A-1-108**, as enacted by Chapter 154, Laws of Utah 1965
- 89 **70A-1-109**, as enacted by Chapter 154, Laws of Utah 1965
- 90 **70A-1-201**, as last amended by Chapter 42, Laws of Utah 2006
- 91 **70A-1-202**, as enacted by Chapter 154, Laws of Utah 1965
- 92 **70A-1-203**, as enacted by Chapter 154, Laws of Utah 1965
- 93 **70A-1-204**, as enacted by Chapter 154, Laws of Utah 1965
- 94 **70A-1-205**, as enacted by Chapter 154, Laws of Utah 1965
- 95 **70A-1-206**, as last amended by Chapter 252, Laws of Utah 2000
- 96 **70A-1-207**, as last amended by Chapter 237, Laws of Utah 1993
- 97 **70A-1-208**, as enacted by Chapter 154, Laws of Utah 1965

99 *Be it enacted by the Legislature of the state of Utah:*

100 Section 1. Section **11-14-501** is amended to read:

101 **11-14-501. Creation and perfection of government security interests.**

102 (1) As used in this section:

103 (a) "Bonds" means any bond, note, lease, or other obligation of a governmental unit.

104 (b) "Governmental unit" has the meaning assigned in [~~Subsection~~] Section

105 70A-9a-102[~~(45)~~].

106 (c) "Pledge" means the creation of a security interest of any kind.

107 (d) "Property" means any property or interests in property, other than real property.

108 (e) "Security agreement" means any resolution, ordinance, indenture, document, or
109 other agreement or instrument under which the revenues, fees, rents, charges, taxes, or other
110 property are pledged to secure the bonds.

111 (2) This section expressly governs the creation, perfection, priority, and enforcement of
112 a security interest created by the state or a governmental unit of the state, notwithstanding
113 anything in Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, to the

114 contrary.

115 (3) (a) The revenues, fees, rents, charges, taxes, or other property pledged by a
116 governmental unit for the purpose of securing its bonds are immediately subject to the lien of
117 the pledge.

118 (b) (i) The lien is a perfected lien upon the effective date of the security agreement.

119 (ii) The physical delivery, filing, or recording of a security agreement or financing
120 statement under the Uniform Commercial Code or otherwise, or any other similar act, is not
121 necessary to perfect the lien.

122 (c) The lien of any pledge is valid, binding, perfected, and enforceable from the time
123 the pledge is made.

124 (d) The lien of the pledge has priority:

125 (i) based on the time of the creation of the pledge unless otherwise provided in the
126 security agreement; and

127 (ii) as against all parties having claims of any kind in tort, contract, or otherwise
128 against the governmental unit, regardless of whether or not the parties have notice of the lien.

129 (e) Each pledge and security agreement made for the benefit or security of any of the
130 bonds shall continue to be effective until:

131 (i) the principal, interest, and premium, if any, on the bonds have been fully paid;

132 (ii) provision for payment has been made; or

133 (iii) the lien created by the security agreement has been released by agreement of the
134 parties in interest or as provided by the security agreement that created the lien.

135 Section 2. Section **15-8-4** is amended to read:

136 **15-8-4. Inapplicability of other laws -- Exempted transactions.**

137 (1) Rental purchase agreements that comply with this chapter are not governed by the
138 laws relating to:

139 (a) a security interest as defined in Subsection [~~70A-1-201(37)~~] 70A-1a-201(2)(ii); or

140 (b) Title 70C, Utah Consumer Credit Code, except that Sections 70C-7-102 through
141 70C-7-104 and 70C-2-205 shall apply to lessors as defined in this chapter to the same extent as

142 they apply to creditors under Title 70C.

143 (2) The chapter does not apply to the following:

144 (a) rental purchase agreements primarily for business, commercial, or agricultural
145 purposes, or those made with governmental agencies or instrumentalities or with organizations;

146 (b) a lease of a safe deposit box;

147 (c) a lease or bailment of personal property which is incidental to the lease of real
148 property and which provides that the consumer has no option to purchase the leased property;

149 or

150 (d) a lease of a motor vehicle, as defined in Section 41-1a-102.

151 Section 3. Section **24-1-3** is amended to read:

152 **24-1-3. Definitions.**

153 As used in this section:

154 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
155 24-1-18.

156 (2) "Agency" means any agency of municipal, county, or state government, including
157 law enforcement agencies, law enforcement personnel, and multi-jurisdictional task forces.

158 (3) "Claimant" means:

159 (a) any owner of property as defined in this section;

160 (b) any interest holder as defined in this section; and

161 (c) any other person or entity who asserts a claim to any property seized for forfeiture
162 under this section.

163 (4) "Complaint" means a civil complaint seeking the forfeiture of any real or personal
164 property pursuant to this chapter.

165 (5) "Constructive seizure" means a seizure of property where the property is left in the
166 control of the owner and the seizing agency posts the property with notice of seizure by that
167 agency for forfeiture.

168 (6) "Contraband" means any property, item, or substance which is unlawful to produce
169 or to possess under state or federal law.

170 (7) (a) "Innocent owner" means an owner or interest holder who held an ownership
171 interest in property at the time the conduct subjecting the property to seizure occurred, and:

172 (i) did not have actual knowledge of the conduct subjecting the property to seizure; or

173 (ii) upon learning of the conduct subjecting the property to seizure, took reasonable
174 steps to prohibit the illegal use of the property.

175 (b) "Innocent owner" means an owner or interest holder who acquired an ownership
176 interest in the property and who had no knowledge that the illegal conduct subjecting the
177 property to seizure had occurred or that the property had been seized for forfeiture, and:

178 (i) acquired the property in a bona fide transaction for value;

179 (ii) was a person, including a minor child, who acquired an interest in the property
180 through probate or inheritance; or

181 (iii) was a spouse who acquired an interest in property through dissolution of marriage
182 or by operation of law.

183 (8) (a) "Interest holder" means a secured party as defined in [~~Subsection~~] Section
184 70A-9a-102[~~(72)~~], a mortgagee, lien creditor, or the beneficiary of a security interest or
185 encumbrance pertaining to an interest in property, whose interest would be perfected against a
186 good faith purchaser for value.

187 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
188 an agent or nominee for another person, or who is not in substantial compliance with any
189 statute requiring an interest in property to be recorded or reflected in public records in order to
190 perfect the interest against a good faith purchaser for value.

191 (9) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not
192 to exceed 20% of the net value of the forfeited property.

193 (10) "Legislative body" means:

194 (a) (i) the state Legislature, county commission, county council, city commission, city
195 council, or town council that has fiscal oversight and budgetary approval authority over a
196 seizing agency; or

197 (ii) the seizing agency's governing political subdivision; or

198 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
199 memorandum of understanding executed by the agencies participating in the task force.

200 (11) "Multijurisdictional task force" means a law enforcement task force or other
201 agency comprised of persons who are employed by or acting under the authority of different
202 governmental authorities, including federal, state, county or municipal governments, or any
203 combination of these agencies.

204 (12) "Owner" means any person or entity, other than an interest holder as defined in
205 this section, that possesses a bona fide legal or equitable interest in real or personal property.

206 (13) "Program" means the Crime Reduction Assistance Program created in Section
207 24-1-19.

208 (14) "Property" means all property, whether real or personal, tangible or intangible.

209 (15) "Prosecuting attorney" means:

210 (a) the state attorney general and any assistant attorney general;

211 (b) any district attorney or deputy district attorney; [~~and~~]

212 (c) any county attorney or assistant county attorney; and

213 (d) any other attorney authorized to commence an action on behalf of the state under
214 this chapter or other provisions of state law.

215 (16) "Seize for forfeiture" means seizure of property:

216 (a) by a law enforcement officer or law enforcement agency, including a constructive
217 seizure; and

218 (b) accompanied by an assertion by the officer or agency or by a prosecuting attorney
219 that the property is seized for forfeiture in accordance with this chapter.

220 Section 4. Section **32A-11a-102** is amended to read:

221 **32A-11a-102. Definitions.**

222 As used in this chapter:

223 (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship
224 agreement that a terminating party seeks to terminate or not renew.

225 (2) (a) "Distributorship agreement" means any written contract, agreement, or

226 arrangement between a supplier and a wholesaler pursuant to which the wholesaler has the
 227 right to purchase, resell, and distribute in a designated geographical area any brand of beer
 228 manufactured, imported, or distributed by the supplier.

229 (b) A separate agreement between a supplier and a wholesaler that relates to the
 230 relationship between the supplier and the wholesaler or the duties of either of them under a
 231 distributorship agreement is considered to be part of the distributorship agreement for purposes
 232 of this chapter.

233 (c) A distributorship agreement may be for a definite or indefinite period.

234 (3) "Good cause" means the material failure by a supplier or a wholesaler to comply
 235 with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if
 236 the failure occurs after the supplier or wholesaler acting in good faith provides notice of
 237 deficiency and an opportunity to correct in accordance with Sections 32A-11a-103 and
 238 32A-11a-104.

239 (4) "Good faith" is as defined in [~~Section 70A-2-103~~] Subsection 70A-1a-201(2)(t).

240 (5) "Retailer" means a person subject to license under Chapter 10, Beer Retailer
 241 Licenses.

242 (6) "Sales territory" means the geographic area of distribution and sale responsibility
 243 designated by a distributorship agreement.

244 (7) "Supplier," notwithstanding Section 32A-1-105, means a brewer or other person
 245 who sells beer to a wholesaler for resale in this state.

246 (8) "Terminating party" means a supplier or wholesaler who:

247 (a) is a party to a distributorship agreement; and

248 (b) seeks to terminate or not renew the distributorship agreement.

249 Section 5. Section **41-1a-601** is amended to read:

250 **41-1a-601. Lien validity -- Security interest.**

251 (1) Except as provided under Subsection (2), a lien upon a vehicle, vessel, or outboard
 252 motor, except a lien dependent upon possession, is not valid against the creditors of an owner
 253 acquiring a lien by levy or attachment, or subsequent purchasers, or encumbrancers without

254 notice until Sections 41-1a-602 through 41-1a-606 have been complied with.

255 (2) Security interests in inventory consisting in part of vehicles subject to registration
256 under this chapter, that are held for sale by a person in the business of selling goods of that
257 kind, shall be perfected under Section 70A-9a-310, except that buyers in the ordinary course of
258 business, as defined in Section ~~[70A-1-201]~~ 70A-1a-201, take free of the security interests as
259 provided in Section 70A-9a-320.

260 Section 6. Section ~~46-4-103~~ is amended to read:

261 **46-4-103. Scope.**

262 (1) Except as otherwise provided in Subsection (2), this chapter applies to electronic
263 records and electronic signatures relating to a transaction.

264 (2) This chapter does not apply to:

265 (a) a transaction to the extent it is governed by a law governing the creation and
266 execution of wills, codicils, or testamentary trusts;

267 (b) Title 70A, Uniform Commercial Code, other than:

268 (i) ~~[Sections 70A-1-107 and 70A-1-206]~~ Section 70A-1a-306; and

269 (ii) Title 70A, Chapter 2, and Title 70A, Chapter 2a.

270 (3) This chapter applies to an electronic record or electronic signature otherwise
271 excluded from the application of this chapter under Subsection (2) to the extent it is governed
272 by a law other than those specified in Subsection (2).

273 (4) A transaction subject to this chapter is also subject to other applicable substantive
274 law.

275 (5) Nothing in this chapter requires any county recorder to accept for recording any
276 instrument in electronic form.

277 Section 7. Section ~~46-4-403~~ is amended to read:

278 **46-4-403. Transferable records.**

279 (1) As used in this section, "transferable record" means an electronic record that:

280 (a) would be a note under Title 70A, Chapter 3, Uniform Commercial Code -
281 Negotiable Instruments, or a document under Title 70A, Chapter 7a, Uniform Commercial

282 Code - Documents of Title, if the electronic record were in writing; and

283 (b) the issuer of the electronic record expressly has agreed is a transferable record.

284 (2) A person has control of a transferable record if a system employed for evidencing
285 the transfer of interests in the transferable record reliably establishes that person as the person
286 to which the transferable record was issued or transferred.

287 (3) A system satisfies Subsection (2), and a person is deemed to have control of a
288 transferable record, if the transferable record is created, stored, and assigned in such a manner
289 that:

290 (a) a single authoritative copy of the transferable record exists that is unique,
291 identifiable, and, except as otherwise provided in Subsections (3)(d), (e), and (f), unalterable;

292 (b) the authoritative copy identifies the person asserting control as:

293 (i) the person to which the transferable record was issued; or

294 (ii) if the authoritative copy indicates that the transferable record has been transferred,
295 the person to which the transferable record was most recently transferred;

296 (c) the authoritative copy is communicated to and maintained by the person asserting
297 control or its designated custodian;

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

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

302 (f) any revision of the authoritative copy is readily identifiable as authorized or
303 unauthorized.

304 (4) (a) Except as otherwise agreed, a person having control of a transferable record is
305 the holder, as defined in Subsection [~~70A-1-201(20)~~] 70A-1a-201(2)(u), of the transferable
306 record and has the same rights and defenses as a holder of an equivalent record or writing
307 under Title 70A, Uniform Commercial Code, including, if the applicable statutory
308 requirements under Subsection 70A-3-302(1), Section 70A-7a-501, or Section 70A-9a-308 are
309 satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable

310 document of title has been duly negotiated, or a purchaser, respectively.

311 (b) Delivery, possession, and indorsement are not required to obtain or exercise any of
312 the rights under Subsection (4)(a).

313 (5) Except as otherwise agreed, an obligor under a transferable record has the same
314 rights and defenses as an equivalent obligor under equivalent records or writings under Title
315 70A, Uniform Commercial Code.

316 (6) (a) If requested by a person against which enforcement is sought, the person
317 seeking to enforce the transferable record shall provide reasonable proof that the person is in
318 control of the transferable record.

319 (b) Proof may include access to the authoritative copy of the transferable record and
320 related business records sufficient to review the terms of the transferable record and to
321 establish the identity of the person having control of the transferable record.

322 Section 8. Section **70A-1a-101** is enacted to read:

323 **CHAPTER 1a. UNIFORM COMMERCIAL CODE - GENERAL PROVISIONS**

324 **Part 1. General Provisions**

325 **70A-1a-101. Title.**

326 This chapter is known as the "Uniform Commercial Code - General Provisions."

327 Section 9. Section **70A-1a-102** is enacted to read:

328 **70A-1a-102. Scope of chapter.**

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

331 Section 10. Section **70A-1a-103** is enacted to read:

332 **70A-1a-103. Construction of this title to promote its purposes and policies --**

333 **Applicability of supplemental principles of law.**

334 (1) This title must be liberally construed and applied to promote its underlying
335 purposes and policies, which are:

336 (a) to simplify, clarify, and modernize the law governing commercial transactions;

337 (b) to permit the continued expansion of commercial practices through custom, usage,

338 and agreement of the parties; and

339 (c) to make uniform the law among the various jurisdictions.

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

344 Section 11. Section **70A-1a-104** is enacted to read:

345 **70A-1a-104. Construction against implied repeal.**

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

349 Section 12. Section **70A-1a-105** is enacted to read:

350 **70A-1a-105. Severability.**

351 If any provision or clause of this title or its application to any person or circumstance is
352 held invalid, the invalidity does not affect other provisions or applications of this title which
353 can be given effect without the invalid provision or application, and to this end the provisions
354 of this title are severable.

355 Section 13. Section **70A-1a-106** is enacted to read:

356 **70A-1a-106. Use of singular and plural-- gender.**

357 In this title, unless the statutory context otherwise requires:

358 (1) words in the singular number include the plural, and those in the plural include the
359 singular; and

360 (2) words of any gender also refer to any other gender.

361 Section 14. Section **70A-1a-107** is enacted to read:

362 **70A-1a-107. Section captions.**

363 Section captions are part of this title.

364 Section 15. Section **70A-1a-108** is enacted to read:

365 **70A-1a-108. Relation to electronic signatures in global and national commerce**

366 act.

367 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
368 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this
369 chapter modifies, limits, or supersedes Section 7001(c) of that act or authorizes electronic
370 delivery of any of the notices described in Section 7003(b) of that act.

371 Section 16. Section **70A-1a-201** is enacted to read:

372 **Part 2. General Definitions and Principles of Interpretation**

373 **70A-1a-201. General definitions.**

374 (1) Unless the context otherwise requires, words or phrases defined in this section, or
375 in the additional definitions contained in other chapters of this title that apply to particular
376 chapters or parts thereof, have the meanings stated.

377 (2) Subject to definitions contained in other chapters of this title that apply to particular
378 chapters or parts thereof:

379 (a) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim,
380 set-off, suit in equity, and any other proceeding in which rights are determined.

381 (b) "Aggrieved party" means a party entitled to pursue a remedy.

382 (c) "Agreement," as distinguished from "contract," means the bargain of the parties in
383 fact, as found in their language or inferred from other circumstances, including course of
384 performance, course of dealing, or usage of trade as provided in Section 70A-1a-303.

385 (d) "Bank" means a person engaged in the business of banking and includes a savings
386 bank, savings and loan association, credit union, and trust company.

387 (e) "Bearer" means a person in possession of a negotiable instrument, document of
388 title, or certificated security that is payable to bearer or indorsed in blank.

389 (f) "Bill of lading" means a document evidencing the receipt of goods for shipment
390 issued by a person engaged in the business of transporting or forwarding goods.

391 (g) "Branch" includes a separately incorporated foreign branch of a bank.

392 (h) "Burden of establishing" a fact means the burden of persuading the trier of fact that
393 the existence of the fact is more probable than its nonexistence.

394 (i) "Buyer in ordinary course of business" means a person that buys goods in good
395 faith, without knowledge that the sale violates the rights of another person in the goods, and in
396 the ordinary course from a person, other than a pawnbroker, in the business of selling goods of
397 that kind. A person buys goods in the ordinary course if the sale to the person comports with
398 the usual or customary practices in the kind of business in which the seller is engaged or with
399 the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at
400 the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in
401 ordinary course of business may buy for cash, by exchange of other property, or on secured or
402 unsecured credit, and may acquire goods or documents of title under a preexisting contract for
403 sale. Only a buyer that takes possession of the goods or has a right to recover the goods from
404 the seller under Chapter 2, Uniform Commercial Code - Sales, may be a buyer in ordinary
405 course of business. "Buyer in ordinary course of business" does not include a person that
406 acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a
407 money debt.

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

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

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

416 (k) "Consumer" means an individual who enters into a transaction primarily for
417 personal, family, or household purposes.

418 (l) "Contract," as distinguished from "agreement," means the total legal obligation that
419 results from the parties' agreement as determined by this title as supplemented by any other
420 applicable laws.

421 (m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any

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

425 (n) "Defendant" includes a person in the position of defendant in a counterclaim,
426 cross-claim, or third-party claim.

427 (o) "Delivery," with respect to an instrument, document of title, or chattel paper, means
428 voluntary transfer of possession.

429 (p) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse
430 receipt or order for the delivery of goods, and also any other document which in the regular
431 course of business or financing is treated as adequately evidencing that the person in possession
432 of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a
433 document of title, a document must purport to be issued by or addressed to a bailee and purport
434 to cover goods in the bailee's possession which are either identified or are fungible portions of
435 an identified mass.

436 (q) "Fault" means a default, breach, or wrongful act or omission.

437 (r) "Fungible goods" means:

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

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

441 (s) "Genuine" means free of forgery or counterfeiting.

442 (t) "Good faith" means honesty in fact in the conduct or transaction concerned.

443 (u) "Holder" means:

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

446 (ii) the person in possession of a document of title if the goods are deliverable either to
447 bearer or to the order of the person in possession.

448 (v) "Insolvency proceeding" includes an assignment for the benefit of creditors or other
449 proceeding intended to liquidate or rehabilitate the estate of the person involved.

- 450 (w) "Insolvent" means:
451 (i) having generally ceased to pay debts in the ordinary course of business other than as
452 a result of bona fide dispute;
453 (ii) being unable to pay debts as they become due; or
454 (iii) being insolvent within the meaning of federal bankruptcy law.
455 (x) "Money" means a medium of exchange currently authorized or adopted by a
456 domestic or foreign government. The term includes a monetary unit of account established by a
457 intergovernmental organization or by agreement between two or more countries.
458 (y) "Organization" means a person other than an individual.
459 (z) "Party," as distinguished from "third party," means a person that has engaged in a
460 transaction or made an agreement subject to this title.
461 (aa) "Person" means an individual, corporation, business trust, estate, trust, partnership,
462 limited liability company, association, joint venture, government, governmental subdivision,
463 agency, instrumentality, public corporation, or any other legal or commercial entity.
464 (bb) "Present value" means the amount as of a date certain of one or more sums
465 payable in the future, discounted to the date certain by use of either an interest rate specified by
466 the parties if that rate is not manifestly unreasonable at the time the transaction is entered into
467 or, if an interest rate is not so specified, a commercially reasonable rate that takes into account
468 the facts and circumstances at the time the transaction is entered into.
469 (cc) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge,
470 lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an
471 interest in property.
472 (dd) "Purchaser" means a person that takes by purchase.
473 (ee) "Record" means information that is inscribed on a tangible medium or that is
474 stored in an electronic or other medium and is retrievable in perceivable form.
475 (ff) "Remedy" means any remedial right to which an aggrieved party is entitled with or
476 without resort to a tribunal.
477 (gg) "Representative" means a person empowered to act for another, including an

478 agent, an officer of a corporation or association, and a trustee, executor, or administrator of an
479 estate.

480 (hh) "Right" includes remedy.

481 (ii) "Security interest" means an interest in personal property or fixtures which secures
482 payment or performance of an obligation. "Security interest" includes any interest of a
483 consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in
484 a transaction that is subject to Chapter 9a, Uniform Commercial Code - Secured Transactions.
485 "Security interest" does not include the special property interest of a buyer of goods on
486 identification of those goods to a contract for sale under Section 70A-2-401, but a buyer may
487 also acquire a "security interest" by complying with Chapter 9a, Uniform Commercial Code -
488 Secured Transactions. Except as otherwise provided in Section 70A-2-505, the right of a seller
489 or lessor of goods under Chapter 2, Uniform Commercial Code - Sales, or 2A, Uniform
490 Commercial Code - Leases, to retain or acquire possession of the goods is not a "security
491 interest," but a seller or lessor may also acquire a "security interest" by complying with Chapter
492 9a, Uniform Commercial Code - Secured Transactions. The retention or reservation of title by
493 a seller of goods notwithstanding shipment or delivery to the buyer under Section 70A-2-401 is
494 limited in effect to a reservation of a "security interest." Whether a transaction in the form of a
495 lease creates a "security interest" is determined pursuant to Section 70A-1a-203.

496 (jj) "Send" in connection with a writing, record, or notice means:

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

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

503 (kk) "Signed" includes using any symbol executed or adopted with present intention to
504 adopt or accept a writing.

505 (ll) "State" means a state of the United States, the District of Columbia, Puerto Rico,

506 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
507 of the United States.

508 (mm) "Surety" includes a guarantor or other secondary obligor.

509 (nn) "Term" means a portion of an agreement that relates to a particular matter.

510 (oo) "Unauthorized signature" means a signature made without actual, implied, or
511 apparent authority. The term includes a forgery.

512 (pp) "Warehouse receipt" means a receipt issued by a person engaged in the business of
513 storing goods for hire.

514 (qq) "Writing" includes printing, typewriting, or any other intentional reduction to
515 tangible form. "Written" has a corresponding meaning.

516 Section 17. Section **70A-1a-202** is enacted to read:

517 **70A-1a-202. Notice -- Knowledge.**

518 (1) Subject to Subsection (6), a person has "notice" of a fact if the person:

519 (a) has actual knowledge of it;

520 (b) has received a notice or notification of it; or

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

523 (2) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

524 (3) "Discover," "learn," or words of similar import refer to knowledge rather than to
525 reason to know.

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

529 (5) Subject to Subsection (6), a person "receives" a notice or notification when:

530 (a) it comes to that person's attention; or

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

534 (6) Notice, knowledge, or a notice or notification received by an organization is
535 effective for a particular transaction from the time it is brought to the attention of the individual
536 conducting that transaction and, in any event, from the time it would have been brought to the
537 individual's attention if the organization had exercised due diligence. An organization
538 exercises due diligence if it maintains reasonable routines for communicating significant
539 information to the person conducting the transaction and there is reasonable compliance with
540 the routines. Due diligence does not require an individual acting for the organization to
541 communicate information unless the communication is part of the individual's regular duties or
542 the individual has reason to know of the transaction and that the transaction would be
543 materially affected by the information.

544 Section 18. Section **70A-1a-203** is enacted to read:

545 **70A-1a-203. Lease distinguished from security interest.**

546 (1) Whether a transaction in the form of a lease creates a lease or security interest is
547 determined by the facts of each case.

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

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

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

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

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

561 (3) A transaction in the form of a lease does not create a security interest merely

562 because:

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

566 (b) the lessee assumes risk of loss of the goods;

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

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

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

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

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

578 Additional consideration is not nominal if:

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

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

585 (5) The "remaining economic life of the goods" and "reasonably predictable" fair
586 market rent, fair market value, or cost of performing under the lease agreement must be
587 determined with reference to the facts and circumstances at the time the transaction is entered
588 into.

589 Section 19. Section **70A-1a-204** is enacted to read:

590 **70A-1a-204. Value.**

591 Except as otherwise provided in Chapters 3, Uniform Commercial Code - Negotiable
592 Instruments, 4, Uniform Commercial Code - Bank Deposits and Collections, and 5, Uniform
593 Commercial Code - Letters of Credit, a person gives value for rights if the person acquires
594 them:

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

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

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

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

601 Section 20. Section **70A-1a-205** is enacted to read:

602 **70A-1a-205. Reasonable time -- Seasonableness.**

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

605 (2) An action is taken seasonably if it is taken at or within the time agreed or, if no time
606 is agreed, at or within a reasonable time.

607 Section 21. Section **70A-1a-206** is enacted to read:

608 **70A-1a-206. Presumptions.**

609 Whenever this title creates a "presumption" with respect to a fact, or provides that a fact
610 is "presumed," the trier of fact must find the existence of the fact unless and until evidence is
611 introduced that supports a finding of its nonexistence.

612 Section 22. Section **70A-1a-301** is enacted to read:

613 **Part 3. Territorial Applicability and General Rules**

614 **70A-1a-301. Territorial applicability -- Parties' power to choose applicable law.**

615 (1) Except as provided in this section, when a transaction bears a reasonable relation to
616 this state and also to another state or nation, the parties may agree that the law either of this
617 state or of such other state or nation shall govern their rights and duties. Failing such

618 agreement, this title applies to transactions bearing an appropriate relation to this state.

619 (2) Where one of the following provisions of this title specifies the applicable law, that
620 provision governs and a contrary agreement is effective only to the extent permitted by the law,
621 including the conflict of laws rules, so specified:

622 (a) rights of creditors against sold goods under Section 70A-2-402;

623 (b) applicability of the chapter on leases under Sections 70A-2a-105 and 70A-2a-106;

624 (c) applicability of the chapter on bank deposits and collections under Section
625 70A-4-102;

626 (d) applicability of the chapter on funds transfers under Section 70A-4a-507;

627 (e) applicability of the chapter on letters of credit under Section 70A-5-116;

628 (f) applicability of the chapter on investment securities under Section 70A-8-109; or

629 (g) law governing perfection, the effect of perfection or nonperfection, and the priority
630 of security interests and agricultural liens under Sections 70A-9a-301 through 70A-9a-307.

631 Section 23. Section **70A-1a-302** is enacted to read:

632 **70A-1a-302. Variation by agreement.**

633 (1) Except as otherwise provided in Subsection (2) or elsewhere in this title, the effect
634 of provisions of this title may be varied by agreement.

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

640 (3) The presence in certain provisions of this title of the phrase "unless otherwise
641 agreed," or words of similar import, does not imply that the effect of other provisions may not
642 be varied by agreement under this section.

643 Section 24. Section **70A-1a-303** is enacted to read:

644 **70A-1a-303. Course of performance, course of dealing, and usage of trade.**

645 (1) A "course of performance" is a sequence of conduct between the parties to a

646 particular transaction that exists if:

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

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

651 (2) A "course of dealing" is a sequence of conduct concerning previous transactions
652 between the parties to a particular transaction that is fairly to be regarded as establishing a
653 common basis of understanding for interpreting their expressions and other conduct.

654 (3) A "usage of trade" is any practice or method of dealing having such regularity of
655 observance in a place, vocation, or trade as to justify an expectation that it will be observed
656 with respect to the transaction in question. The existence and scope of such a usage must be
657 proved as facts. If it is established that such a usage is embodied in a trade code or similar
658 record, the interpretation of the record is a question of law.

659 (4) A course of performance or course of dealing between the parties or usage of trade
660 in the vocation or trade in which they are engaged or of which they are or should be aware is
661 relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to
662 specific terms of the agreement, and may supplement or qualify the terms of the agreement. A
663 usage of trade applicable in the place in which part of the performance under the agreement is
664 to occur may be so utilized as to that part of the performance.

665 (5) Except as otherwise provided in Subsection (6), the express terms of an agreement
666 and any applicable course of performance, course of dealing, or usage of trade must be
667 construed whenever reasonable as consistent with each other. If such a construction is
668 unreasonable:

669 (a) express terms prevail over course of performance, course of dealing, and usage of
670 trade;

671 (b) course of performance prevails over course of dealing and usage of trade; and

672 (c) course of dealing prevails over usage of trade.

673 (6) Subject to Section 70A-2-209, a course of performance is relevant to show a waiver

674 or modification of any term inconsistent with the course of performance.

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

678 Section 25. Section **70A-1a-304** is enacted to read:

679 **70A-1a-304. Obligation of good faith.**

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

682 Section 26. Section **70A-1a-305** is enacted to read:

683 **70A-1a-305. Remedies to be liberally administered.**

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

688 (2) Any right or obligation declared by this title is enforceable by action unless the
689 provision declaring it specifies a different and limited effect.

690 Section 27. Section **70A-1a-306** is enacted to read:

691 **70A-1a-306. Waiver or renunciation of claim or right after breach.**

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

694 Section 28. Section **70A-1a-307** is enacted to read:

695 **70A-1a-307. Prima facie evidence by third-party documents.**

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

700 Section 29. Section **70A-1a-308** is enacted to read:

701 **70A-1a-308. Performance or acceptance under reservation of rights.**

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

706 (2) Subsection (1) does not apply to an accord and satisfaction.

707 Section 30. Section **70A-1a-309** is enacted to read:

708 **70A-1a-309. Option to accelerate at will.**

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

715 Section 31. Section **70A-1a-310** is enacted to read:

716 **70A-1a-310. Subordinated obligations.**

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

722 Section 32. Section **70A-2-103** is amended to read:

723 **70A-2-103. Definitions and index of definitions.**

724 (1) In this chapter unless the context otherwise requires:

725 (a) "Buyer" means a person who buys or contracts to buy goods.

726 (b) "Good faith" in the case of a merchant means honesty in fact and the observance of
727 reasonable commercial standards of fair dealing in the trade.

728 (c) "Receipt" of goods means taking physical possession of them.

729 (d) "Seller" means a person who sells or contracts to sell goods.

- 730 (2) Other definitions applying to this chapter or to specified parts thereof, and the
731 sections in which they appear are:
- 732 (a) "Acceptance." Section 70A-2-606.
 - 733 (b) "Banker's credit." Section 70A-2-325.
 - 734 (c) "Between merchants." Section 70A-2-104.
 - 735 (d) "Cancellation." Subsection 70A-2-106(4).
 - 736 (e) "Commercial unit." Section 70A-2-105.
 - 737 (f) "Confirmed credit." Section 70A-2-325.
 - 738 (g) "Conforming to contract." Section 70A-2-106.
 - 739 (h) "Contract for sale." Section 70A-2-106.
 - 740 (i) "Cover." Section 70A-2-712.
 - 741 (j) "Entrusting." Section 70A-2-403.
 - 742 (k) "Financing agency." Section 70A-2-104.
 - 743 (l) "Future goods." Section 70A-2-105.
 - 744 (m) "Goods." Section 70A-2-105.
 - 745 (n) "Identification." Section 70A-2-501.
 - 746 (o) "Installment contract." Section 70A-2-612.
 - 747 (p) "Letter of Credit." Section 70A-2-325.
 - 748 (q) "Lot." Section 70A-2-105.
 - 749 (r) "Merchant." Section 70A-2-104.
 - 750 (s) "Overseas." Section 70A-2-323.
 - 751 (t) "Person in position of seller." Section 70A-2-707.
 - 752 (u) "Present sale." Section 70A-2-106.
 - 753 (v) "Sale." Section 70A-2-106.
 - 754 (w) "Sale on approval." Section 70A-2-326.
 - 755 (x) "Sale or return." Section 70A-2-326.
 - 756 (y) "Termination." Section 70A-2-106.
 - 757 (3) "Control" as provided in Section 70A-7a-106, and the following definitions in other

758 chapters apply to this chapter:

759 (a) "Check." Section 70A-3-104.

760 (b) "Consignee." Section 70A-7a-102.

761 (c) "Consignor." Section 70A-7a-102.

762 (d) "Consumer goods." Section 70A-9a-102.

763 (e) "Dishonor." Section 70A-3-502.

764 (f) "Draft." Section 70A-3-104.

765 (4) In addition, Chapter [†] 1a, Uniform Commercial Code - General Provisions,

766 contains general definitions and principles of construction and interpretation applicable

767 throughout this chapter.

768 Section 33. Section **70A-2-202** is amended to read:

769 **70A-2-202. Final written expression -- Parol or extrinsic evidence.**

770 Terms with respect to which the confirmatory memoranda of the parties agree or which

771 are otherwise set forth in a writing intended by the parties as a final expression of their

772 agreement with respect to such terms as are included therein may not be contradicted by

773 evidence of any prior agreement or of a contemporaneous oral agreement but may be explained

774 or supplemented;

775 [~~(a)~~] (1) by course of performance, course of dealing, or usage of trade (Section

776 [~~70A-1-205~~] 70A-1a-303) or by course of performance (Section 70A-2-208); and

777 [~~(b)~~] (2) by evidence of consistent additional terms unless the court finds the writing to

778 have been intended also as a complete and exclusive statement of the terms of the agreement.

779 Section 34. Section **70A-2a-103** is amended to read:

780 **70A-2a-103. Definitions -- Index of definitions.**

781 (1) In this chapter, unless the context otherwise requires:

782 (a) "Buyer in ordinary course of business" means a person, who in good faith and

783 without knowledge that the sale to him is in violation of the ownership rights or security

784 interest or leasehold interest of a third party in the goods, buys in ordinary course from a person

785 in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may

786 be for cash or by exchange of other property or on secured or unsecured credit and includes
787 acquiring goods or documents of title under a preexisting contract for sale, but does not include
788 a transfer in bulk, or as security for, or in total or partial satisfaction of a money debt.

789 (b) "Cancellation" occurs when either party puts an end to the lease contract for default
790 by the other party.

791 (c) "Commercial unit" means a unit of goods which by commercial usage is a single
792 whole for purposes of lease, and the division of which materially impairs its character or value
793 on the market or in use. A commercial unit may be a single article, such as a machine, or a set
794 of articles, such as a suite of furniture or a line of machinery, or a quantity, such as a gross or
795 carload, or any other unit treated in use or in the relevant market as a single whole.

796 (d) "Conforming goods or performance under a lease contract" means goods or
797 performance that are in accordance with the obligations under the lease contract.

798 (e) "Consumer lease" means a lease that a lessor, regularly engaged in the business of
799 leasing or selling, makes to a lessee, who is an individual and who takes under the lease
800 primarily for a personal, family, or household purpose.

801 (f) "Fault" means wrongful act, omission, breach, or default.

802 (g) "Finance lease" means a lease in which:

803 (i) the lessor does not select, manufacture, or supply the goods;

804 (ii) the lessor acquires the goods or the right to possession and use of the goods in
805 connection with the lease; and

806 (iii) one of the following occurs:

807 (A) the lessee receives a copy of the contract by which the lessor acquired the goods or
808 the right to possession and use of the goods before signing the lease contract;

809 (B) the lessee's approval of the contract by which the lessor acquired the goods or the
810 right to possession and use of the goods is a condition to effectiveness of the lease contract;

811 (C) the lessee, before signing the lease contract, receives an accurate and complete
812 statement designating the promises and warranties, and any disclaimers of warranties,
813 limitations, or modifications of remedies, or liquidated damages, including those of a third

814 party, such as the manufacturer of the goods, provided to the lessor by the person supplying the
815 goods in connection with or as part of the contract by which the lessor acquired the goods or
816 the right to possession and use of the goods; or

817 (D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease
818 contract, informs the lessee in writing:

819 (I) of the identity of the person supplying the goods to the lessor, unless the lessee has
820 selected that person and directed the lessor to acquire the goods or the right to possession and
821 use of the goods from that person;

822 (II) that the lessee is entitled under this chapter to the promises and warranties,
823 including those of any third party, provided to the lessor by the person supplying the goods in
824 connection with or as part of the contract by which the lessor acquired the goods or the right to
825 possession and use of the goods; and

826 (III) that the lessee may communicate with the person supplying the goods to the lessor
827 and receive an accurate and complete statement of those promises and warranties, including
828 any disclaimers and limitations of them or of remedies.

829 (h) "Goods" means all things that are movable at the time of identification to the lease
830 contract, or are fixtures. The term does not include money, documents, instruments, accounts,
831 chattel paper, general intangibles, or minerals or the like, including oil and gas, before
832 extraction. The term also includes the unborn young of animals.

833 (i) "Installment lease contract" means a lease contract that authorizes or requires the
834 delivery of goods in separate lots to be separately accepted, even though the lease contract
835 contains a clause stating "each delivery is a separate lease" or its equivalent.

836 (j) "Lease" means a transfer of the right to possession and use of goods for a term, in
837 return for consideration. Unless the context clearly indicates otherwise, the term includes a
838 sublease. But a sale, including a sale on approval or a sale or return, or retention or creation of
839 a security interest is not a lease.

840 (k) "Lease agreement" with respect to the lease, means the bargain of the lessor and the
841 lessee in fact as found in their language or by implication from other circumstances including

842 course of dealing or usage of trade or course of performance as provided in this chapter.

843 Unless the context clearly indicates otherwise, the term includes a sublease agreement.

844 (l) "Lease contract" means the total legal obligation that results from the lease
845 agreement as affected by this chapter and any other applicable rules of law. Unless the context
846 clearly indicates otherwise, the term includes a sublease contract.

847 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease
848 contract.

849 (n) "Lessee" means a person who acquires the right to possession and use of goods
850 under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

851 (o) "Lessee in ordinary course of business" means a person who in good faith and
852 without knowledge that the lease to him is in violation of the ownership rights, security
853 interest, or leasehold interest of a third party in the goods, leases in ordinary course from a
854 person in the business of selling or leasing goods of that kind, but does not include a
855 pawnbroker. "Leasing" may be for cash or by exchange of other property, or on secured or
856 unsecured credit, and includes acquiring goods or documents of title under a preexisting lease
857 contract. "Leasing" does not include a transfer in bulk or as security for or in total or partial
858 satisfaction of a money debt.

859 (p) "Lessor" means a person who transfers the right to possession and use of goods
860 under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

861 (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration,
862 termination, or cancellation of the lease contract.

863 (r) "Lien" means a charge against or interest in goods to secure payment of a debt or
864 performance of an obligation, but the term does not include a security interest.

865 (s) "Lot" means a parcel or single article that is the subject matter of a separate lease or
866 delivery, whether or not it is sufficient to perform the lease contract.

867 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the
868 kind subject to the lease.

869 (u) "Present value" means the amount as of a date certain of one or more sums payable

870 in the future, discounted to the date certain. The discount is determined by the interest rate
871 specified by the parties if the rate was not manifestly unreasonable at the time the transaction
872 was entered into; otherwise, the discount is determined by a commercially reasonable rate that
873 takes into account the facts and circumstances of each case at the time the transaction was
874 entered into.

875 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift,
876 or any other voluntary transaction creating an interest in goods.

877 (w) "Sublease" means a lease of goods, the right to possession and use of which was
878 acquired by the lessor as a lessee under an existing lease.

879 (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased
880 under a finance lease.

881 (y) "Supply contract" means a contract under which a lessor buys or leases goods to be
882 leased.

883 (z) "Termination" occurs when either party, pursuant to a power created by agreement
884 or law, puts an end to the lease contract otherwise than for default.

885 (2) Other definitions applying to this chapter and the sections in which they appear are:

886 (a) "Accessions," Section 70A-2a-310[;].

887 (b) "Construction mortgage," Section 70A-2a-309[;].

888 (c) "Encumbrance," Section 70A-2a-309[;].

889 (d) "Fixtures," Section 70A-2a-309[;].

890 (e) "Fixture filing," Section 70A-2a-309[; ~~and~~].

891 (f) "Purchase money lease," Section 70A-2a-309.

892 (3) The following definitions in other chapters apply to this chapter:

893 (a) "Account," Subsection 70A-9a-102(2)[;].

894 (b) "Between merchants," Section 70A-2-104[;].

895 (c) "Buyer," Section 70A-2-103[;].

896 (d) "Chattel paper," Subsection 70A-9a-102(11)[;].

897 (e) "Consumer goods," Subsection 70A-9a-102(23)[;].

- 898 (f) "Document," Subsection 70A-9a-102(30)[;].
 - 899 (g) "Entrusting," Section 70A-2-403[;].
 - 900 (h) "General intangible," Subsection 70A-9a-102(42)[;].
 - 901 (i) "Good faith," Section 70A-2-103;
 - 902 (j) "Instrument," Subsection 70A-9a-102[~~(47)~~](46).
 - 903 (k) "Merchant," Section 70A-2-104[;].
 - 904 (l) "Mortgage," Subsection 70A-9a-102[~~(55)~~](54).
 - 905 (m) "Pursuant to commitment," Subsection 70A-9a-102[~~(68)~~](67).
 - 906 (n) "Receipt," Section 70A-2-103[;].
 - 907 (o) "Sale," Section 70A-2-106[;].
 - 908 (p) "Sale on approval," Section 70A-2-326[;].
 - 909 (q) "Sale or return," Section 70A-2-326[; and].
 - 910 (r) "Seller," Section 70A-2-103.
- 911 (4) In addition, Title 70A, Chapter [†] 1a, Uniform Commercial Code - General
- 912 Provisions, contains general definitions and principles of construction and interpretation
- 913 applicable throughout this chapter.
- 914 Section 35. Section **70A-2a-501** is amended to read:
- 915 **70A-2a-501. Default -- Procedure.**
- 916 (1) Whether the lessor or the lessee is in default under a lease contract is determined by
- 917 the lease agreement and this chapter.
- 918 (2) If the lessor or the lessee is in default under the lease contract, the party seeking
- 919 enforcement has rights and remedies as provided in this chapter and, except as limited by this
- 920 chapter, as provided in the lease agreement.
- 921 (3) If the lessor or the lessee is in default under the lease contract, the party seeking
- 922 enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract
- 923 by self-help or any available judicial procedure or nonjudicial procedure, including
- 924 administrative proceeding, arbitration, or the like, in accordance with this chapter.
- 925 (4) Except as otherwise provided in [~~Section 70A-1-106~~] Subsection 70A-1a-305(1), in

926 this chapter, or in the lease agreement, the rights and remedies referred to in Subsections (2)
927 and (3) are cumulative.

928 (5) If the lease agreement covers both real property and goods, the party seeking
929 enforcement may proceed under this section as to the goods, or under other applicable law as to
930 both the real property and the goods in accordance with that person's rights and remedies in
931 respect of the real property, in which case this section does not apply.

932 Section 36. Section **70A-2a-518** is amended to read:

933 **70A-2a-518. Cover -- Substitute goods.**

934 (1) After default by a lessor under the lease contract of the type described in Section
935 70A-2a-508, or if agreed after other default by the lessor, the lessee may cover by making any
936 purchase or lease of or contract to purchase or lease goods in substitution for those due from
937 the lessor.

938 (2) Except as otherwise provided with respect to damages liquidated in the lease
939 agreement as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement
940 of the parties as provided in [~~Subsection 70A-1-102 (3) and Section~~] Sections 70A-1a-302 and
941 70A-2a-503, if a lessee's cover is by lease agreement substantially similar to the original lease
942 agreement and the lease agreement is made in good faith and in a commercially reasonable
943 manner, the lessee may recover from the lessor as damages:

944 (a) the present value, as of the date of the commencement of the term of the new lease
945 agreement, of the rent under the new lease agreement applicable to that period of the new lease
946 term that is comparable to the then remaining term of the original lease agreement, minus the
947 present value as of the same date of the total rent for the then remaining lease term of the
948 original lease agreement; and

949 (b) any incidental or consequential damages less expenses saved in consequence of the
950 lessor's default.

951 (3) If a lessee's cover is by lease agreement that qualifies for treatment under
952 Subsection (2), the lessee may elect to proceed under Subsection (2) or Section 70A-2a-519. If
953 a lessee's cover is by lease agreement that for any reason does not qualify for treatment under

954 Subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor under
955 Section 70A-2a-519 as if the lessee had elected not to cover.

956 Section 37. Section **70A-2a-519** is amended to read:

957 **70A-2a-519. Lessee's damages for nondelivery, repudiation, default, and breach**
958 **of warranty in regard to accepted goods.**

959 (1) Except as otherwise provided with respect to damages liquidated in the lease
960 agreement as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement
961 of the parties as provided in [~~Subsection 70A-1-102 (3) and Section~~] Sections 70A-1a-302 and
962 70A-2a-503, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease
963 agreement whether or not the lease agreement qualifies for treatment under Subsection
964 70A-2a-518(2), or is by purchase or otherwise, the measure of damages for default by the
965 lessor under Section 70A-2a-508 is the present value, as of the date of the default, of the then
966 market rent minus the present value as of the same date of the original rent, computed for the
967 remaining lease term of the original lease agreement together with incidental and consequential
968 damages, less expenses saved in consequence of the lessor's default.

969 (2) Market rent is to be determined as of the place for tender or, in cases of rejection
970 after arrival or revocation of acceptance, as of the place of arrival.

971 (3) Except as otherwise agreed, if the lessee has accepted goods and given notification
972 as provided in Subsection 70A-2a-516(3), the measure of damages for nonconforming tender
973 or delivery or other default by a lessor is the loss resulting in the ordinary course of events from
974 the lessor's default as determined in any manner that is reasonable together with incidental and
975 consequential damages, less expenses saved in consequence of the lessor's default.

976 (4) Except as otherwise agreed, the measure of damages for breach of warranty is the
977 present value at the time and place of acceptance of the difference between the value of the use
978 of the goods accepted and the value if they had been as warranted for the lease term, unless
979 special circumstances show proximate damages of a different amount, together with incidental
980 and consequential damages, less expenses saved in consequence of the lessor's default or
981 breach of warranty.

982 Section 38. Section **70A-2a-527** is amended to read:

983 **70A-2a-527. Lessor's rights to dispose of goods.**

984 (1) After a default by a lessee under the lease contract of the type described in Section
985 70A-2a-523 or after the lessor refuses to deliver or takes possession of goods as provided in
986 Section 70A-2a-525 or 70A-2a-526, or if agreed, after other default by a lessee, the lessor may
987 dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

988 (2) Except as otherwise provided with respect to damages liquidated in the lease
989 agreement as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement
990 of the parties as provided in [~~Subsection 70A-1-102 (3) and Section~~] Sections 70A-1a-302 and
991 70A-2a-503, if the disposition is by lease agreement substantially similar to the original lease
992 agreement and the lease agreement is made in good faith and in a commercially reasonable
993 manner, the lessor may recover from the lessee as damages:

994 (a) accrued and unpaid rent as of the date of the commencement of the term of the new
995 lease agreement;

996 (b) the present value, as of the date of the commencement of the term of the new lease
997 agreement, of the difference between the total rent for the then remaining lease term of the
998 original lease agreement minus the present value, as of the same date, of the rent under the new
999 lease agreement applicable to that period of the new lease term which is comparable to the then
1000 remaining term of the original lease agreement; and

1001 (c) any incidental damages allowed under Section 70A-2a-530, less expenses saved in
1002 consequence of the lessee's default.

1003 (3) If the lessor's disposition is by lease agreement that qualifies for treatment under
1004 Subsection (2), the lessor may elect to proceed under Subsection (2) or Section 70A-2a-528. If
1005 the lessor's disposition is by lease agreement that for any reason does not qualify for treatment
1006 under Subsection (2), or is by sale or otherwise, the lessor may recover from the lessee under
1007 Section 70A-2a-528 as if the lessor had elected not to dispose of the goods.

1008 (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for
1009 value as a result of a disposition under this section takes the goods free of the original lease

1010 contract and any rights of the original lessee even though the lessor fails to comply with one or
1011 more of the requirements of this chapter.

1012 (5) The lessor is not accountable to the lessee for any profit made on any disposition.
1013 A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the
1014 lessor for any excess over the amount of the lessee's security interest as provided in Subsection
1015 70A-2a-508(5).

1016 Section 39. Section **70A-2a-528** is amended to read:

1017 **70A-2a-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or**
1018 **other default.**

1019 (1) Except as otherwise provided with respect to damages liquidated in the lease
1020 agreement as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement
1021 of the parties as provided in [~~Subsection 70A-1-102 (3) and Section~~] Sections 70A-1a-302 and
1022 70A-2a-503, if a lessor elects to retain the goods or a lessor elects to dispose of the goods and
1023 the disposition is by lease agreement whether or not the lease agreement qualifies for treatment
1024 under Subsection 70A-2a-527(2), or is by sale or otherwise, the lessor may recover from the
1025 lessee as damages for a default of the type described in Section 70A-2a-523 or, if agreed, for
1026 any other default of the lessee:

1027 (a) accrued and unpaid rent as of the date of default if the lessee has never taken
1028 possession of the goods, or, if the lessee has taken possession of the goods, as of the date on
1029 which the lessee makes a tender of the goods to the lessor;

1030 (b) the present value as of the date determined under Subsection (1)(a) of default of the
1031 total rent for the then remaining lease term of the original lease agreement and minus the
1032 present value as of the same date of the market rent at the place where the goods are located
1033 computed for the same lease term; and

1034 (c) any incidental damages allowed under Section 70A-2a-530, less expenses saved in
1035 consequence of the lessee's default.

1036 (2) If the measure of damages provided in Subsection (1) is inadequate to put a lessor
1037 in as good a position as performance would have, the measure of damages is the present value

1038 of the profit, including reasonable overhead, the lessor would have made from full performance
1039 by the lessee, together with any incidental damages allowed under Section 70A-2a-530, due
1040 allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

1041 Section 40. Section **70A-3-103** is amended to read:

1042 **70A-3-103. Definitions.**

1043 (1) In this chapter:

1044 (a) "Acceptor" means a drawee who has accepted a draft.

1045 (b) "Drawee" means a person ordered in a draft to make payment.

1046 (c) "Drawer" means a person who signs or is identified in a draft as a person ordering
1047 payment.

1048 (d) "Good faith" means honesty in fact in the conduct or transaction concerned.

1049 (e) "Maker" means a person who signs or is identified in a note as a person undertaking
1050 to pay.

1051 (f) "Order" means a written instruction to pay money signed by the person giving the
1052 instruction. The instruction may be addressed to any person, including the person giving the
1053 instruction, or to one or more persons jointly or in the alternative, but not in succession. An
1054 authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

1055 (g) "Ordinary care" in the case of a person engaged in business means observance of
1056 reasonable commercial standards, prevailing in the area in which the person is located, with
1057 respect to the business in which the person is engaged. In the case of a bank that takes an
1058 instrument for processing for collection or payment by automated means, reasonable
1059 commercial standards do not require the bank to examine the instrument if the failure to
1060 examine does not violate the bank's prescribed procedures and the bank's procedures do not
1061 vary unreasonably from general banking usage not disapproved by this chapter or Title 70A,
1062 Chapter 4, Uniform Commercial Code -[=] Bank Deposits and Collections.

1063 (h) "Party" means a party to an instrument.

1064 (i) "Promise" means a written undertaking to pay money signed by the person
1065 undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise

1066 unless the obligor also undertakes to pay the obligation.

1067 (j) "Prove" with respect to a fact means to meet the burden of establishing the fact as
1068 defined in Subsection [~~70A-1-201(8)~~] 70A-1a-201(2)(h).

1069 (k) "Remitter" means a person who purchases an instrument from its issuer if the
1070 instrument is payable to an identified person other than the purchaser.

1071 (2) Other definitions applying to this chapter and the sections in which they appear are:

1072 (a) "Acceptance," Section 70A-3-409[;].

1073 (b) "Accommodated party," Section 70A-3-419[;].

1074 (c) "Accommodation party," Section 70A-3-419[;].

1075 (d) "Alteration," Section 70A-3-407[;].

1076 (e) "Anomalous indorsement," Section 70A-3-205[;].

1077 (f) "Blank indorsement," Section 70A-3-205[;].

1078 (g) "Cashier's check," Section 70A-3-104[;].

1079 (h) "Certificate of deposit," Section 70A-3-104[;].

1080 (i) "Certified check," Section 70A-3-409[;].

1081 (j) "Check," Section 70A-3-104[;].

1082 (k) "Consideration," Section 70A-3-303[;].

1083 (l) "Demand draft," Section 70A-3-104[;].

1084 (m) "Draft," Section 70A-3-104[;].

1085 (n) "Holder in due course," Section 70A-3-302[;].

1086 (o) "Incomplete instrument," Section 70A-3-115[;].

1087 (p) "Indorsement," Section 70A-3-204[;].

1088 (q) "Indorser," Section 70A-3-204[;].

1089 (r) "Instrument," Section 70A-3-104[;].

1090 (s) "Issue," Section 70A-3-105[;].

1091 (t) "Issuer," Section 70A-3-105[;].

1092 (u) "Negotiable instrument," Section 70A-3-104[;].

1093 (v) "Negotiation," Section 70A-3-201[;].

- 1094 (w) "Note," Section 70A-3-104[;].
1095 (x) "Payable at a definite time," Section 70A-3-108[;].
1096 (y) "Payable on demand," Section 70A-3-108[;].
1097 (z) "Payable to bearer," Section 70A-3-109[;].
1098 (aa) "Payable to order," Section 70A-3-109[;].
1099 (bb) "Payment," Section 70A-3-602[;].
1100 (cc) "Person entitled to enforce," Section 70A-3-301[;].
1101 (dd) "Presentment," Section 70A-3-501[;].
1102 (ee) "Reacquisition," Section 70A-3-207[;].
1103 (ff) "Special indorsement," Section 70A-3-205[;].
1104 (gg) "Teller's check," Section 70A-3-104[;].
1105 (hh) "Transfer of instrument," Section 70A-3-203[;].
1106 (ii) "Traveler's check," Section 70A-3-104[;].
1107 (jj) "Value," Section 70A-3-303.
1108 (3) The following definitions in other chapters apply to this chapter:
1109 (a) "Bank," Section 70A-4-105[;].
1110 (b) "Banking day," Section 70A-4-104[;].
1111 (c) "Clearinghouse," Section 70A-4-104[;].
1112 (d) "Collecting bank," Section 70A-4-105[;].
1113 (e) "Depository bank," Section 70A-4-105[;].
1114 (f) "Documentary draft," Section 70A-4-104[;].
1115 (g) "Intermediary bank," Section 70A-4-105[;].
1116 (h) "Item," Section 70A-4-104[;].
1117 (i) "Payor bank," Section 70A-4-105[;].
1118 (j) "Suspends payments," Section 70A-4-104.
1119 (4) In addition, Chapter [†] 1a, Uniform Commercial Code - General Provisions,
1120 contains general definitions and principles of construction and interpretation applicable
1121 throughout this chapter.

1122 Section 41. Section **70A-4-104** is amended to read:

1123 **70A-4-104. Definitions and index of definitions.**

1124 (1) In this chapter, unless the context otherwise requires:

1125 (a) "Account" means any deposit or credit account with a bank including a demand,
1126 time, savings, passbook, share draft, or similar account, other than the account evidenced by a
1127 certificate of deposit.

1128 (b) "Afternoon" means the period of a day between noon and midnight.

1129 (c) "Banking day" means the part of a day on which a bank is open to the public for
1130 carrying on substantially all of its banking functions other than a Saturday, a Sunday, or a legal
1131 holiday.

1132 (d) "Clearinghouse" means an association of banks or other payors regularly clearing
1133 items.

1134 (e) "Customer" means a person having an account with a bank or for whom a bank has
1135 agreed to collect items including a bank that maintains an account at another bank.

1136 (f) "Documentary draft" means a draft to be presented for acceptance or payment if
1137 specified documents, certificated securities as provided in Section 70A-8-101, instructions for
1138 uncertificated securities as provided in Section 70A-8-101, other certificates, statements, or the
1139 like are to be received by the drawee or other payor before acceptance or payment of the draft.

1140 (g) "Draft" means a draft as defined in Section 70A-3-104 or an item, other than an
1141 instrument, that is an order.

1142 (h) "Drawee" means a person ordered in a draft to make payment.

1143 (i) "Item" means an instrument or a promise or order to pay money handled by a bank
1144 for collection or payment. The term does not include a payment order governed by [~~Title 70A,~~]
1145 Chapter [~~4A~~] 4a, Uniform Commercial Code - Funds Transfers, or a credit or debit card slip.

1146 (j) "Midnight deadline" with respect to a bank is midnight on its next banking day
1147 following the banking day on which it receives the relevant item or notice or from which the
1148 time for taking action commences to run, whichever is later.

1149 (k) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or

1150 by remittance, or otherwise as agreed. A settlement may be either provisional or final.

1151 (l) "Suspends payments" with respect to a bank means that it has been closed by order
1152 of the supervisory authorities, that a public officer has been appointed to take it over or that it
1153 ceases or refuses to make payments in the ordinary course of business.

1154 (2) Other definitions applying to this chapter and the sections in which they appear are:

1155 (a) "Agreement for electronic presentment," Section 70A-4-110[;].

1156 (b) "Bank," Section 70A-4-105[;].

1157 (c) "Collecting bank," Section 70A-4-105[;].

1158 (d) "Depository bank," Section 70A-4-105[;].

1159 (e) "Intermediary bank," Section 70A-4-105[;].

1160 (f) "Payor bank," Section 70A-4-105[;].

1161 (g) "Presenting bank," Section 70A-4-105[; and].

1162 (h) "Presentment notice," Section 70A-4-110.

1163 (3) "Control" as provided in Section 70A-7a-106 and the following definitions in other
1164 chapters apply to this chapter:

1165 (a) "Acceptance," Section 70A-3-409[;].

1166 (b) "Alteration," Section 70A-3-407[;].

1167 (c) "Cashier's check," Section 70A-3-104[;].

1168 (d) "Certificate of deposit," Section 70A-3-104[;].

1169 (e) "Certified check," Section 70A-3-409[;].

1170 (f) "Check," Section 70A-3-104[;].

1171 (g) "Good faith," Section 70A-3-103[;].

1172 (h) "Holder in due course," Section 70A-3-302[;].

1173 (i) "Instrument," Section 70A-3-104[;].

1174 (j) "Notice of dishonor," Section 70A-3-503[;].

1175 (k) "Order," Section 70A-3-103[;].

1176 (l) "Ordinary care," Section 70A-3-103[;].

1177 (m) "Person entitled to enforce," Section 70A-3-301[;].

- 1178 (n) "Presentment," Section 70A-3-501[;].
- 1179 (o) "Promise," Section 70A-3-103[;].
- 1180 (p) "Prove," Section 70A-3-103[;].
- 1181 (q) "Teller's check," Section 70A-3-104[; ~~and~~].
- 1182 (r) "Unauthorized signature," Section 70A-3-403.
- 1183 (4) In addition, Chapter [;] 1a, Uniform Commercial Code - General Provisions,
- 1184 contains general definitions and principles of construction and interpretation applicable
- 1185 throughout this chapter.
- 1186 Section 42. Section **70A-4a-105** is amended to read:
- 1187 **70A-4a-105. Other definitions.**
- 1188 (1) In this chapter:
- 1189 (a) "Authorized account" means a deposit account of a customer in a bank designated
- 1190 by the customer as a source of payment orders issued by the customer to the bank. If a
- 1191 customer does not so designate an account, any account of the customer is an authorized
- 1192 account if payment of a payment order from that account is not inconsistent with a restriction
- 1193 on the use of that account.
- 1194 (b) "Bank" means a person engaged in the business of banking, and includes a savings
- 1195 bank, savings and loan association, credit union, and trust company. A branch or separate
- 1196 office of a bank is a separate bank for purposes of this chapter.
- 1197 (c) "Customer" means a person, including a bank, having an account with a bank or
- 1198 from whom a bank has agreed to receive payment orders.
- 1199 (d) "Funds transfer business day" of a receiving bank means the part of a day during
- 1200 which the receiving bank is open for the receipt, processing, and transmittal of payment orders
- 1201 and cancellations and amendments of payment orders.
- 1202 (e) "Funds transfer system" means a wire transfer network, automated clearing house,
- 1203 or other communication system of a clearing house or other association of banks through which
- 1204 a payment order by a bank may be transmitted to the bank to which the order is addressed.
- 1205 (f) "Good faith" means honesty in fact and the observance of reasonable commercial

1206 standards of fair dealing.

1207 (g) "Prove" with respect to a fact means to meet the burden of establishing the fact
1208 under Subsection [~~70A-1-201(8)~~] 70A-1a-201(2)(h).

1209 (2) Other definitions applying to this chapter and the sections in which they appear are:

1210 (a) "Acceptance," Section 70A-4a-209[;].

1211 (b) "Beneficiary," Section 70A-4a-103[;].

1212 (c) "Beneficiary's bank," Section 70A-4a-103[;].

1213 (d) "Executed," Section 70A-4a-301[;].

1214 (e) "Execution date," Section 70A-4a-301[;].

1215 (f) "Funds transfer system rule," Section 70A-4a-501[;].

1216 (g) "Funds transfer," Section 70A-4a-104[;].

1217 (h) "Intermediary bank," Section 70A-4a-104[;].

1218 (i) "Originator," Section 70A-4a-104[;].

1219 (j) "Originator's bank," Section 70A-4a-104[;].

1220 (k) "Payment by beneficiary's bank to beneficiary," Section 70A-4a-405[;].

1221 (l) "Payment by originator to beneficiary," Section 70A-4a-406[;].

1222 (m) "Payment by sender, to receiving bank," Section 70A-4a-403[;].

1223 (n) "Payment date," Section 70A-4a-401[;].

1224 (o) "Payment order," Section 70A-4a-103[;].

1225 (p) "Receiving bank," Section 70A-4a-103[;].

1226 (q) "Security procedure," Section 70A-4a-201[; ~~and~~].

1227 (r) "Sender," Section 70A-4a-103.

1228 (3) The following definitions in Chapter 4, Uniform Commercial Code - Bank

1229 Deposits and Collections, apply to this chapter:

1230 (a) "Clearinghouse," Section 70A-4-104[;].

1231 (b) "Item," Section 70A-4-104[; ~~and~~].

1232 (c) "Suspends payments," Section 70A-4-104.

1233 (4) In addition, [~~Title 70A,~~] Chapter [~~7~~] 1a, Uniform Commercial Code [~~7~~]- General

1234 Provisions, contains general definitions and principles of construction and interpretation
1235 applicable throughout this chapter.

1236 Section 43. Section **70A-4a-106** is amended to read:

1237 **70A-4a-106. Time payment order is received.**

1238 (1) The time of receipt of a payment order or communication canceling or amending a
1239 payment order is determined by the rules applicable to receipt of a notice stated in [~~Subsection~~
1240 ~~70A-1-201 (27)~~] Section 70A-1a-202. A receiving bank may fix a cutoff time or times on a
1241 funds transfer business day, as a cutoff time for the receipt and processing of payment orders
1242 and communications canceling or amending payment orders. Different cutoff times may apply
1243 to receipt of payment orders, cancellations, or amendments, or to different categories of
1244 payment orders, cancellations, or amendments. A cutoff time may apply to senders generally
1245 or different cutoff times may apply to different senders or categories of payment orders. If a
1246 payment order or communication canceling or amending a payment order is received after the
1247 close of a funds transfer business day or after the appropriate cutoff time on a funds transfer
1248 business day, the receiving bank may treat the payment order or communication as received at
1249 the opening of the next funds transfer business day.

1250 (2) If this chapter refers to an execution date or payment date or states a day on which a
1251 receiving bank is required to take any action, and the date or day does not fall on a funds
1252 transfer business day, the next day that is a funds transfer business day is treated as the date or
1253 day stated, unless the contrary is stated in this chapter.

1254 Section 44. Section **70A-4a-204** is amended to read:

1255 **70A-4a-204. Refund of payment and duty of customer to report with respect to**
1256 **unauthorized payment order.**

1257 (1) (a) If a receiving bank accepts a payment order issued in the name of its customer
1258 as sender which is not authorized and not effective as the order of the customer under Section
1259 70A-4a-202, or not enforceable, in whole or in part, against the customer under Section
1260 70A-4a-203, the bank shall refund any payment of the payment order received from the
1261 customer to the extent the bank is not entitled to enforce payment, and shall pay interest on the

1262 refundable amount calculated from the date the bank received payment to the date of the
1263 refund.

1264 (b) However, the customer is not entitled to interest from the bank on the amount to be
1265 refunded if the customer fails to exercise ordinary care to determine that the order was not
1266 authorized by the customer and to notify the bank of the relevant facts within a reasonable time
1267 not exceeding 90 days after the date the customer received notification from the bank that the
1268 order was accepted or that the customer's account was debited with respect to the order.

1269 (c) The bank is not entitled to any recovery from the customer on account of a failure
1270 by the customer to give notification as stated in this section.

1271 (2) Reasonable time under Subsection (1) may be fixed by agreement as stated in
1272 Subsection [~~70A-1-204(1)~~] 70A-1a-302(2), but the obligation of a receiving bank to refund
1273 payment as stated in Subsection (1) may not otherwise be varied by agreement.

1274 Section 45. Section **70A-5-103** is amended to read:

1275 **70A-5-103. Scope.**

1276 (1) This chapter applies to letters of credit and to certain rights and obligations arising
1277 out of transactions involving letters of credit.

1278 (2) The statement of a rule in this chapter does not by itself require, imply, or negate
1279 application of the same or a different rule to a situation not provided for, or to a person not
1280 specified, in this chapter.

1281 (3) With the exception of this Subsection (3), Subsections (1) and (4), Subsections
1282 70A-5-102(9) and (10), 70A-5-106(4), and 70A-5-114(4), and except to the extent prohibited
1283 in [~~Subsections 70A-1-102(3)~~] Section 70A-1a-302 and Subsection 70A-5-117(4), the effect of
1284 this chapter may be varied by agreement or by a provision stated or incorporated by reference
1285 in an undertaking. A term in an agreement or undertaking generally excusing liability or
1286 generally limiting remedies for failure to perform obligations is not sufficient to vary
1287 obligations prescribed by this chapter.

1288 (4) Rights and obligations of an issuer to a beneficiary or a nominated person under a
1289 letter of credit are independent of the existence, performance, or nonperformance of a contract

1290 or arrangement out of which the letter of credit arises or which underlies it, including contracts
1291 or arrangements between the issuer and the applicant and between the applicant and the
1292 beneficiary.

1293 Section 46. Section **70A-7a-102** is amended to read:

1294 **70A-7a-102. Definitions and index of definitions.**

1295 (1) In this chapter, unless the context otherwise requires:

1296 (a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other
1297 document of title acknowledges possession of goods and contracts to deliver them.

1298 (b) "Carrier" means a person that issues a bill of lading.

1299 (c) "Consignee" means a person named in a bill of lading to which or to whose order
1300 the bill promises delivery.

1301 (d) "Consignor" means a person named in a bill of lading as the person from which the
1302 goods have been received for shipment.

1303 (e) "Delivery order" means a record that contains an order to deliver goods directed to a
1304 warehouse, carrier, or other person that in the ordinary course of business issues warehouse
1305 receipts or bills of lading.

1306 (f) "Good faith" means honesty in fact and the observance of reasonable commercial
1307 standards of fair dealing.

1308 (g) "Goods" means all things that are treated as movable for the purposes of a contract
1309 for storage or transportation.

1310 (h) "Issuer" means a bailee that issues a document of title or, in the case of an
1311 unaccepted delivery order, the person that orders the possessor of goods to deliver. The term
1312 includes a person for which an agent or employee purports to act in issuing a document if the
1313 agent or employee has real or apparent authority to issue documents, even if the issuer did not
1314 receive any goods, the goods were misdescribed, or in any other respect the agent or employee
1315 violated the issuer's instructions.

1316 (i) "Person entitled under the document" means the holder, in the case of a negotiable
1317 document of title, or the person to which delivery of the goods is to be made by the terms of, or

1318 pursuant to instructions in a record under, a nonnegotiable document of title.

1319 (j) "Record" means information that is inscribed on a tangible medium or that is stored
1320 in an electronic or other medium and is retrievable in perceivable form.

1321 (k) "Shipper" means a person that enters into a contract of transportation with a carrier.

1322 (l) "Sign" means, with present intent to authenticate or adopt a record:

1323 (i) to execute or adopt a tangible symbol; or

1324 (ii) to attach to or logically associate with the record an electronic sound, symbol, or
1325 process.

1326 (m) "Warehouse" means a person engaged in the business of storing goods for hire.

1327 (2) Definitions in other chapters applying to this chapter and the sections in which they
1328 appear are:

1329 (a) "Contract for sale," Section 70A-2-106.

1330 (b) "Lessee in the ordinary course of business," Section 70A-2a-103.

1331 (c) "Receipt" of goods, Section 70A-2-103.

1332 (3) In addition, Chapter [1-] 1a, Uniform Commercial Code - General Provisions,
1333 contains general definitions and principles of construction and interpretation applicable
1334 throughout this chapter.

1335 Section 47. Section **70A-8-101** is amended to read:

1336 **70A-8-101. Definitions.**

1337 (1) As used in this chapter:

1338 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial
1339 asset and that it is a violation of the rights of the claimant for another person to hold, transfer,
1340 or deal with the financial asset.

1341 (b) "Bearer form," as applied to a certificated security, means a form in which the
1342 security is payable to the bearer of the security certificate according to its terms but not by
1343 reason of an indorsement.

1344 (c) "Broker" means a person defined as a broker or dealer under the federal securities
1345 laws, but without excluding a bank acting in that capacity.

- 1346 (d) "Certificated security" means a security that is represented by a certificate.
- 1347 (e) "Clearing corporation" means:
- 1348 (i) a person that is registered as a "clearing agency" under the federal securities laws;
- 1349 (ii) a federal reserve bank; or
- 1350 (iii) any other person that provides clearance or settlement services with respect to
- 1351 financial assets that would require it to register as a clearing agency under the federal securities
- 1352 laws but for an exclusion or exemption from the registration requirement, if its activities as a
- 1353 clearing corporation, including promulgation of rules, are subject to regulation by a federal or
- 1354 state governmental authority.
- 1355 (f) "Communicate" means to:
- 1356 (i) send a signed writing; or
- 1357 (ii) transmit information by any mechanism agreed upon by the persons transmitting
- 1358 and receiving the information.
- 1359 (g) "Entitlement holder" means a person identified in the records of a securities
- 1360 intermediary as the person having a security entitlement against the securities intermediary. If
- 1361 a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that
- 1362 person is the entitlement holder.
- 1363 (h) "Entitlement order" means a notification communicated to a securities intermediary
- 1364 directing transfer or redemption of a financial asset to which the entitlement holder has a
- 1365 security entitlement.
- 1366 (i) (i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:
- 1367 (A) a security;
- 1368 (B) an obligation of a person or a share, participation, or other interest in a person or in
- 1369 property or an enterprise of a person, which is or is of a type, dealt in or traded on financial
- 1370 markets, or which is recognized in any area in which it is issued or dealt in as a medium for
- 1371 investment; or
- 1372 (C) any property that is held by a securities intermediary for another person in a
- 1373 securities account if that securities intermediary has expressly agreed with the other person that

1374 the property is to be treated as a financial asset under this chapter.

1375 (ii) As context requires, the term means either the interest itself or the means by which
1376 a person's claim to it is evidenced, including a certificated or uncertificated security, a security
1377 certificate, or a security entitlement.

1378 (j) "Good faith," for purposes of the obligation of good faith in the performance or
1379 enforcement of contracts or duties within this chapter, means honesty in fact and the
1380 observance of reasonable commercial standards of fair dealing.

1381 (k) "Indorsement" means a signature that alone or accompanied by other words is made
1382 on a security certificate in registered form or on a separate document for the purpose of
1383 assigning, transferring, or redeeming the security or granting a power to assign, transfer, or
1384 redeem it.

1385 (l) "Instruction" means a notification communicated to the issuer of an uncertificated
1386 security which directs that the transfer of the security be registered or that the security be
1387 redeemed.

1388 (m) "Registered form," as applied to a certificated security, means a form in which:

1389 (i) the security certificate specifies a person entitled to the security; and

1390 (ii) a transfer of the security may be registered upon books maintained for that purpose
1391 by or on behalf of the issuer, or the security certificate so states.

1392 (n) "Securities intermediary" means:

1393 (i) a clearing corporation; or

1394 (ii) a person, including a bank or broker, that in the ordinary course of its business
1395 maintains securities accounts for others and is acting in that capacity.

1396 (o) "Security," except as otherwise provided in Section 70A-8-102, means an
1397 obligation of an issuer or a share, participation, or other interest in an issuer or in property or an
1398 enterprise of an issuer:

1399 (i) which is represented by a security certificate in bearer or registered form, or the
1400 transfer of which may be registered upon books maintained for that purpose by or on behalf of
1401 the issuer;

1402 (ii) which is one of a class or series or by its terms is divisible into a class or series of
1403 shares, participations, interests, or obligations; and

1404 (iii) which:

1405 (A) is, or is of a type, dealt in or traded on securities exchanges or securities markets;

1406 or

1407 (B) is a medium for investment and by its terms expressly provides that it is a security
1408 governed by this chapter.

1409 (p) "Security certificate" means a certificate representing a security.

1410 (q) "Security entitlement" means the rights and property interest of an entitlement
1411 holder with respect to a financial asset specified in Part 5.

1412 (r) "Uncertificated security" means a security that is not represented by a certificate.

1413 (2) Other definitions applying to this chapter and the sections in which they appear are:

1414 (a) "Appropriate person," Section 70A-8-106[;].

1415 (b) "Control," Section 70A-8-105[;].

1416 (c) "Delivery," Section 70A-8-301[;].

1417 (d) "Investment company security," Section 70A-8-102[;].

1418 (e) "Issuer," Section 70A-8-201[;].

1419 (f) "Overissue," Section 70A-8-210[;].

1420 (g) "Protected purchaser," Section 70A-8-303[; and].

1421 (h) "Securities account," Section 70A-8-501.

1422 (3) In addition, Chapter [;] 1a, Uniform Commercial Code - General Provisions,
1423 contains general definitions and principles of construction and interpretation applicable
1424 throughout this chapter.

1425 (4) The characterization of a person, business, or transaction for purposes of this
1426 chapter does not determine the characterization of the person, business, or transaction for
1427 purposes of any other law, regulation, or rule.

1428 Section 48. Section **70A-9a-102.1** is amended to read:

1429 **70A-9a-102.1. Definitions from other chapters.**

- 1430 (1) "Control" as provided in Section 70A-7a-106 and the following definitions in other
1431 chapters of this title apply to this chapter:
- 1432 (a) "Applicant" Section 70A-5-102.
 - 1433 (b) "Beneficiary" Section 70A-5-102.
 - 1434 (c) "Broker" Section 70A-8-101.
 - 1435 (d) "Certificated security" Section 70A-8-101.
 - 1436 (e) "Check" Section 70A-3-104.
 - 1437 (f) "Clearing corporation" Section 70A-8-101.
 - 1438 (g) "Contract for sale" Section 70A-2-106.
 - 1439 (h) "Customer" Section 70A-4-104.
 - 1440 (i) "Entitlement holder" Section 70A-8-101.
 - 1441 (j) "Financial asset" Section 70A-8-101.
 - 1442 (k) "Holder in due course" Section 70A-3-302.
 - 1443 (l) (i) "Issuer" (with respect to a letter of credit or letter-of-credit right) Section
1444 70A-5-102.
 - 1445 (ii) "Issuer" (with respect to a security) Section 70A-8-201.
 - 1446 (iii) "Issuer" (with respect to documents of title) Section 70A-7a-102.
 - 1447 (m) "Lease" Section 70A-2a-103.
 - 1448 (n) "Lease agreement" Section 70A-2a-103.
 - 1449 (o) "Lease contract" Section 70A-2a-103.
 - 1450 (p) "Leasehold interest" Section 70A-2a-103.
 - 1451 (q) "Lessee" Section 70A-2a-103.
 - 1452 (r) "Lessee in ordinary course of business" Section 70A-2a-103.
 - 1453 (s) "Lessor" Section 70A-2a-103.
 - 1454 (t) "Lessor's residual interest" Section 70A-2a-103.
 - 1455 (u) "Letter of credit" Section 70A-5-102.
 - 1456 (v) "Merchant" Section 70A-2-104.
 - 1457 (w) "Negotiable instrument" Section 70A-3-104.

- 1458 (x) "Nominated person" Section 70A-5-102.
- 1459 (y) "Note" Section 70A-3-104.
- 1460 (z) "Proceeds of a letter of credit" Section 70A-5-114.
- 1461 (aa) "Prove" Section 70A-3-103.
- 1462 (bb) "Sale" Section 70A-2-106.
- 1463 (cc) "Securities account" Section 70A-8-501.
- 1464 (dd) "Securities intermediary" Section 70A-8-101.
- 1465 (ee) "Security" Section 70A-8-101.
- 1466 (ff) "Security certificate" Section 70A-8-101.
- 1467 (gg) "Security entitlement" Section 70A-8-101.
- 1468 (hh) "Uncertificated security" Section 70A-8-101.
- 1469 (2) Chapter ~~[+]~~ 1a, Uniform Commercial Code - General Provisions, contains general
- 1470 definitions and principles of construction and interpretation applicable throughout this chapter.
- 1471 Section 49. Section **70A-10-104** is amended to read:
- 1472 **70A-10-104. Laws not repealed.**
- 1473 Chapter 7a, Uniform Commercial Code - Documents of Title, does not repeal or modify
- 1474 any laws prescribing the form or contents of documents of title or the services or facilities to be
- 1475 afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt
- 1476 with herein; but the fact that such laws are violated does not affect the status of a document of
- 1477 title which otherwise complies with the definition of a document of title as defined in Section
- 1478 ~~[70A-1-201]~~ 70A-1a-201.
- 1479 Section 50. Section **70C-2-204** is amended to read:
- 1480 **70C-2-204. Certain negotiable instruments prohibited.**
- 1481 With respect to a consumer credit sale not involving real property, the seller may not
- 1482 take a negotiable instrument under Section 70A-3-104 other than a check as evidence of the
- 1483 obligation of the buyer. A holder is not in good faith under Subsection ~~[70A-1-201(19)]~~
- 1484 70A-1a-201(2)(t) if he takes a negotiable instrument with notice that it is issued in violation of
- 1485 this section. A holder in due course under Section 70A-3-302 is not subject to the liabilities set

1486 forth in the provisions on the effect of violations on rights of parties under Section 70C-7-201.

1487 Section 51. **Repealer.**

1488 This bill repeals:

1489 Section **70A-1-101, Short title.**

1490 Section **70A-1-102, Purposes -- Rules of construction -- Variation by agreement.**

1491 Section **70A-1-103, Supplementary general principles of law applicable.**

1492 Section **70A-1-104, Construction against implicit repeal.**

1493 Section **70A-1-105, Territorial application of title -- Parties' power to choose**
1494 **applicable law.**

1495 Section **70A-1-106, Remedies to be liberally administered.**

1496 Section **70A-1-107, Waiver or renunciation of claim or right after breach.**

1497 Section **70A-1-108, Severability.**

1498 Section **70A-1-109, Section captions.**

1499 Section **70A-1-201, General definitions.**

1500 Section **70A-1-202, Prima facie evidence by third-party documents.**

1501 Section **70A-1-203, Obligation of good faith.**

1502 Section **70A-1-204, Time -- Reasonable time -- "Seasonably."**

1503 Section **70A-1-205, Course of dealing and usage of trade.**

1504 Section **70A-1-206, Statute of frauds for kinds of personal property not otherwise**
1505 **covered.**

1506 Section **70A-1-207, Performance or acceptance under reservation of rights.**

1507 Section **70A-1-208, Option to accelerate at will.**