

1 **UNIFORM COMMERCIAL CODE - WAREHOUSE**
2 **RECEIPTS, BILLS OF LADING, AND**
3 **OTHER DOCUMENTS OF TITLE**

4 2006 GENERAL SESSION

5 STATE OF UTAH

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

7 House Sponsor: Ross I. Romero

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Uniform Commercial Code's treatment of documents of title and
12 related amendments.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ repeals Title 70A, Chapter 7, Uniform Commercial Code - Documents of Title;
- 16 ▶ enacts the revised article 7 of the Uniform Commercial Code in Title 70A, Chapter

17 7a, Uniform Commercial Code - Documents of Title, with provisions including:

- 18 • electronic documents of title;
- 19 • warehouse receipts;
- 20 • bills of lading; and
- 21 • the obligations, liabilities, negotiation, and transfer of documents of title;
- 22 ▶ amends other provisions of Title 70A, Uniform Commercial Code, to conform with

23 the adoption of Title 70A, Chapter 7a, Uniform Commercial Code - Documents of
24 Title; and

- 25 ▶ makes technical amendments.

26 **Monies Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 **AMENDS:**

- 32 **38-8-1**, as enacted by Chapter 171, Laws of Utah 1981
- 33 **46-4-403**, as enacted by Chapter 74, Laws of Utah 2000
- 34 **70A-1-201**, as last amended by Chapter 252, Laws of Utah 2000
- 35 **70A-2-103**, as last amended by Chapter 252, Laws of Utah 2000
- 36 **70A-2-104**, as enacted by Chapter 154, Laws of Utah 1965
- 37 **70A-2-310**, as enacted by Chapter 154, Laws of Utah 1965
- 38 **70A-2-323**, as enacted by Chapter 154, Laws of Utah 1965
- 39 **70A-2-401**, as enacted by Chapter 154, Laws of Utah 1965
- 40 **70A-2-403**, as last amended by Chapter 131, Laws of Utah 2003
- 41 **70A-2-503**, as enacted by Chapter 154, Laws of Utah 1965
- 42 **70A-2-505**, as enacted by Chapter 154, Laws of Utah 1965
- 43 **70A-2-506**, as enacted by Chapter 154, Laws of Utah 1965
- 44 **70A-2-509**, as enacted by Chapter 154, Laws of Utah 1965
- 45 **70A-2-605**, as enacted by Chapter 154, Laws of Utah 1965
- 46 **70A-2-705**, as enacted by Chapter 154, Laws of Utah 1965
- 47 **70A-2a-103**, as last amended by Chapter 252, Laws of Utah 2000
- 48 **70A-2a-514**, as enacted by Chapter 197, Laws of Utah 1990
- 49 **70A-2a-526**, as enacted by Chapter 197, Laws of Utah 1990
- 50 **70A-4-104**, as last amended by Chapter 204, Laws of Utah 1996
- 51 **70A-4-210**, as last amended by Chapter 252, Laws of Utah 2000
- 52 **70A-5-110**, as repealed and reenacted by Chapter 241, Laws of Utah 1997
- 53 **70A-8-102**, as last amended by Chapter 252, Laws of Utah 2000
- 54 **70A-9a-102**, as enacted by Chapter 252, Laws of Utah 2000
- 55 **70A-9a-102.1**, as enacted by Chapter 252, Laws of Utah 2000
- 56 **70A-9a-203**, as enacted by Chapter 252, Laws of Utah 2000
- 57 **70A-9a-207**, as enacted by Chapter 252, Laws of Utah 2000
- 58 **70A-9a-208**, as enacted by Chapter 252, Laws of Utah 2000

- 59 **70A-9a-301**, as enacted by Chapter 252, Laws of Utah 2000
- 60 **70A-9a-310**, as enacted by Chapter 252, Laws of Utah 2000
- 61 **70A-9a-312**, as enacted by Chapter 252, Laws of Utah 2000
- 62 **70A-9a-313**, as enacted by Chapter 252, Laws of Utah 2000
- 63 **70A-9a-314**, as enacted by Chapter 252, Laws of Utah 2000
- 64 **70A-9a-317**, as enacted by Chapter 252, Laws of Utah 2000
- 65 **70A-9a-331**, as enacted by Chapter 252, Laws of Utah 2000
- 66 **70A-9a-338**, as enacted by Chapter 252, Laws of Utah 2000
- 67 **70A-9a-601**, as enacted by Chapter 252, Laws of Utah 2000
- 68 **70A-10-104**, as last amended by Chapter 204, Laws of Utah 1996
- 69 **72-9-404**, as renumbered and amended by Chapter 270, Laws of Utah 1998

70 ENACTS:

- 71 **70A-7a-101**, Utah Code Annotated 1953
- 72 **70A-7a-102**, Utah Code Annotated 1953
- 73 **70A-7a-103**, Utah Code Annotated 1953
- 74 **70A-7a-104**, Utah Code Annotated 1953
- 75 **70A-7a-105**, Utah Code Annotated 1953
- 76 **70A-7a-106**, Utah Code Annotated 1953
- 77 **70A-7a-201**, Utah Code Annotated 1953
- 78 **70A-7a-202**, Utah Code Annotated 1953
- 79 **70A-7a-203**, Utah Code Annotated 1953
- 80 **70A-7a-204**, Utah Code Annotated 1953
- 81 **70A-7a-205**, Utah Code Annotated 1953
- 82 **70A-7a-206**, Utah Code Annotated 1953
- 83 **70A-7a-207**, Utah Code Annotated 1953
- 84 **70A-7a-208**, Utah Code Annotated 1953
- 85 **70A-7a-209**, Utah Code Annotated 1953
- 86 **70A-7a-210**, Utah Code Annotated 1953
- 87 **70A-7a-301**, Utah Code Annotated 1953
- 88 **70A-7a-302**, Utah Code Annotated 1953
- 89 **70A-7a-303**, Utah Code Annotated 1953

- 90 **70A-7a-304**, Utah Code Annotated 1953
- 91 **70A-7a-305**, Utah Code Annotated 1953
- 92 **70A-7a-306**, Utah Code Annotated 1953
- 93 **70A-7a-307**, Utah Code Annotated 1953
- 94 **70A-7a-308**, Utah Code Annotated 1953
- 95 **70A-7a-309**, Utah Code Annotated 1953
- 96 **70A-7a-401**, Utah Code Annotated 1953
- 97 **70A-7a-402**, Utah Code Annotated 1953
- 98 **70A-7a-403**, Utah Code Annotated 1953
- 99 **70A-7a-404**, Utah Code Annotated 1953
- 100 **70A-7a-501**, Utah Code Annotated 1953
- 101 **70A-7a-502**, Utah Code Annotated 1953
- 102 **70A-7a-503**, Utah Code Annotated 1953
- 103 **70A-7a-504**, Utah Code Annotated 1953
- 104 **70A-7a-505**, Utah Code Annotated 1953
- 105 **70A-7a-506**, Utah Code Annotated 1953
- 106 **70A-7a-507**, Utah Code Annotated 1953
- 107 **70A-7a-508**, Utah Code Annotated 1953
- 108 **70A-7a-509**, Utah Code Annotated 1953
- 109 **70A-7a-601**, Utah Code Annotated 1953
- 110 **70A-7a-602**, Utah Code Annotated 1953
- 111 **70A-7a-603**, Utah Code Annotated 1953
- 112 **70A-7a-701**, Utah Code Annotated 1953
- 113 **70A-7a-702**, Utah Code Annotated 1953

114 REPEALS:

- 115 **70A-7-101**, as enacted by Chapter 154, Laws of Utah 1965
- 116 **70A-7-102**, as enacted by Chapter 154, Laws of Utah 1965
- 117 **70A-7-103**, as enacted by Chapter 154, Laws of Utah 1965
- 118 **70A-7-104**, as enacted by Chapter 154, Laws of Utah 1965
- 119 **70A-7-105**, as enacted by Chapter 154, Laws of Utah 1965
- 120 **70A-7-201**, as enacted by Chapter 154, Laws of Utah 1965

- 121 **70A-7-202**, as enacted by Chapter 154, Laws of Utah 1965
- 122 **70A-7-203**, as enacted by Chapter 154, Laws of Utah 1965
- 123 **70A-7-204**, as enacted by Chapter 154, Laws of Utah 1965
- 124 **70A-7-205**, as enacted by Chapter 154, Laws of Utah 1965
- 125 **70A-7-206**, as enacted by Chapter 154, Laws of Utah 1965
- 126 **70A-7-207**, as enacted by Chapter 154, Laws of Utah 1965
- 127 **70A-7-208**, as enacted by Chapter 154, Laws of Utah 1965
- 128 **70A-7-209**, as enacted by Chapter 154, Laws of Utah 1965
- 129 **70A-7-210**, as enacted by Chapter 154, Laws of Utah 1965
- 130 **70A-7-301**, as last amended by Chapter 170, Laws of Utah 1996
- 131 **70A-7-302**, as enacted by Chapter 154, Laws of Utah 1965
- 132 **70A-7-303**, as enacted by Chapter 154, Laws of Utah 1965
- 133 **70A-7-304**, as enacted by Chapter 154, Laws of Utah 1965
- 134 **70A-7-305**, as enacted by Chapter 154, Laws of Utah 1965
- 135 **70A-7-306**, as enacted by Chapter 154, Laws of Utah 1965
- 136 **70A-7-307**, as enacted by Chapter 154, Laws of Utah 1965
- 137 **70A-7-308**, as enacted by Chapter 154, Laws of Utah 1965
- 138 **70A-7-309**, as enacted by Chapter 154, Laws of Utah 1965
- 139 **70A-7-401**, as enacted by Chapter 154, Laws of Utah 1965
- 140 **70A-7-402**, as enacted by Chapter 154, Laws of Utah 1965
- 141 **70A-7-403**, as enacted by Chapter 154, Laws of Utah 1965
- 142 **70A-7-404**, as enacted by Chapter 154, Laws of Utah 1965
- 143 **70A-7-501**, as enacted by Chapter 154, Laws of Utah 1965
- 144 **70A-7-502**, as enacted by Chapter 154, Laws of Utah 1965
- 145 **70A-7-503**, as last amended by Chapter 252, Laws of Utah 2000
- 146 **70A-7-504**, as enacted by Chapter 154, Laws of Utah 1965
- 147 **70A-7-505**, as enacted by Chapter 154, Laws of Utah 1965
- 148 **70A-7-506**, as enacted by Chapter 154, Laws of Utah 1965
- 149 **70A-7-507**, as enacted by Chapter 154, Laws of Utah 1965
- 150 **70A-7-508**, as enacted by Chapter 154, Laws of Utah 1965
- 151 **70A-7-509**, as enacted by Chapter 154, Laws of Utah 1965

152 70A-7-601, as enacted by Chapter 154, Laws of Utah 1965

153 70A-7-602, as enacted by Chapter 154, Laws of Utah 1965

154 70A-7-603, as enacted by Chapter 154, Laws of Utah 1965

155

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

157 Section 1. Section 38-8-1 is amended to read:

158 **38-8-1. Definitions.**

159 As used in this chapter:

160 (1) "Default" means the failure to perform in a timely manner any obligation or duty set
161 forth in this chapter or the rental agreement.

162 (2) "Last known address" means that address provided by the occupant in the latest
163 rental agreement or the address provided by the occupant in a subsequent written notice of a
164 change of address.

165 (3) "Occupant" means a person, or his sublessee, successor, or assign, entitled to the
166 use of the storage space at a self-service storage facility under a rental agreement, to the
167 exclusion of others.

168 (4) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage
169 facility, his agent, or any other person authorized by him to manage the facility or to receive
170 rent from an occupant under a rental agreement.

171 (5) "Personal property" means movable property not affixed to land and includes, but is
172 not limited to, goods, merchandise, and household items.

173 (6) "Rental agreement" means any written agreement or lease which establishes or
174 modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy
175 at a self-service storage facility and which contains a notice stating that all articles stored under
176 the terms of the agreement will be sold or otherwise disposed of if no payment has been
177 received for a continuous 30-day period. The agreement shall contain a provision directing the
178 occupant to disclose any lienholders with an interest in property that is or will be stored in the
179 self-service storage facility.

180 (7) "Self-service storage facility" means any real property designed and used for the
181 purpose of renting or leasing individual storage space to occupants who are to have access to
182 the facility for the purpose of storing and removing personal property. No occupant may use a

183 self-service storage facility for residential purposes. The owner of a self-service storage facility
184 is not a [~~warehouseman~~] warehouse as used in [~~Subsection 70A-7-102(1)(h)~~] Section
185 70A-7a-102. If an owner issues any warehouse receipt, bill of lading, or other document of title
186 for the personal property stored, the owner and the occupant are subject to the provisions of the
187 Uniform Commercial Code, and the provisions of this chapter do not apply.

188 Section 2. Section **46-4-403** is amended to read:

189 **46-4-403. Transferable records.**

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

191 (a) would be a note under Title 70A, Chapter 3, Uniform Commercial Code -
192 Negotiable Instruments, or a document under Title 70A, Chapter [~~7~~] 7a, Uniform Commercial
193 Code - Documents of Title, if the electronic record were in writing; and

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

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

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

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

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

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

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

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

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

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

213 (f) any revision of the authoritative copy is readily identifiable as authorized or

214 unauthorized.

215 (4) (a) Except as otherwise agreed, a person having control of a transferable record is
216 the holder, as defined in Subsection 70A-1-201(20), of the transferable record and has the same
217 rights and defenses as a holder of an equivalent record or writing under Title 70A, Uniform
218 Commercial Code, including, if the applicable statutory requirements under Subsection
219 70A-3-302(1), Section [~~70A-7-501~~] 70A-7a-501, or Section [~~70A-9-308~~] 70A-9a-308 are
220 satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable
221 document of title has been duly negotiated, or a purchaser, respectively.

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

224 (5) Except as otherwise agreed, an obligor under a transferable record has the same
225 rights and defenses as an equivalent obligor under equivalent records or writings under Title
226 70A, Uniform Commercial Code.

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

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

233 Section 3. Section **70A-1-201** is amended to read:

234 **70A-1-201. General definitions.**

235 In addition to definitions contained in the subsequent chapters of this title and unless
236 the context otherwise requires, in this title:

237 (1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim,
238 setoff, suit in equity, and any other proceedings in which rights are determined.

239 (2) "Aggrieved party" means a party entitled to resort to a remedy.

240 (3) "Agreement" means the bargain of the parties in fact as found in their language or
241 by implication from other circumstances including course of dealing or usage of trade or course
242 of performance as provided in Sections 70A-1-205 and 70A-2-208. Whether an agreement has
243 legal consequences is determined by the provisions of this title, if applicable; otherwise by the
244 law of contracts as provided in Section 70A-1-103. Compare the definition of "contract" in

245 Subsection (11).

246 (4) "Bank" means any person engaged in the business of banking.

247 (5) "Bearer" means ~~[the]~~ a person in control of a negotiable electronic document of title
248 or a person in possession of an instrument, a negotiable tangible document of title, or a
249 certificated security payable to bearer or indorsed in blank.

250 (6) "Bill of lading" means a document of title evidencing the receipt of goods for
251 shipment issued by a person engaged in the business of directly or indirectly transporting or
252 forwarding goods~~[-, and includes an airbill. "Airbill" means a document serving for air~~
253 ~~transportation as a bill of lading does for marine or rail transportation, and includes an air~~
254 ~~consignment note or air waybill]. The term does not include a warehouse receipt.~~

255 (7) "Branch" includes a separately incorporated foreign branch of a bank.

256 (8) "Burden of establishing a fact" means the burden of persuading the triers of fact
257 that the existence of the fact is more probable than its nonexistence.

258 (9) "Buyer in ordinary course of business" means a person that buys goods, in good
259 faith, without knowledge that the sale violates the rights of another person in the goods, and in
260 the ordinary course from a person, other than a pawnbroker, in the business of selling goods of
261 that kind. A person buys goods in the ordinary course if the sale to the person comports with
262 the usual or customary practices in the kind of business in which the seller is engaged or with
263 the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at
264 the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in
265 ordinary course of business may buy for cash, by exchange of other property, or on secured or
266 unsecured credit, and may acquire goods or documents of title under a preexisting contract for
267 sale. Only a buyer that takes possession of the goods or has a right to recover the goods from
268 the seller under Chapter 2 may be a buyer in ordinary course of business. A person that
269 acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a
270 money debt is not a buyer in ordinary course of business.

271 (10) "Conspicuous" ~~[means a term or clause that is so written that a reasonable person~~
272 ~~against whom it is to operate ought to have noticed it. A printed heading in capitals such as:~~
273 ~~NONNEGOTIABLE BILL OF LADING is conspicuous. Language in the body of a form is~~
274 ~~"conspicuous" if it is in larger or other contrasting type or color. In a telegram any stated term~~
275 ~~is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the~~

276 court.], with reference to a term, means so written, displayed, or presented that a reasonable
277 person against which it is to operate ought to have noticed it. Whether a term is "conspicuous"
278 or not is a decision for the court. Conspicuous terms include the following:

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

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

284 (11) "Contract" means the total legal obligation which results from the parties'
285 agreement as affected by this title and any other applicable rules of law. Compare the
286 definition of "agreement" in Subsection (3).

287 (12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any
288 representative of creditors, including an assignee for the benefit of creditors, a trustee in
289 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or
290 assignor's estate.

291 (13) "Defendant" includes a person in the position of defendant in a cross-action or
292 counterclaim.

293 (14) "Delivery" with respect to an electronic document of title means voluntary transfer
294 of control, and with respect to instruments tangible, documents of title, chattel paper, or
295 certificated securities means voluntary transfer of possession.

296 (15) (a) "Document of title" [~~includes bill of lading, dock warrant, dock receipt,~~
297 ~~warehouse receipt, or order for the delivery of goods, and also any other document which]~~
298 means a record:

299 (i) that in the regular course of business or financing is treated as adequately
300 representing that the person in possession [of it] or control of the record is entitled to receive,
301 control, hold, and dispose of the [document] record and the goods [it] the record covers[. To
302 be a document of title, a document must purport to be issued by or addressed to a bailee and
303 purport to cover goods in the bailee's possession which are either identified or are fungible
304 portions of an identified mass.]; and

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

307 (b) The term includes a bill of lading, transport document, dock warrant, dock receipt,
308 warehouse receipt, and order for delivery of goods. An electronic document of title means a
309 document of title evidenced by a record consisting of information stored in an electronic
310 medium. A tangible document of title means a document of title evidenced by a record
311 consisting of information that is inscribed on a tangible medium.

312 (16) "Fault" means wrongful act, omission, or breach.

313 (17) "Fungible" with respect to goods or securities means goods or securities of which
314 any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are
315 not fungible are considered fungible for the purposes of this title to the extent that under a
316 particular agreement or document unlike units are treated as equivalents.

317 (18) "Genuine" means free of forgery or counterfeiting.

318 (19) "Good faith" means honesty in fact in the conduct or transaction concerned.

319 (20) "Holder" [~~with respect to a negotiable instrument, certificated security, or~~
320 ~~document of title means the person in possession if]~~ means:

321 [~~in the case of a negotiable instrument payable to bearer or to an identified person,~~
322 ~~the identified person is in possession;]~~

323 [~~in the case of a security, the person in possession is the registered owner, or the~~
324 ~~security has been indorsed to the person in possession by the registered owner, or the security is~~
325 ~~in-bearer form; or]~~

326 [~~in the case of a document of title, the goods are deliverable to bearer or to the order~~
327 ~~of the person in possession.]~~

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

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

332 (c) the person in control of a negotiable electronic document of title.

333 (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase
334 or discount a draft complying with the terms of the credit.

335 (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or
336 other proceedings intended to liquidate or rehabilitate the estate of the person involved.

337 (23) A person is "insolvent" who either has ceased to pay his debts in the ordinary

338 course of business or cannot pay his debts as they become due or if he is insolvent within the
339 meaning of the federal bankruptcy law.

340 (24) "Money" means a medium of exchange authorized or adopted by a domestic or
341 foreign government or intergovernmental organization and includes a monetary unit of account
342 established by an intergovernmental organization or by agreement between two or more
343 nations.

344 (25) Subject to Subsection (27):

345 [~~(25)~~] (a) [~~A~~] a person has "notice" of a fact [~~when~~] if the person:

346 (i) [~~he~~] has actual knowledge of it;

347 (ii) [~~he~~] has received a notice or notification of it; or

348 (iii) from all the facts and circumstances known to [~~him~~] the person at the time in
349 question [~~he~~] has reason to know that it exists.

350 (b) A person "knows" or has "knowledge" of a fact when [~~he~~] the person has actual
351 knowledge of it.

352 (c) "Discover" or "learn" or a word or phrase of similar import refers to knowledge
353 rather than to reason to know.

354 (d) The time and circumstances under which a notice or notification may cease to be
355 effective are not determined by this title.

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

359 (b) [~~A~~] Subject to Subsection (27), a person "receives" a notice or notification when:

360 (i) it comes to [~~his~~] that person's attention; or

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

364 (27) Notice, knowledge of a notice, or notification received by an organization is
365 effective for a particular transaction from the time when it is brought to the attention of the
366 individual conducting that transaction, and in any event from the time when it would have been
367 brought to [~~his~~] the individual's attention if the organization had exercised due diligence. An
368 organization exercises due diligence if it maintains reasonable routines for communicating

369 significant information to the person conducting the transaction and there is reasonable
370 compliance with the routines. Due diligence does not require an individual acting for the
371 organization to communicate information unless such communication is part of [his] the
372 individual's regular duties or [~~unless he~~] the individual has reason to know of the transaction
373 and that the transaction would be materially affected by the information.

374 (28) "Organization" includes a corporation, government or governmental subdivision
375 or agency, business trust, estate, trust, partnership or association, two or more persons having a
376 joint or common interest, or any other legal or commercial entity.

377 (29) "Party," as distinct from "third party," means a person who has engaged in a
378 transaction or made an agreement within this title.

379 (30) "Person" includes an individual or an organization as provided in Section
380 70A-1-102.

381 (31) "Presumption" or "presumed" means that the trier of fact must find the existence
382 of the fact presumed unless and until evidence is introduced which would support a finding of
383 its nonexistence.

384 (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien,
385 security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in
386 property.

387 (33) "Purchaser" means a person who takes by purchase.

388 (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or
389 without resort to a tribunal.

390 (35) "Representative" includes an agent, an officer of a corporation or association, and
391 a trustee, executor, or administrator of an estate, or any other person empowered to act for
392 another.

393 (36) "Rights" includes remedies.

394 (37) (a) "Security interest" means an interest in personal property or fixtures which
395 secures payment or performance of an obligation. The term also includes any interest of a
396 consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in
397 a transaction that is subject to Title 70A, Chapter 9a, Uniform Commercial Code - Secured
398 Transactions. The special property interest of a buyer of goods on identification of those goods
399 to a contract for sale under Section 70A-2-401 is not a "security interest," but a buyer may also

400 acquire a "security interest" by complying with Title 70A, Chapter 9a, Uniform Commercial
401 Code - Secured Transactions. Except as otherwise provided in Section 70A-2-505, the right of
402 a seller or lessor of goods under Chapter 2 or ~~[2A]~~ 2a to retain or acquire possession of the
403 goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by
404 complying with Chapter 9a, Uniform Commercial Code - Secured Transactions. The retention
405 or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer
406 (Section 70A-2-401) is limited in effect to a reservation of a "security interest."
407 Notwithstanding anything in Title 70A to the contrary, "security interest" does not include a
408 rental purchase agreement as defined in Section 15-8-3.

409 (b) Whether a transaction creates a lease or security interest is determined by the facts
410 of each case; however, a transaction creates a security interest if the consideration the lessee is
411 to pay the lessor for the right to possession and use of the goods is an obligation for the term of
412 the lease not subject to termination by the lessee, and:

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

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

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

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

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

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

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

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

429 (iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater
430 than the reasonably predictable fair market rent for the use of the goods for the term of the

431 renewal at the time the option is to be performed; or

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

435 (d) For purposes of this Subsection (37):

436 (i) Additional consideration is not nominal if, when the option to renew the lease is
437 granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the
438 term of the renewal determined at the time the option is to be performed, or when the option to
439 become the owner of the goods is granted to the lessee the price is stated to be the fair market
440 value of the goods determined at the time the option is to be performed.

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

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

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

452 (38) "Send" in connection with any writing or notice means:

453 (a) to deposit in the mail or deliver for transmission by any other usual means of
454 communication with postage or the cost of the transmission provided for and properly
455 addressed, and, in the case of an instrument, to an address specified thereon or otherwise
456 agreed, or if there be none to any address reasonable under the circumstances~~[- The receipt of~~
457 ~~any writing or notice within the time at which it would have arrived if properly sent has the~~
458 ~~effect of a proper sending-]; or~~

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

461 (39) "Signed" includes any symbol executed or adopted by a party with present

462 intention to authenticate a writing.

463 (40) "Surety" includes guarantor.

464 (41) "Telegram" includes a message transmitted by radio, teletype, cable, any
465 mechanical method of transmission, or the like.

466 (42) "Term" means that portion of an agreement which relates to a particular matter.

467 (43) "Unauthorized signature" means one made without actual, implied, or apparent
468 authority and includes a forgery.

469 (44) "Value." Except as otherwise provided with respect to negotiable instruments and
470 bank collections as in Sections 70A-3-303, 70A-4-210, and 70A-4-211, a person gives "value"
471 for rights if he acquires them:

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

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

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

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

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

480 (46) "Written" or "writing" includes printing, typewriting, or any other intentional
481 reduction to tangible form.

482 Section 4. Section **70A-2-103** is amended to read:

483 **70A-2-103. Definitions and index of definitions.**

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

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

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

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

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

490 (2) Other definitions applying to this chapter or to specified parts thereof, and the
491 sections in which they appear are:

492 (a) "Acceptance." Section 70A-2-606.

- 493 (b) "Banker's credit." Section 70A-2-325.
- 494 (c) "Between merchants." Section 70A-2-104.
- 495 (d) "Cancellation." Subsection 70A-2-106(4).
- 496 (e) "Commercial unit." Section 70A-2-105.
- 497 (f) "Confirmed credit." Section 70A-2-325.
- 498 (g) "Conforming to contract." Section 70A-2-106.
- 499 (h) "Contract for sale." Section 70A-2-106.
- 500 (i) "Cover." Section 70A-2-712.
- 501 (j) "Entrusting." Section 70A-2-403.
- 502 (k) "Financing agency." Section 70A-2-104.
- 503 (l) "Future goods." Section 70A-2-105.
- 504 (m) "Goods." Section 70A-2-105.
- 505 (n) "Identification." Section 70A-2-501.
- 506 (o) "Installment contract." Section 70A-2-612.
- 507 (p) "Letter of Credit." Section 70A-2-325.
- 508 (q) "Lot." Section 70A-2-105.
- 509 (r) "Merchant." Section 70A-2-104.
- 510 (s) "Overseas." Section 70A-2-323.
- 511 (t) "Person in position of seller." Section 70A-2-707.
- 512 (u) "Present sale." Section 70A-2-106.
- 513 (v) "Sale." Section 70A-2-106.
- 514 (w) "Sale on approval." Section 70A-2-326.
- 515 (x) "Sale or return." Section 70A-2-326.
- 516 (y) "Termination." Section 70A-2-106.
- 517 (3) ~~[The]~~ "Control" as provided in Section 70A-7a-106, and the following definitions
- 518 in other chapters apply to this chapter:
- 519 (a) "Check." Section 70A-3-104.
- 520 (b) "Consignee." Section ~~[70A-7-102]~~ 70A-7a-102.
- 521 (c) "Consignor." Section ~~[70A-7-102]~~ 70A-7a-102.
- 522 (d) "Consumer goods." Section 70A-9a-102.
- 523 (e) "Dishonor." Section 70A-3-502.

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

525 (4) In addition Chapter 1 contains general definitions and principles of construction
526 and interpretation applicable throughout this chapter.

527 Section 5. Section **70A-2-104** is amended to read:

528 **70A-2-104. Definitions -- "Merchant" -- "Between merchants" -- "Financing**
529 **agency."**

530 (1) "Merchant" means a person who deals in goods of the kind or otherwise by his
531 occupation holds himself out as having knowledge or skill peculiar to the practices or goods
532 involved in the transaction or to whom such knowledge or skill may be attributed by his
533 employment of an agent or broker or other intermediary who by his occupation holds himself
534 out as having such knowledge or skill.

535 (2) "Financing agency" means a bank, finance company or other person who in the
536 ordinary course of business makes advances against goods or documents of title or who by
537 arrangement with either the seller or the buyer intervenes in ordinary course to make or collect
538 payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft
539 or making advances against it or by merely taking it for collection whether or not documents of
540 title accompany or are associated with the draft. "Financing agency" includes also a bank or
541 other person who similarly intervenes between persons who are in the position of seller and
542 buyer in respect to the goods (Section 70A-2-707).

543 (3) "Between merchants" means in any transaction with respect to which both parties
544 are chargeable with the knowledge or skill of merchants.

545 Section 6. Section **70A-2-310** is amended to read:

546 **70A-2-310. Open time for payment or running of credit -- Authority to ship**
547 **under reservation.**

548 Unless otherwise agreed:

549 [~~(a)~~] (1) payment is due at the time and place at which the buyer is to receive the goods
550 even though the place of shipment is the place of delivery; [~~and~~]

551 [~~(b)~~] (2) if the seller is authorized to send the goods he may ship them under
552 reservation, and may tender the documents of title, but the buyer may inspect the goods after
553 their arrival before payment is due unless such inspection is inconsistent with the terms of the
554 contract (Section 70A-2-513); [~~and~~]

555 ~~[(e)]~~ (3) if delivery is authorized and made by way of documents of title otherwise than
556 by Subsection ~~[(b)]~~ (2) then payment is due regardless of where the goods are to be received:

557 (a) at the time and place at which the buyer is to receive delivery of the tangible
558 documents ~~[regardless of where the goods are to be received]; [and] or~~

559 (b) at the time the buyer is to receive delivery of the electronic documents and at the
560 seller's place of business or, if none, the seller's residence; and

561 ~~[(d)]~~ (4) where the seller is required or authorized to ship the goods on credit the credit
562 period runs from the time of shipment but postdating the invoice or delaying its dispatch will
563 correspondingly delay the starting of the credit period.

564 Section 7. Section **70A-2-323** is amended to read:

565 **70A-2-323. Form of bill of lading required in overseas shipment -- "Overseas."**

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

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

574 (a) due tender of a single part is acceptable within the provisions of this chapter on cure
575 of improper delivery (Subsection (1) of Section 70A-2-508); and

576 (b) even though the full set is demanded, if the documents are sent from abroad the
577 person tendering an incomplete set may nevertheless require payment upon furnishing an
578 indemnity which the buyer in good faith ~~[deems]~~ considers adequate.

579 (3) A shipment by water or by air or a contract contemplating such shipment is
580 "overseas" in so far as by usage of trade or agreement it is subject to the commercial, financing
581 or shipping practices characteristic of international deep water commerce.

582 Section 8. Section **70A-2-401** is amended to read:

583 **70A-2-401. Passing of title -- Reservation for security -- Limited application of**
584 **this section.**

585 Each provision of this chapter with regard to the rights, obligations and remedies of the

586 seller, the buyer, purchasers or other third parties applies irrespective of title to the goods
587 except where the provision refers to such title. In so far as situations are not covered by the
588 other provisions of this chapter and matters concerning title become material the following
589 rules apply:

590 (1) Title to goods cannot pass under a contract for sale prior to their identification to
591 the contract (Section 70A-2-501), and unless otherwise explicitly agreed the buyer acquires by
592 their identification a special property as limited by this act. Any retention or reservation by the
593 seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a
594 reservation of a security interest. Subject to these provisions and to the provisions of the
595 chapter on Secured Transactions (Chapter [9] 9a), title to goods passes from the seller to the
596 buyer in any manner and on any conditions explicitly agreed on by the parties.

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

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

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

606 (3) Unless otherwise explicitly agreed where delivery is to be made without moving the
607 goods[;]:

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

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

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

616 Section 9. Section **70A-2-403** is amended to read:

617 **70A-2-403. Power to transfer -- Good faith purchase of goods -- Definition of**
618 **entrusting.**

619 (1) A purchaser of goods acquires all title which his transferor had or had power to
620 transfer except that a purchaser of a limited interest acquires rights only to the extent of the
621 interest purchased. A person with voidable title has power to transfer a good title to a good
622 faith purchaser for value. When goods have been delivered under a transaction of purchase the
623 purchaser has such power even though:

624 (a) the transferor was deceived as to the identity of the purchaser;
625 (b) the delivery was in exchange for a check which is later dishonored;
626 (c) it was agreed that the transaction was to be a "cash sale"; or
627 (d) the delivery was procured through fraud punishable as larcenous under the criminal
628 law.

629 (2) Any entrusting of possession of goods to a merchant who deals in goods of that
630 kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of
631 business.

632 (3) "Entrusting" includes any delivery and any acquiescence in retention of possession
633 regardless of any condition expressed between the parties to the delivery or acquiescence and
634 regardless of whether the procurement of the entrusting or the possessor's disposition of the
635 goods have been such as to be larcenous under the criminal law.

636 (4) The rights of other purchasers of goods and of lien creditors are governed by
637 Chapter 9a, Uniform Commercial Code - Secured Transactions and Chapter [~~7, Uniform~~
638 ~~Commercial Code~~] 7a, Uniform Commercial Code - Documents of Title.

639 Section 10. Section **70A-2-503** is amended to read:

640 **70A-2-503. Manner of seller's tender of delivery.**

641 (1) Tender of delivery requires that the seller put and hold conforming goods at the
642 buyer's disposition and give the buyer any notification reasonably necessary to enable him to
643 take delivery. The manner, time, and place for tender are determined by the agreement and this
644 chapter, and in particular:

645 (a) tender must be at a reasonable hour, and if it is of goods, they must be kept
646 available for the period reasonably necessary to enable the buyer to take possession; but
647 (b) unless otherwise agreed, the buyer must furnish facilities reasonably suited to the

648 receipt of the goods.

649 (2) Where the case is within the next section, respecting shipment tender requires that
650 the seller comply with its provisions.

651 (3) Where the seller is required to deliver at a particular destination, tender requires
652 that he comply with Subsection (1) and also in any appropriate case tender documents as
653 described in Subsections (4) and (5) of this section.

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

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

659 (b) tender to the buyer of a nonnegotiable document of title or of a [~~written direction~~
660 ~~to~~] record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects,
661 and except as otherwise provided in Chapter 9a, Uniform Commercial Code - Secured
662 Transactions, receipt by the bailee of notification of the buyer's rights fixes those rights as
663 against the bailee and all third persons; but risk of loss of the goods and of any failure by the
664 bailee to honor the nonnegotiable document of title or to obey the direction remains on the
665 seller until the buyer has had a reasonable time to present the document or direction, and a
666 refusal by the bailee to honor the document or to obey the direction defeats the tender.

667 (5) Where the contract requires the seller to deliver documents:

668 (a) he must tender all such documents in correct form, except as provided in this
669 chapter with respect to bills of lading in a set [~~(Subsection (2) of Section 70A-2-323)~~] as
670 provided in Subsection 70A-2-323(2); and

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

673 Section 11. Section **70A-2-505** is amended to read:

674 **70A-2-505. Seller's shipment under reservation.**

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

676 (a) his procurement of a negotiable bill of lading to his own order or otherwise reserves
677 in him a security interest in the goods. His procurement of the bill to the order of a financing
678 agency or of the buyer indicates in addition only the seller's expectation of transferring that

679 interest to the person named[-]; and

680 (b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the
681 goods as security but except in a case of conditional delivery [~~Subsection (2) of Section~~
682 ~~70A-2-507~~] as provided in Subsection 70A-2-507(2), a nonnegotiable bill of lading naming
683 the buyer as consignee reserves no security interest even though the seller retains possession or
684 control of the bill of lading.

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

689 Section 12. Section ~~70A-2-506~~ is amended to read:

690 **70A-2-506. Rights of financing agency.**

691 (1) A financing agency by paying or purchasing for value a draft which relates to a
692 shipment of goods acquires to the extent of the payment or purchase and in addition to its own
693 rights under the draft and any document of title securing it any rights of the shipper in the
694 goods including the right to stop delivery and the shipper's right to have the draft honored by
695 the buyer.

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

700 Section 13. Section ~~70A-2-509~~ is amended to read:

701 **70A-2-509. Risk of loss in the absence of breach.**

702 (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

703 (a) if it does not require him to deliver them at a particular destination, the risk of loss
704 passes to the buyer when the goods are duly delivered to the carrier even though the shipment
705 is under reservation [~~f~~] as provided in Section 70A-2-505[~~}]~~; but

706 (b) if it does require him to deliver them at a particular destination and the goods are
707 there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer
708 when the goods are there duly so tendered as to enable the buyer to take delivery.

709 (2) Where the goods are held by a bailee to be delivered without being moved, the risk

710 of loss passes to the buyer:

711 (a) on his receipt of possession or control of a negotiable document of title covering the
712 goods; [~~or~~]

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

714 (c) after his receipt of possession or control of a nonnegotiable document of title or
715 other [~~written~~] direction to deliver in a record, as provided in Subsection 70A-2-503(4)(b) [~~of~~
716 ~~Section 70A-2-503~~].

717 (3) In any case not within Subsection (1) or (2), the risk of loss passes to the buyer on
718 his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on
719 tender of delivery.

720 (4) The provisions of this section are subject to contrary agreement of the parties and to
721 the provisions of this chapter on sale on approval [~~(f) as provided in~~ Section 70A-2-327~~(j)~~] and
722 on effect of breach on risk of loss [~~(f) as provided in~~ Section 70A-2-510~~(j)~~].

723 Section 14. Section **70A-2-605** is amended to read:

724 **70A-2-605. Waiver of buyer's objections by failure to particularize.**

725 (1) The buyer's failure to state in connection with rejection a particular defect which is
726 ascertainable by reasonable inspection precludes him from relying on the unstated defect to
727 justify rejection or to establish breach;

728 (a) where the seller could have cured it if stated seasonably; or

729 (b) between merchants when the seller has after rejection made a request in writing for
730 a full and final written statement of all defects on which the buyer proposes to rely.

731 (2) Payment against documents made without reservation of rights precludes recovery
732 of the payment for defects apparent [~~on the face of~~] in the documents.

733 Section 15. Section **70A-2-705** is amended to read:

734 **70A-2-705. Seller's stoppage of delivery in transit or otherwise.**

735 (1) The seller may stop delivery of goods in the possession of a carrier or other bailee
736 when he discovers the buyer to be insolvent [~~(f) as provided in~~ Section 70A-2-702) and may
737 stop delivery of carload, truckload, planeload, or larger shipments of express or freight when
738 the buyer repudiates or fails to make a payment due before delivery or if for any other reason
739 the seller has a right to withhold or reclaim the goods.

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

- 741 (a) receipt of the goods by the buyer; [~~or~~]
742 (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the
743 bailee holds the goods for the buyer; [~~or~~]
744 (c) such acknowledgment to the buyer by a carrier by reshipment or as [~~warehouseman~~]
745 warehouse; or
746 (d) negotiation to the buyer of any negotiable document of title covering the goods.
747 (3) (a) To stop delivery, the seller must so notify as to enable the bailee by reasonable
748 diligence to prevent delivery of the goods.
749 (b) After such notification, the bailee must hold and deliver the goods according to the
750 directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
751 (c) If a negotiable document of title has been issued for goods, the bailee is not obliged
752 to obey a notification to stop until surrender of possession or control of the document.
753 (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a
754 notification to stop received from a person other than the consignor.

755 Section 16. Section **70A-2a-103** is amended to read:

756 **70A-2a-103. Definitions -- Index of definitions.**

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

- 758 (a) "Buyer in ordinary course of business" means a person, who in good faith and
759 without knowledge that the sale to him is in violation of the ownership rights or security
760 interest or leasehold interest of a third party in the goods, buys in ordinary course from a person
761 in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may
762 be for cash or by exchange of other property or on secured or unsecured credit and includes
763 [~~receiving~~] acquiring goods or documents of title under a preexisting contract for sale, but does
764 not include a transfer in bulk, or as security for, or in total or partial satisfaction of a money
765 debt.
766 (b) "Cancellation" occurs when either party puts an end to the lease contract for default
767 by the other party.
768 (c) "Commercial unit" means a unit of goods which by commercial usage is a single
769 whole for purposes of lease, and the division of which materially impairs its character or value
770 on the market or in use. A commercial unit may be a single article, such as a machine, or a set
771 of articles, such as a suite of furniture or a line of machinery, or a quantity, such as a gross or

772 carload, or any other unit treated in use or in the relevant market as a single whole.

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

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

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

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

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

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

783 (iii) one of the following occurs:

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

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

788 (C) the lessee, before signing the lease contract, receives an accurate and complete
789 statement designating the promises and warranties, and any disclaimers of warranties,
790 limitations, or modifications of remedies, or liquidated damages, including those of a third
791 party, such as the manufacturer of the goods, provided to the lessor by the person supplying the
792 goods in connection with or as part of the contract by which the lessor acquired the goods or
793 the right to possession and use of the goods; or

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

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

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

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

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

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

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

817 (k) "Lease agreement" with respect to the lease, means the bargain of the lessor and the
818 lessee in fact as found in their language or by implication from other circumstances including
819 course of dealing or usage of trade or course of performance as provided in this chapter.
820 Unless the context clearly indicates otherwise, the term includes a sublease agreement.

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

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

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

828 (o) "Lessee in ordinary course of business" means a person who in good faith and
829 without knowledge that the lease to him is in violation of the ownership rights, security
830 interest, or leasehold interest of a third party in the goods, leases in ordinary course from a
831 person in the business of selling or leasing goods of that kind, but does not include a
832 pawnbroker. "Leasing" may be for cash or by exchange of other property, or on secured or
833 unsecured credit, and includes ~~receiving~~ acquiring goods or documents of title under a

834 preexisting lease contract. "Leasing" does not include a transfer in bulk or as security for or in
835 total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

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

863 (a) "Accessions," Section 70A-2a-310;

864 (b) "Construction mortgage," Section 70A-2a-309;

- 865 (c) "Encumbrance," Section 70A-2a-309;
- 866 (d) "Fixtures," Section 70A-2a-309;
- 867 (e) "Fixture filing," Section 70A-2a-309; and
- 868 (f) "Purchase money lease," Section 70A-2a-309.
- 869 (3) The following definitions in other chapters apply to this chapter:
- 870 (a) "Account," Subsection 70A-9a-102(2);
- 871 (b) "Between merchants," Section 70A-2-104;
- 872 (c) "Buyer," Section 70A-2-103;
- 873 (d) "Chattel paper," Subsection 70A-9a-102(11);
- 874 (e) "Consumer goods," Subsection 70A-9a-102(23);
- 875 (f) "Document," Subsection 70A-9a-102(30);
- 876 (g) "Entrusting," Section 70A-2-403;
- 877 (h) "General intangible," Subsection 70A-9a-102(42);
- 878 (i) "Good faith," Section 70A-2-103;
- 879 (j) "Instrument," Subsection 70A-9a-102(47);
- 880 (k) "Merchant," Section 70A-2-104;
- 881 (l) "Mortgage," Subsection 70A-9a-102(55);
- 882 (m) "Pursuant to commitment," Subsection 70A-9a-102(68);
- 883 (n) "Receipt," Section 70A-2-103;
- 884 (o) "Sale," Section 70A-2-106;
- 885 (p) "Sale on approval," Section 70A-2-326;
- 886 (q) "Sale or return," Section 70A-2-326; and
- 887 (r) "Seller," Section 70A-2-103.
- 888 (4) In addition, Title 70A, Chapter 1, Uniform Commercial Code - General Provisions,
- 889 contains general definitions and principles of construction and interpretation applicable
- 890 throughout this chapter.
- 891 Section 17. Section **70A-2a-514** is amended to read:
- 892 **70A-2a-514. Waiver of lessee's objections.**
- 893 (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable
- 894 by reasonable inspection precludes the lessee from relying on the defect to justify rejection or
- 895 to establish default:

896 (a) if, stated seasonably, the lessor or the supplier could have cured it as provided in
897 Section 70A-2a-513; or

898 (b) between merchants if the lessor or the supplier after rejection has made a request in
899 writing for a full and final written statement of all defects on which the lessee proposes to rely.

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

903 Section 18. Section **70A-2a-526** is amended to read:

904 **70A-2a-526. Lessor's stoppage of delivery in transit or otherwise.**

905 (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if
906 the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload,
907 planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a
908 payment due before delivery, whether for rent, security, or otherwise under the lease contract,
909 or for any other reason the lessor has a right to withhold or take possession of the goods.

910 (2) In pursuing its remedies under Subsection (1), the lessor may stop delivery until:

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

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

914 (c) such an acknowledgment to the lessee by a carrier via reshipment or as
915 [~~warehouseman~~] a warehouse.

916 (3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable
917 diligence to prevent delivery of the goods.

918 (b) After notification, the bailee shall hold and deliver the goods according to the
919 directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

920 (c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a
921 notification to stop received from a person other than the consignor.

922 Section 19. Section **70A-4-104** is amended to read:

923 **70A-4-104. Definitions and index of definitions.**

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

925 (a) "Account" means any deposit or credit account with a bank including a demand,
926 time, savings, passbook, share draft, or similar account, other than the account evidenced by a

927 certificate of deposit.

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

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

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

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

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

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

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

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

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

949 (k) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or
950 by remittance, or otherwise as agreed. A settlement may be either provisional or final.

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

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

955 (a) "Agreement for electronic presentment," Section 70A-4-110;

956 (b) "Bank," Section 70A-4-105;

957 (c) "Collecting bank," Section 70A-4-105;

958 (d) "Depository bank," Section 70A-4-105;
959 (e) "Intermediary bank," Section 70A-4-105;
960 (f) "Payor bank," Section 70A-4-105;
961 (g) "Presenting bank," Section 70A-4-105; and
962 (h) "Presentment notice," Section 70A-4-110.
963 (3) [~~The~~] "Control" as provided in Section 70A-7a-106 and the following definitions in
964 other chapters apply to this chapter:

965 (a) "Acceptance," Section 70A-3-409;
966 (b) "Alteration," Section 70A-3-407;
967 (c) "Cashier's check," Section 70A-3-104;
968 (d) "Certificate of deposit," Section 70A-3-104;
969 (e) "Certified check," Section 70A-3-409;
970 (f) "Check," Section 70A-3-104;
971 (g) "Good faith," Section 70A-3-103;
972 (h) "Holder in due course," Section 70A-3-302;
973 (i) "Instrument," Section 70A-3-104;
974 (j) "Notice of dishonor," Section 70A-3-503;
975 (k) "Order," Section 70A-3-103;
976 (l) "Ordinary care," Section 70A-3-103;
977 (m) "Person entitled to enforce," Section 70A-3-301;
978 (n) "Presentment," Section 70A-3-501;
979 (o) "Promise," Section 70A-3-103;
980 (p) "Prove," Section 70A-3-103;
981 (q) "Teller's check," Section 70A-3-104; and
982 (r) "Unauthorized signature," Section 70A-3-403.

983 (4) In addition, Chapter 1, General Provisions, contains general definitions and
984 principles of construction and interpretation applicable throughout this chapter.

985 Section 20. Section **70A-4-210** is amended to read:

986 **70A-4-210. Security interest of collecting bank in items, accompanying**
987 **documents, and proceeds.**

988 (1) A collecting bank has a security interest in an item and any accompanying

989 documents or the proceeds of either:

990 (a) in case of an item deposited in an account, to the extent to which credit given for
991 the item has been withdrawn or applied;

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

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

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

1000 (3) Receipt by a collecting bank of a final settlement for an item is a realization on its
1001 security interest in the item, accompanying documents, and proceeds. So long as the bank does
1002 not receive final settlement for the item or give up possession of the item or possession or
1003 control of the accompanying documents for purposes other than collection, the security interest
1004 continues to that extent and is subject to [~~Title 70A,~~] Chapter 9a, Uniform Commercial Code -
1005 Secured Transactions, but:

1006 (a) no security agreement is necessary to make the security interest enforceable,
1007 Subsection 70A-9a-203(2)(c)(i);

1008 (b) no filing is required to perfect the security interest; and

1009 (c) the security interest has priority over conflicting perfected security interests in the
1010 item, accompanying documents, or proceeds.

1011 Section 21. Section **70A-5-110** is amended to read:

1012 **70A-5-110. Warranties.**

1013 (1) If its presentation is honored, the beneficiary warrants:

1014 (a) to the issuer, any other person to whom presentation is made, and the applicant that
1015 there is no fraud or forgery of the kind described in Subsection 70A-5-109(1); and

1016 (b) to the applicant that the drawing does not violate any agreement between the
1017 applicant and beneficiary or any other agreement intended by them to be augmented by the
1018 letter of credit.

1019 (2) The warranties in Subsection (1) are in addition to warranties arising under Title

1020 70A, Chapter 3, Uniform Commercial Code - Negotiable Instruments, Chapter 4, Uniform
1021 Commercial Code - Bank Deposits and Collections, Chapter [7,] 7a, Uniform Commercial
1022 Code - Documents of Title, and Chapter 8, Uniform Commercial Code - Investment Securities,
1023 because of the presentation or transfer of documents covered by any of those chapters.

1024 Section 22. Section **70A-7a-101** is enacted to read:

1025 **CHAPTER 7a. UNIFORM COMMERCIAL CODE - DOCUMENTS OF TITLE**

1026 **Part 1. General Provisions**

1027 **70A-7a-101. Title.**

1028 This chapter is known as the "Uniform Commercial Code - Documents of Title."

1029 Section 23. Section **70A-7a-102** is enacted to read:

1030 **70A-7a-102. Definitions and index of definitions.**

1031 (1) In this chapter, unless the context otherwise requires:

1032 (a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other
1033 document of title acknowledges possession of goods and contracts to deliver them.

1034 (b) "Carrier" means a person that issues a bill of lading.

1035 (c) "Consignee" means a person named in a bill of lading to which or to whose order
1036 the bill promises delivery.

1037 (d) "Consignor" means a person named in a bill of lading as the person from which the
1038 goods have been received for shipment.

1039 (e) "Delivery order" means a record that contains an order to deliver goods directed to a
1040 warehouse, carrier, or other person that in the ordinary course of business issues warehouse
1041 receipts or bills of lading.

1042 (f) "Good faith" means honesty in fact and the observance of reasonable commercial
1043 standards of fair dealing.

1044 (g) "Goods" means all things that are treated as movable for the purposes of a contract
1045 for storage or transportation.

1046 (h) "Issuer" means a bailee that issues a document of title or, in the case of an
1047 unaccepted delivery order, the person that orders the possessor of goods to deliver. The term
1048 includes a person for which an agent or employee purports to act in issuing a document if the
1049 agent or employee has real or apparent authority to issue documents, even if the issuer did not
1050 receive any goods, the goods were misdescribed, or in any other respect the agent or employee

1051 violated the issuer's instructions.

1052 (i) "Person entitled under the document" means the holder, in the case of a negotiable
1053 document of title, or the person to which delivery of the goods is to be made by the terms of, or
1054 pursuant to instructions in a record under, a nonnegotiable document of title.

1055 (j) "Record" means information that is inscribed on a tangible medium or that is stored
1056 in an electronic or other medium and is retrievable in perceivable form.

1057 (k) "Shipper" means a person that enters into a contract of transportation with a carrier.

1058 (l) "Sign" means, with present intent to authenticate or adopt a record:

1059 (i) to execute or adopt a tangible symbol; or

1060 (ii) to attach to or logically associate with the record an electronic sound, symbol, or
1061 process.

1062 (m) "Warehouse" means a person engaged in the business of storing goods for hire.

1063 (2) Definitions in other chapters applying to this chapter and the sections in which they
1064 appear are:

1065 (a) "Contract for sale," Section 70A-2-106.

1066 (b) "Lessee in the ordinary course of business," Section 70A-2a-103.

1067 (c) "Receipt" of goods, Section 70A-2-103.

1068 (3) In addition, Chapter 1, General Provisions, contains general definitions and
1069 principles of construction and interpretation applicable throughout this chapter.

1070 Section 24. Section **70A-7a-103** is enacted to read:

1071 **70A-7a-103. Relation of chapter to treaty or statute.**

1072 (1) This chapter is subject to any treaty or statute of the United States or regulatory
1073 statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

1074 (2) This chapter does not modify or repeal any law prescribing the form or content of a
1075 document of title or the services or facilities to be afforded by a bailee, or otherwise regulating
1076 a bailee's business in respects not specifically treated in this chapter. However, violation of
1077 such a law does not affect the status of a document of title that otherwise is within the
1078 definition of a document of title.

1079 (3) This chapter modifies, limits, and supersedes the federal Electronic Signatures in
1080 Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify,
1081 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize

1082 electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C.
1083 Section 7003(b)).

1084 (4) To the extent there is a conflict between Title 46, Chapter 4, Uniform Electronic
1085 Transactions Act, and this chapter, this chapter governs.

1086 Section 25. Section **70A-7a-104** is enacted to read:

1087 **70A-7a-104. Negotiable and nonnegotiable document of title.**

1088 (1) Except as otherwise provided in Subsection (3), a document of title is negotiable if
1089 by its terms the goods are to be delivered to bearer or to the order of a named person.

1090 (2) A document of title other than one described in Subsection (1) is nonnegotiable. A
1091 bill of lading that states that the goods are consigned to a named person is not made negotiable
1092 by a provision that the goods are to be delivered only against an order in a record signed by the
1093 same or another named person.

1094 (3) A document of title is nonnegotiable if, at the time it is issued, the document has a
1095 conspicuous legend, however expressed, that it is nonnegotiable.

1096 Section 26. Section **70A-7a-105** is enacted to read:

1097 **70A-7a-105. Reissuance in alternative medium.**

1098 (1) Upon request of a person entitled under an electronic document of title, the issuer
1099 of the electronic document may issue a tangible document of title as a substitute for the
1100 electronic document if:

1101 (a) the person entitled under the electronic document surrenders control of the
1102 document to the issuer; and

1103 (b) the tangible document when issued contains a statement that it is issued in
1104 substitution for the electronic document.

1105 (2) Upon issuance of a tangible document of title in substitution for an electronic
1106 document of title in accordance with Subsection (1):

1107 (a) the electronic document ceases to have any effect or validity; and

1108 (b) the person that procured issuance of the tangible document warrants to all
1109 subsequent persons entitled under the tangible document that the warrantor was a person
1110 entitled under the electronic document when the warrantor surrendered control of the electronic
1111 document to the issuer.

1112 (3) Upon request of a person entitled under a tangible document of title, the issuer of

1113 the tangible document may issue an electronic document of title as a substitute for the tangible
1114 document if:

1115 (a) the person entitled under the tangible document surrenders possession of the
1116 document to the issuer; and

1117 (b) the electronic document when issued contains a statement that it is issued in
1118 substitution for the tangible document.

1119 (4) Upon issuance of an electronic document of title in substitution for a tangible
1120 document of title in accordance with Subsection (3):

1121 (a) the tangible document ceases to have any effect or validity; and

1122 (b) the person that procured issuance of the electronic document warrants to all
1123 subsequent persons entitled under the electronic document that the warrantor was a person
1124 entitled under the tangible document when the warrantor surrendered possession of the tangible
1125 document to the issuer.

1126 Section 27. Section **70A-7a-106** is enacted to read:

1127 **70A-7a-106. Control of electronic document of title.**

1128 (1) A person has control of an electronic document of title if a system employed for
1129 evidencing the transfer of interests in the electronic document reliably establishes that person
1130 as the person to which the electronic document was issued or transferred.

1131 (2) A system satisfies Subsection (1), and a person is considered to have control of an
1132 electronic document of title, if the document is created, stored, and assigned in such a manner
1133 that:

1134 (a) a single authoritative copy of the document exists which is unique, identifiable,
1135 and, except as otherwise provided in Subsections (2)(d), (e), and (f), unalterable;

1136 (b) the authoritative copy identifies the person asserting control as:

1137 (i) the person to which the document was issued; or

1138 (ii) if the authoritative copy indicates that the document has been transferred, the
1139 person to which the document was most recently transferred;

1140 (c) the authoritative copy is communicated to and maintained by the person asserting
1141 control or its designated custodian;

1142 (d) copies or amendments that add or change an identified assignee of the authoritative
1143 copy can be made only with the consent of the person asserting control;

1144 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as
1145 a copy that is not the authoritative copy; and

1146 (f) any amendment of the authoritative copy is readily identifiable as authorized or
1147 unauthorized.

1148 Section 28. Section **70A-7a-201** is enacted to read:

1149 **Part 2. Warehouse Receipts - Special Provisions**

1150 **70A-7a-201. Person that may issue a warehouse receipt -- Storage under bond.**

1151 (1) A warehouse receipt may be issued by any warehouse.

1152 (2) If goods, including distilled spirits and agricultural commodities, are stored under a
1153 statute requiring a bond against withdrawal or a license for the issuance of receipts in the
1154 nature of warehouse receipts, a receipt issued for the goods is considered to be a warehouse
1155 receipt even if issued by a person that is the owner of the goods and is not a warehouse.

1156 Section 29. Section **70A-7a-202** is enacted to read:

1157 **70A-7a-202. Form of warehouse receipt -- Effect of omission.**

1158 (1) A warehouse receipt need not be in any particular form.

1159 (2) Unless a warehouse receipt provides for each of the following, the warehouse is
1160 liable for damages caused to a person injured by its omission:

1161 (a) a statement of the location of the warehouse facility where the goods are stored;

1162 (b) the date of issue of the receipt;

1163 (c) the unique identification code of the receipt;

1164 (d) a statement whether the goods received will be delivered to the bearer, to a named
1165 person, or to a named person or that person's order;

1166 (e) the rate of storage and handling charges, unless goods are stored under a field
1167 warehousing arrangement, in which case a statement of that fact is sufficient on a

1168 nonnegotiable receipt;

1169 (f) a description of the goods or the packages containing them;

1170 (g) the signature of the warehouse or its agent;

1171 (h) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or
1172 in common with others, a statement of the fact of that ownership; and

1173 (i) a statement of the amount of advances made and of liabilities incurred for which the
1174 warehouse claims a lien or security interest, unless the precise amount of advances made or

1175 liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its
1176 agent that issued the receipt, in which case a statement of the fact that advances have been
1177 made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

1178 (3) A warehouse may insert in its receipt any terms that are not contrary to this title and
1179 do not impair its obligation of delivery under Section 70A-7a-403 or its duty of care under
1180 Section 70A-7a-204. Any contrary provision is ineffective.

1181 Section 30. Section **70A-7a-203** is enacted to read:

1182 **70A-7a-203. Liability for nonreceipt or misdescription.**

1183 A party to or purchaser for value in good faith of a document of title, other than a bill of
1184 lading, that relies upon the description of the goods in the document may recover from the
1185 issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent
1186 that:

1187 (1) the document conspicuously indicates that the issuer does not know whether all or
1188 part of the goods in fact were received or conform to the description, such as a case in which
1189 the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or
1190 description is qualified by "contents, condition, and quality unknown," "said to contain," or
1191 words of similar import, if the indication is true; or

1192 (2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

1193 Section 31. Section **70A-7a-204** is enacted to read:

1194 **70A-7a-204. Duty of care -- Contractual limitation of warehouse's liability.**

1195 (1) A warehouse is liable for damages for loss of or injury to the goods caused by its
1196 failure to exercise care with regard to the goods that a reasonably careful person would exercise
1197 under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages
1198 that could not have been avoided by the exercise of that care.

1199 (2) Damages may be limited by a term in the warehouse receipt or storage agreement
1200 limiting the amount of liability in case of loss or damage beyond which the warehouse is not
1201 liable. Such a limitation is not effective with respect to the warehouse's liability for conversion
1202 to its own use. On request of the bailor in a record at the time of signing the storage agreement
1203 or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may
1204 be increased on part or all of the goods covered by the storage agreement or the warehouse
1205 receipt. In this event, increased rates may be charged based on an increased valuation of the

1206 goods.

1207 (3) Reasonable provisions as to the time and manner of presenting claims and
1208 commencing actions based on the bailment may be included in the warehouse receipt or storage
1209 agreement.

1210 Section 32. Section **70A-7a-205** is enacted to read:

1211 **70A-7a-205. Title under warehouse receipt defeated in certain cases.**

1212 A buyer in ordinary course of business of fungible goods sold and delivered by a
1213 warehouse that is also in the business of buying and selling such goods takes the goods free of
1214 any claim under a warehouse receipt even if the receipt is negotiable and has been duly
1215 negotiated.

1216 Section 33. Section **70A-7a-206** is enacted to read:

1217 **70A-7a-206. Termination of storage at warehouse's option.**

1218 (1) A warehouse, by giving notice to the person on whose account the goods are held
1219 and any other person known to claim an interest in the goods, may require payment of any
1220 charges and removal of the goods from the warehouse at the termination of the period of
1221 storage fixed by the document of title or, if a period is not fixed, within a stated period not less
1222 than 30 days after the warehouse gives notice. If the goods are not removed before the date
1223 specified in the notice, the warehouse may sell them pursuant to Section 70A-7a-210.

1224 (2) If a warehouse in good faith believes that goods are about to deteriorate or decline
1225 in value to less than the amount of its lien within the time provided in Subsection (1) and
1226 Section 70A-7a-210, the warehouse may specify in the notice given under Subsection (1) any
1227 reasonable shorter time for removal of the goods and, if the goods are not removed, may sell
1228 them at public sale held not less than one week after a single advertisement or posting.

1229 (3) If, as a result of a quality or condition of the goods of which the warehouse did not
1230 have notice at the time of deposit, the goods are a hazard to other property, the warehouse
1231 facilities, or other persons, the warehouse may sell the goods at public or private sale without
1232 advertisement or posting on reasonable notification to all persons known to claim an interest in
1233 the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may
1234 dispose of them in any lawful manner and does not incur liability by reason of that disposition.

1235 (4) A warehouse shall deliver the goods to any person entitled to them under this
1236 chapter upon due demand made at any time before sale or other disposition under this section.

1237 (5) A warehouse may satisfy its lien from the proceeds of any sale or disposition under
1238 this section but shall hold the balance for delivery on the demand of any person to which the
1239 warehouse would have been bound to deliver the goods.

1240 Section 34. Section **70A-7a-207** is enacted to read:

1241 **70A-7a-207. Goods must be kept separate -- Fungible goods.**

1242 (1) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate
1243 the goods covered by each receipt so as to permit at all times identification and delivery of
1244 those goods. However, different lots of fungible goods may be commingled.

1245 (2) If different lots of fungible goods are commingled, the goods are owned in common
1246 by the persons entitled thereto and the warehouse is severally liable to each owner for that
1247 owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the
1248 receipts the warehouse has issued against it, the persons entitled include all holders to which
1249 overissued receipts have been duly negotiated.

1250 Section 35. Section **70A-7a-208** is enacted to read:

1251 **70A-7a-208. Altered warehouse receipts.**

1252 If a blank in a negotiable tangible warehouse receipt has been filled in without
1253 authority, a good-faith purchaser for value and without notice of the lack of authority may treat
1254 the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic
1255 warehouse receipt enforceable against the issuer according to its original tenor.

1256 Section 36. Section **70A-7a-209** is enacted to read:

1257 **70A-7a-209. Lien of warehouse.**

1258 (1) A warehouse has a lien against the bailor on the goods covered by a warehouse
1259 receipt or storage agreement or on the proceeds thereof in its possession for charges for storage
1260 or transportation, including demurrage and terminal charges, insurance, labor, or other charges,
1261 present or future, in relation to the goods, and for expenses necessary for preservation of the
1262 goods or reasonably incurred in their sale pursuant to law. If the person on whose account the
1263 goods are held is liable for similar charges or expenses in relation to other goods whenever
1264 deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed
1265 for charges and expenses in relation to other goods, the warehouse also has a lien against the
1266 goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its
1267 possession for those charges and expenses, whether or not the other goods have been delivered

1268 by the warehouse. However, as against a person to which a negotiable warehouse receipt is
1269 duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in
1270 the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of
1271 the specific goods covered by the receipt subsequent to the date of the receipt.

1272 (2) A warehouse may also reserve a security interest against the bailor for the
1273 maximum amount specified on the receipt for charges other than those specified in Subsection
1274 (1), such as for money advanced and interest. The security interest is governed by Chapter 9a,
1275 Uniform Commercial Code - Secured Transactions.

1276 (3) A warehouse's lien for charges and expenses under Subsection (1) or a security
1277 interest under Subsection (2) is also effective against any person that so entrusted the bailor
1278 with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for
1279 value would have been valid. However, the lien or security interest is not effective against a
1280 person that before issuance of a document of title had a legal interest or a perfected security
1281 interest in the goods and that did not:

1282 (a) deliver or entrust the goods or any document of title covering the goods to the
1283 bailor or the bailor's nominee with:

1284 (i) actual or apparent authority to ship, store, or sell;

1285 (ii) power to obtain delivery under Section 70A-7a-403; or

1286 (iii) power of disposition under Section 70A-2-403, Subsection 70A-2a-304(2),
1287 Subsection 70A-2a-305(2), Section 70A-9a-320, or Subsection 70A-9a-321(3) or other statute
1288 or rule of law; or

1289 (b) acquiesce in the procurement by the bailor or its nominee of any document.

1290 (4) A warehouse's lien on household goods for charges and expenses in relation to the
1291 goods under Subsection (1) is also effective against all persons if the depositor was the legal
1292 possessor of the goods at the time of deposit. In this Subsection (4), "household goods" means
1293 furniture, furnishings, or personal effects used by the depositor in a dwelling.

1294 (5) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably
1295 refuses to deliver.

1296 Section 37. Section **70A-7a-210** is enacted to read:

1297 **70A-7a-210. Enforcement of warehouse's lien.**

1298 (1) Except as otherwise provided in Subsection (2), a warehouse's lien may be enforced

1299 by public or private sale of the goods, in bulk or in packages, at any time or place and on any
1300 terms that are commercially reasonable, after notifying all persons known to claim an interest
1301 in the goods. The notification must include a statement of the amount due, the nature of the
1302 proposed sale, and the time and place of any public sale. The fact that a better price could have
1303 been obtained by a sale at a different time or in a method different from that selected by the
1304 warehouse is not of itself sufficient to establish that the sale was not made in a commercially
1305 reasonable manner. The warehouse sells in a commercially reasonable manner if the
1306 warehouse sells the goods in the usual manner in any recognized market therefor, sells at the
1307 price current in that market at the time of the sale, or otherwise sells in conformity with
1308 commercially reasonable practices among dealers in the type of goods sold. A sale of more
1309 goods than apparently necessary to be offered to ensure satisfaction of the obligation is not
1310 commercially reasonable, except in cases covered by the preceding sentence.

1311 (2) A warehouse may enforce its lien on goods, other than goods stored by a merchant
1312 in the course of its business, only if the following requirements are satisfied:

1313 (a) All persons known to claim an interest in the goods must be notified.

1314 (b) The notification must include an itemized statement of the claim, a description of
1315 the goods subject to the lien, a demand for payment within a specified time not less than ten
1316 days after receipt of the notification, and a conspicuous statement that unless the claim is paid
1317 within that time the goods will be advertised for sale and sold by auction at a specified time
1318 and place.

1319 (c) The sale must conform to the terms of the notification.

1320 (d) The sale must be held at the nearest suitable place to where the goods are held or
1321 stored.

1322 (e) After the expiration of the time given in the notification, an advertisement of the
1323 sale must be published once a week for two weeks consecutively in a newspaper of general
1324 circulation where the sale is to be held. The advertisement must include a description of the
1325 goods, the name of the person on whose account the goods are being held, and the time and
1326 place of the sale. The sale must take place at least 15 days after the first publication. If there is
1327 no newspaper of general circulation where the sale is to be held, the advertisement must be
1328 posted at least ten days before the sale in not fewer than six conspicuous places in the
1329 neighborhood of the proposed sale.

1330 (3) Before any sale pursuant to this section, any person claiming a right in the goods
1331 may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in
1332 complying with this section. In that event, the goods may not be sold but must be retained by
1333 the warehouse subject to the terms of the receipt and this chapter.

1334 (4) A warehouse may buy at any public sale held pursuant to this section.

1335 (5) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the
1336 goods free of any rights of persons against which the lien was valid, despite the warehouse's
1337 noncompliance with this section.

1338 (6) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this
1339 section but shall hold the balance, if any, for delivery on demand to any person to which the
1340 warehouse would have been bound to deliver the goods.

1341 (7) The rights provided by this section are in addition to all other rights allowed by law
1342 to a creditor against a debtor.

1343 (8) If a lien is on goods stored by a merchant in the course of its business, the lien may
1344 be enforced in accordance with Subsection (1) or (2).

1345 (9) A warehouse is liable for damages caused by failure to comply with the
1346 requirements for sale under this section and, in case of willful violation, is liable for
1347 conversion.

1348 Section 38. Section **70A-7a-301** is enacted to read:

1349 **Part 3. Bills of Lading - Special Provisions**

1350 **70A-7a-301. Liability for nonreceipt or misdescription -- "Said to contain" --**
1351 **"Shipper's weight, load, and count" -- Improper handling.**

1352 (1) A consignee of a nonnegotiable bill of lading which has given value in good faith,
1353 or a holder to which a negotiable bill has been duly negotiated, relying upon the description of
1354 the goods in the bill or upon the date shown in the bill, may recover from the issuer damages
1355 caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to
1356 the extent that the bill indicates that the issuer does not know whether any part or all of the
1357 goods in fact were received or conform to the description, such as in a case in which the
1358 description is in terms of marks or labels or kind, quantity, or condition or the receipt or
1359 description is qualified by "contents or condition of contents of packages unknown," "said to
1360 contain," "shipper's weight, load, and count," or words of similar import, if that indication is

1361 true.

1362 (2) If goods are loaded by the issuer of a bill of lading:

1363 (a) the issuer shall count the packages of goods if shipped in packages and ascertain the
1364 kind and quantity if shipped in bulk; and

1365 (b) words such as "shipper's weight, load, and count," or words of similar import
1366 indicating that the description was made by the shipper are ineffective except as to goods
1367 concealed in packages.

1368 (3) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of
1369 lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and
1370 quantity within a reasonable time after receiving the shipper's request in a record to do so. In
1371 that case, "shipper's weight" or words of similar import are ineffective.

1372 (4) The issuer of a bill of lading, by including in the bill the words "shipper's weight,
1373 load, and count," or words of similar import, may indicate that the goods were loaded by the
1374 shipper, and, if that statement is true, the issuer is not liable for damages caused by the
1375 improper loading. However, omission of such words does not imply liability for damages
1376 caused by improper loading.

1377 (5) A shipper guarantees to an issuer the accuracy at the time of shipment of the
1378 description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the
1379 shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in
1380 those particulars. This right of indemnity does not limit the issuer's responsibility or liability
1381 under the contract of carriage to any person other than the shipper.

1382 Section 39. Section **70A-7a-302** is enacted to read:

1383 **70A-7a-302. Through bills of lading and similar documents of title.**

1384 (1) The issuer of a through bill of lading, or other document of title embodying an
1385 undertaking to be performed in part by a person acting as its agent or by a performing carrier, is
1386 liable to any person entitled to recover on the bill or other document for any breach by the other
1387 person or the performing carrier of its obligation under the bill or other document. However, to
1388 the extent that the bill or other document covers an undertaking to be performed overseas or in
1389 territory not contiguous to the continental United States or an undertaking including matters
1390 other than transportation, this liability for breach by the other person or the performing carrier
1391 may be varied by agreement of the parties.

1392 (2) If goods covered by a through bill of lading or other document of title embodying
1393 an undertaking to be performed in part by a person other than the issuer are received by that
1394 person, the person is subject, with respect to its own performance while the goods are in its
1395 possession, to the obligation of the issuer. The person's obligation is discharged by delivery of
1396 the goods to another person pursuant to the bill or other document and does not include liability
1397 for breach by any other person or by the issuer.

1398 (3) The issuer of a through bill of lading or other document of title described in
1399 Subsection (1) is entitled to recover from the performing carrier, or other person in possession
1400 of the goods when the breach of the obligation under the bill or other document occurred:

1401 (a) the amount it may be required to pay to any person entitled to recover on the bill or
1402 other document for the breach, as may be evidenced by any receipt, judgment, or transcript of
1403 judgment; and

1404 (b) the amount of any expense reasonably incurred by the issuer in defending any
1405 action commenced by any person entitled to recover on the bill or other document for the
1406 breach.

1407 Section 40. Section **70A-7a-303** is enacted to read:

1408 **70A-7a-303. Diversion -- Reconsignment -- Change of instructions.**

1409 (1) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a
1410 person or destination other than that stated in the bill or may otherwise dispose of the goods,
1411 without liability for misdelivery, on instructions from:

1412 (a) the holder of a negotiable bill;

1413 (b) the consignor on a nonnegotiable bill, even if the consignee has given contrary
1414 instructions;

1415 (c) the consignee on a nonnegotiable bill in the absence of contrary instructions from
1416 the consignor, if the goods have arrived at the billed destination or if the consignee is in
1417 possession of the tangible bill or in control of the electronic bill; or

1418 (d) the consignee on a nonnegotiable bill, if the consignee is entitled as against the
1419 consignor to dispose of the goods.

1420 (2) Unless instructions described in Subsection (1) are included in a negotiable bill of
1421 lading, a person to which the bill is duly negotiated may hold the bailee according to the
1422 original terms.

1423 Section 41. Section **70A-7a-304** is enacted to read:

1424 **70A-7a-304. Tangible bills of lading in a set.**

1425 (1) Except as customary in international transportation, a tangible bill of lading may
1426 not be issued in a set of parts. The issuer is liable for damages caused by violation of this

1427 Subsection (1).

1428 (2) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains
1429 an identification code and is expressed to be valid only if the goods have not been delivered
1430 against any other part, the whole of the parts constitutes one bill.

1431 (3) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different
1432 parts are negotiated to different persons, the title of the holder to which the first due negotiation
1433 is made prevails as to both the document of title and the goods even if any later holder may
1434 have received the goods from the carrier in good faith and discharged the carrier's obligation by
1435 surrendering its part.

1436 (4) A person that negotiates or transfers a single part of a tangible bill of lading issued
1437 in a set is liable to holders of that part as if it were the whole set.

1438 (5) The bailee shall deliver in accordance with Chapter 4, Uniform Commercial Code -
1439 Bank Deposits and Collections, against the first presented part of a tangible bill of lading
1440 lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole
1441 bill.

1442 Section 42. Section **70A-7a-305** is enacted to read:

1443 **70A-7a-305. Destination bills.**

1444 (1) Instead of issuing a bill of lading to the consignor at the place of shipment, a
1445 carrier, at the request of the consignor, may procure the bill to be issued at destination or at any
1446 other place designated in the request.

1447 (2) Upon request of any person entitled as against a carrier to control the goods while
1448 in transit and on surrender of possession or control of any outstanding bill of lading or other
1449 receipt covering the goods, the issuer, subject to Section 70A-7a-105, may procure a substitute
1450 bill to be issued at any place designated in the request.

1451 Section 43. Section **70A-7a-306** is enacted to read:

1452 **70A-7a-306. Altered bills of lading.**

1453 An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill

1454 enforceable according to its original tenor.

1455 Section 44. Section **70A-7a-307** is enacted to read:

1456 **70A-7a-307. Lien of carrier.**

1457 (1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds
1458 thereof in its possession for charges after the date of the carrier's receipt of the goods for
1459 storage or transportation, including demurrage and terminal charges, and for expenses
1460 necessary for preservation of the goods incident to their transportation or reasonably incurred in
1461 their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading,
1462 a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges
1463 are stated, a reasonable charge.

1464 (2) A lien for charges and expenses under Subsection (1) on goods that the carrier was
1465 required by law to receive for transportation is effective against the consignor or any person
1466 entitled to the goods unless the carrier had notice that the consignor lacked authority to subject
1467 the goods to those charges and expenses. Any other lien under Subsection (1) is effective
1468 against the consignor and any person that permitted the bailor to have control or possession of
1469 the goods unless the carrier had notice that the bailor lacked authority.

1470 (3) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably
1471 refuses to deliver.

1472 Section 45. Section **70A-7a-308** is enacted to read:

1473 **70A-7a-308. Enforcement of carrier's lien.**

1474 (1) A carrier's lien on goods may be enforced by public or private sale of the goods, in
1475 bulk or in packages, at any time or place and on any terms that are commercially reasonable,
1476 after notifying all persons known to claim an interest in the goods. The notification must
1477 include a statement of the amount due, the nature of the proposed sale, and the time and place
1478 of any public sale. The fact that a better price could have been obtained by a sale at a different
1479 time or in a method different from that selected by the carrier is not of itself sufficient to
1480 establish that the sale was not made in a commercially reasonable manner. The carrier sells
1481 goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in
1482 any recognized market therefor, sells at the price current in that market at the time of the sale,
1483 or otherwise sells in conformity with commercially reasonable practices among dealers in the
1484 type of goods sold. A sale of more goods than apparently necessary to be offered to ensure

1485 satisfaction of the obligation is not commercially reasonable, except in cases covered by the
1486 preceding sentence.

1487 (2) Before any sale pursuant to this section, any person claiming a right in the goods
1488 may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in
1489 complying with this section. In that event, the goods may not be sold but must be retained by
1490 the carrier, subject to the terms of the bill of lading and this chapter.

1491 (3) A carrier may buy at any public sale pursuant to this section.

1492 (4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods
1493 free of any rights of persons against which the lien was valid, despite the carrier's
1494 noncompliance with this section.

1495 (5) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section
1496 but shall hold the balance, if any, for delivery on demand to any person to which the carrier
1497 would have been bound to deliver the goods.

1498 (6) The rights provided by this section are in addition to all other rights allowed by law
1499 to a creditor against a debtor.

1500 (7) A carrier's lien may be enforced pursuant to either Subsection (1) or the procedure
1501 set forth in Subsection 70A-7a-210(2).

1502 (8) A carrier is liable for damages caused by failure to comply with the requirements
1503 for sale under this section and, in case of willful violation, is liable for conversion.

1504 Section 46. Section **70A-7a-309** is enacted to read:

1505 **70A-7a-309. Duty of care -- Contractual limitation of carrier's liability.**

1506 (1) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall
1507 exercise the degree of care in relation to the goods which a reasonably careful person would
1508 exercise under similar circumstances. This Subsection (1) does not affect any statute,
1509 regulation, or rule of law that imposes liability upon a common carrier for damages not caused
1510 by its negligence.

1511 (2) Damages may be limited by a term in the bill of lading or in a transportation
1512 agreement that the carrier's liability may not exceed a value stated in the bill or transportation
1513 agreement if the carrier's rates are dependent upon value and the consignor is afforded an
1514 opportunity to declare a higher value and the consignor is advised of the opportunity.
1515 However, such a limitation is not effective with respect to the carrier's liability for conversion

1516 to its own use.

1517 (3) Reasonable provisions as to the time and manner of presenting claims and
1518 commencing actions based on the shipment may be included in a bill of lading or a
1519 transportation agreement.

1520 Section 47. Section **70A-7a-401** is enacted to read:

1521 **Part 4. Warehouse Receipts and Bills of Lading - General Obligations**

1522 **70A-7a-401. Irregularities in issue of receipt or bill or conduct of issuer.**

1523 The obligations imposed by this chapter on an issuer apply to a document of title even
1524 if:

1525 (1) the document does not comply with the requirements of this chapter or of any other
1526 statute, rule, or regulation regarding its issuance, form, or content;

1527 (2) the issuer violated laws regulating the conduct of its business;

1528 (3) the goods covered by the document were owned by the bailee when the document
1529 was issued; or

1530 (4) the person issuing the document is not a warehouse but the document purports to be
1531 a warehouse receipt.

1532 Section 48. Section **70A-7a-402** is enacted to read:

1533 **70A-7a-402. Duplicate document of title -- Overissue.**

1534 A duplicate or any other document of title purporting to cover goods already
1535 represented by an outstanding document of the same issuer does not confer any right in the
1536 goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of
1537 documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute
1538 documents issued pursuant to Section 70A-7a-105. The issuer is liable for damages caused by
1539 its overissue or failure to identify a duplicate document by a conspicuous notation.

1540 Section 49. Section **70A-7a-403** is enacted to read:

1541 **70A-7a-403. Obligation of bailee to deliver -- Excuse.**

1542 (1) A bailee shall deliver the goods to a person entitled under a document of title if the
1543 person complies with Subsections (2) and (3), unless and to the extent that the bailee
1544 establishes any of the following:

1545 (a) delivery of the goods to a person whose receipt was rightful as against the claimant;

1546 (b) damage to or delay, loss, or destruction of the goods for which the bailee is not

1547 liable;

1548 (c) previous sale or other disposition of the goods in lawful enforcement of a lien or on
1549 a warehouse's lawful termination of storage;

1550 (d) the exercise by a seller of its right to stop delivery pursuant to Section 70A-2-705
1551 or by a lessor of its right to stop delivery pursuant to Section 70A-2a-526;

1552 (e) a diversion, reconsignment, or other disposition pursuant to Section 70A-7a-303;

1553 (f) release, satisfaction, or any other personal defense against the claimant; or

1554 (g) any other lawful excuse.

1555 (2) A person claiming goods covered by a document of title shall satisfy the bailee's
1556 lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until
1557 the charges are paid.

1558 (3) Unless a person claiming the goods is a person against which the document of title
1559 does not confer a right under Subsection 70A-7a-503(1)(a):

1560 (a) the person claiming under a document shall surrender possession or control of any
1561 outstanding negotiable document covering the goods for cancellation or indication of partial
1562 deliveries; and

1563 (b) the bailee shall cancel the document or conspicuously indicate in the document the
1564 partial delivery or the bailee is liable to any person to which the document is duly negotiated.

1565 Section 50. Section **70A-7a-404** is enacted to read:

1566 **70A-7a-404. No liability for good-faith delivery pursuant to document of title.**

1567 A bailee that in good faith has received goods and delivered or otherwise disposed of
1568 the goods according to the terms of a document of title or pursuant to this chapter is not liable
1569 for the goods even if:

1570 (1) the person from which the bailee received the goods did not have authority to
1571 procure the document or to dispose of the goods; or

1572 (2) the person to which the bailee delivered the goods did not have authority to receive
1573 the goods.

1574 Section 51. Section **70A-7a-501** is enacted to read:

1575 **Part 5. Warehouse Receipts and Bills of Lading - Negotiation and Transfer**

1576 **70A-7a-501. Form of negotiation and requirements of due negotiation.**

1577 (1) The following rules apply to a negotiable tangible document of title:

1578 (a) If the document's original terms run to the order of a named person, the document is
1579 negotiated by the named person's indorsement and delivery. After the named person's
1580 indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

1581 (b) If the document's original terms run to bearer, it is negotiated by delivery alone.

1582 (c) If the document's original terms run to the order of a named person and it is
1583 delivered to the named person, the effect is the same as if the document had been negotiated.

1584 (d) Negotiation of the document after it has been indorsed to a named person requires
1585 indorsement by the named person and delivery.

1586 (e) A document is duly negotiated if it is negotiated in the manner stated in this
1587 Subsection (1) to a holder that purchases it in good faith, without notice of any defense against
1588 or claim to it on the part of any person, and for value, unless it is established that the
1589 negotiation is not in the regular course of business or financing or involves receiving the
1590 document in settlement or payment of a monetary obligation.

1591 (2) The following rules apply to a negotiable electronic document of title:

1592 (a) If the document's original terms run to the order of a named person or to bearer, the
1593 document is negotiated by delivery of the document to another person. Indorsement by the
1594 named person is not required to negotiate the document.

1595 (b) If the document's original terms run to the order of a named person and the named
1596 person has control of the document, the effect is the same as if the document had been
1597 negotiated.

1598 (c) A document is duly negotiated if it is negotiated in the manner stated in this
1599 subsection to a holder that purchases it in good faith, without notice of any defense against or
1600 claim to it on the part of any person, and for value, unless it is established that the negotiation
1601 is not in the regular course of business or financing or involves taking delivery of the document
1602 in settlement or payment of a monetary obligation.

1603 (3) Indorsement of a nonnegotiable document of title neither makes it negotiable nor
1604 adds to the transferee's rights.

1605 (4) The naming in a negotiable bill of lading of a person to be notified of the arrival of
1606 the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the
1607 bill of any interest of that person in the goods.

1608 Section 52. Section **70A-7a-502** is enacted to read:

1609 **70A-7a-502. Rights acquired by due negotiation.**

1610 (1) Subject to Sections 70A-7a-205 and 70A-7a-503, a holder to which a negotiable
1611 document of title has been duly negotiated acquires thereby:

1612 (a) title to the document;

1613 (b) title to the goods;

1614 (c) all rights accruing under the law of agency or estoppel, including rights to goods
1615 delivered to the bailee after the document was issued; and

1616 (d) the direct obligation of the issuer to hold or deliver the goods according to the
1617 terms of the document free of any defense or claim by the issuer except those arising under the
1618 terms of the document or under this chapter, but in the case of a delivery order, the bailee's
1619 obligation accrues only upon the bailee's acceptance of the delivery order and the obligation
1620 acquired by the holder is that the issuer and any indorser will procure the acceptance of the
1621 bailee.

1622 (2) Subject to Section 70A-7a-503, title and rights acquired by due negotiation are not
1623 defeated by any stoppage of the goods represented by the document of title or by surrender of
1624 the goods by the bailee and are not impaired even if:

1625 (a) the due negotiation or any prior due negotiation constituted a breach of duty;

1626 (b) any person has been deprived of possession of a negotiable tangible document or
1627 control of a negotiable electronic document by misrepresentation, fraud, accident, mistake,
1628 duress, loss, theft, or conversion; or

1629 (c) a previous sale or other transfer of the goods or document has been made to a third
1630 person.

1631 Section 53. Section **70A-7a-503** is enacted to read:

1632 **70A-7a-503. Document of title to goods defeated in certain cases.**

1633 (1) A document of title confers no right in goods against a person that before issuance
1634 of the document had a legal interest or a perfected security interest in the goods and that did
1635 not:

1636 (a) deliver or entrust the goods or any document of title covering the goods to the
1637 bailor or the bailor's nominee with:

1638 (i) actual or apparent authority to ship, store, or sell;

1639 (ii) power to obtain delivery under Section 70A-7a-403; or

1640 (iii) power of disposition under Section 70A-2-403, Subsection 70A-2a-304(2),
1641 Subsection 70A-2a-305(2), Section 70A-9a-320, or Subsection 70A-9a-321(3) or other statute
1642 or rule of law; or

1643 (b) acquiesce in the procurement by the bailor or its nominee of any document.

1644 (2) Title to goods based upon an unaccepted delivery order is subject to the rights of
1645 any person to which a negotiable warehouse receipt or bill of lading covering the goods has
1646 been duly negotiated. That title may be defeated under Section 70A-7a-504 to the same extent
1647 as the rights of the issuer or a transferee from the issuer.

1648 (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to
1649 the rights of any person to which a bill issued by the freight forwarder is duly negotiated.

1650 However, delivery by the carrier in accordance with Part 4, Warehouse Receipts and Bills of
1651 Lading: General Obligations, pursuant to its own bill of lading discharges the carrier's
1652 obligation to deliver.

1653 Section 54. Section **70A-7a-504** is enacted to read:

1654 **70A-7a-504. Rights acquired in absence of due negotiation -- Effect of diversion --**
1655 **Stoppage of delivery.**

1656 (1) A transferee of a document of title, whether negotiable or nonnegotiable, to which
1657 the document has been delivered but not duly negotiated, acquires the title and rights that its
1658 transferor had or had actual authority to convey.

1659 (2) In the case of a transfer of a nonnegotiable document of title, until but not after the
1660 bailee receives notice of the transfer, the rights of the transferee may be defeated:

1661 (a) by those creditors of the transferor which could treat the transfer as void under
1662 Section 70A-2-402 or 70A-2a-308;

1663 (b) by a buyer from the transferor in ordinary course of business if the bailee has
1664 delivered the goods to the buyer or received notification of the buyer's rights;

1665 (c) by a lessee from the transferor in ordinary course of business if the bailee has
1666 delivered the goods to the lessee or received notification of the lessee's rights; or

1667 (d) as against the bailee, by good-faith dealings of the bailee with the transferor.

1668 (3) A diversion or other change of shipping instructions by the consignor in a
1669 nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee
1670 defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary

1671 course of business or a lessee in ordinary course of business and, in any event, defeats the
1672 consignee's rights against the bailee.

1673 (4) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped
1674 by a seller under Section 70A-2-705 or a lessor under Section 70A-2a-526, subject to the
1675 requirements of due notification in those sections. A bailee that honors the seller's or lessor's
1676 instructions is entitled to be indemnified by the seller or lessor against any resulting loss or
1677 expense.

1678 Section 55. Section **70A-7a-505** is enacted to read:

1679 **70A-7a-505. Indorser not guarantor for other parties.**

1680 The indorsement of a tangible document of title issued by a bailee does not make the
1681 indorser liable for any default by the bailee or previous indorsers.

1682 Section 56. Section **70A-7a-506** is enacted to read:

1683 **70A-7a-506. Delivery without indorsement -- Right to compel indorsement.**

1684 The transferee of a negotiable tangible document of title has a specifically enforceable
1685 right to have its transferor supply any necessary indorsement, but the transfer becomes a
1686 negotiation only as of the time the indorsement is supplied.

1687 Section 57. Section **70A-7a-507** is enacted to read:

1688 **70A-7a-507. Warranties on negotiation or delivery of document of title.**

1689 If a person negotiates or delivers a document of title for value, otherwise than as a mere
1690 intermediary under Section 70A-7a-508, unless otherwise agreed, the transferor, in addition to
1691 any warranty made in selling or leasing the goods, warrants to its immediate purchaser only
1692 that:

1693 (1) the document is genuine;

1694 (2) the transferor does not have knowledge of any fact that would impair the
1695 document's validity or worth; and

1696 (3) the negotiation or delivery is rightful and fully effective with respect to the title to
1697 the document and the goods it represents.

1698 Section 58. Section **70A-7a-508** is enacted to read:

1699 **70A-7a-508. Warranties of collecting bank as to documents of title.**

1700 A collecting bank or other intermediary known to be entrusted with documents of title
1701 on behalf of another or with collection of a draft or other claim against delivery of documents

1702 warrants by the delivery of the documents only its own good faith and authority even if the
1703 collecting bank or other intermediary has purchased or made advances against the claim or
1704 draft to be collected.

1705 Section 59. Section **70A-7a-509** is enacted to read:

1706 **70A-7a-509. Adequate compliance with commercial contract.**

1707 Whether a document of title is adequate to fulfill the obligations of a contract for sale, a
1708 contract for lease, or the conditions of a letter of credit is determined by Chapter 2, Uniform
1709 Commercial Code - Sales, 2a, Uniform Commercial Code - Leases, or 5, Uniform Commercial
1710 Code - Letters of Credit.

1711 Section 60. Section **70A-7a-601** is enacted to read:

1712 **Part 6. Warehouse Receipts and Bills of Lading - Miscellaneous Provisions**

1713 **70A-7a-601. Lost, stolen, or destroyed documents of title.**

1714 (1) If a document of title is lost, stolen, or destroyed, a court may order delivery of the
1715 goods or issuance of a substitute document and the bailee may without liability to any person
1716 comply with the order. If the document was negotiable, a court may not order delivery of the
1717 goods or issuance of a substitute document without the claimant's posting security unless it
1718 finds that any person that may suffer loss as a result of nonsurrender of possession or control of
1719 the document is adequately protected against the loss. If the document was nonnegotiable, the
1720 court may require security. The court may also order payment of the bailee's reasonable costs
1721 and attorney's fees in any action under this Subsection (1).

1722 (2) A bailee that, without a court order, delivers goods to a person claiming under a
1723 missing negotiable document of title is liable to any person injured thereby. If the delivery is
1724 not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if
1725 the claimant posts security with the bailee in an amount at least double the value of the goods
1726 at the time of posting to indemnify any person injured by the delivery which files a notice of
1727 claim within one year after the delivery.

1728 Section 61. Section **70A-7a-602** is enacted to read:

1729 **70A-7a-602. Judicial process against goods covered by negotiable document of**
1730 **title.**

1731 Unless a document of title was originally issued upon delivery of the goods by a person
1732 that did not have power to dispose of them, a lien does not attach by virtue of any judicial

1733 process to goods in the possession of a bailee for which a negotiable document of title is
1734 outstanding unless possession or control of the document is first surrendered to the bailee or
1735 the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods
1736 pursuant to process until possession or control of the document is surrendered to the bailee or
1737 to the court. A purchaser of the document for value without notice of the process or injunction
1738 takes free of the lien imposed by judicial process.

1739 Section 62. Section **70A-7a-603** is enacted to read:

1740 **70A-7a-603. Conflicting claims -- Interpleader.**

1741 If more than one person claims title to or possession of the goods, the bailee is excused
1742 from delivery until the bailee has a reasonable time to ascertain the validity of the adverse
1743 claims or to commence an action for interpleader. The bailee may assert an interpleader either
1744 in defending an action for nondelivery of the goods or by original action.

1745 Section 63. Section **70A-7a-701** is enacted to read:

1746 **Part 7. Miscellaneous Provisions**

1747 **70A-7a-701. Applicability.**

1748 This chapter applies to a document of title that is issued or a bailment that arises on or
1749 after May 1, 2006. This chapter does not apply to a document of title that is issued or a
1750 bailment that arises before May 1, 2006 even if the document of title or bailment would be
1751 subject to this chapter if the document of title had been issued or bailment had arisen on or
1752 after May 1, 2006. This chapter does not apply to a right of action that has accrued before May
1753 1, 2006.

1754 Section 64. Section **70A-7a-702** is enacted to read:

1755 **70A-7a-702. Savings clause.**

1756 A document of title issued or a bailment that arises before May 1, 2006 and the rights,
1757 obligations, and interests flowing from that document or bailment are governed by any statute
1758 or other rule amended or repealed by this chapter as if amendment or repeal had not occurred
1759 and may be terminated, completed, consummated, or enforced under that statute or other rule.

1760 Section 65. Section **70A-8-102** is amended to read:

1761 **70A-8-102. Rules for determining whether certain obligations and interests are**
1762 **securities or financial assets.**

1763 (1) A share or similar equity interest issued by a corporation, business trust, joint stock

1764 company, or similar entity is a security.

1765 (2) An "investment company security" is a security. "Investment company security"
1766 means a share or similar equity interest issued by an entity that is registered as an investment
1767 company under the federal investment company laws, an interest in a unit investment trust that
1768 is so registered, or a face-amount certificate issued by a face-amount certificate company that is
1769 so registered. Investment company security does not include an insurance policy or
1770 endowment policy or annuity contract issued by an insurance company.

1771 (3) An interest in a partnership or limited liability company is not a security unless it is
1772 dealt in or traded on securities exchanges or in securities markets, its terms expressly provide
1773 that it is a security governed by this chapter, or it is an investment company security. However,
1774 an interest in a partnership or limited liability company is a financial asset if it is held in a
1775 securities account.

1776 (4) A writing that is a security certificate is governed by this chapter and not by
1777 Chapter 3, Uniform Commercial Code - Negotiable Instruments, even though it also meets the
1778 requirements of that chapter. However, a negotiable instrument governed by Chapter 3 is a
1779 financial asset if it is held in a securities account.

1780 (5) An option or similar obligation issued by a clearing corporation to its participants is
1781 not a security, but is a financial asset.

1782 (6) A commodity contract, as defined in Subsection 70A-9a-102(15), is not a security
1783 or a financial asset.

1784 (7) A document of title is not a financial asset unless Subsection 70A-8-101(1)(i)(i)(C)
1785 applies.

1786 Section 66. Section **70A-9a-102** is amended to read:

1787 **70A-9a-102. Definitions and index of definitions.**

1788 In this chapter:

1789 (1) "Accession" means goods that are physically united with other goods in such a
1790 manner that the identity of the original goods is not lost.

1791 (2) (a) "Account," except as used in "account for," means a right to payment of a
1792 monetary obligation, whether or not earned by performance:

1793 (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise
1794 disposed of;

- 1795 (ii) for services rendered or to be rendered;
- 1796 (iii) for a policy of insurance issued or to be issued;
- 1797 (iv) for a secondary obligation incurred or to be incurred;
- 1798 (v) for energy provided or to be provided;
- 1799 (vi) for the use or hire of a vessel under a charter or other contract;
- 1800 (vii) arising out of the use of a credit or charge card or information contained on or for
- 1801 use with the card; or
- 1802 (viii) as winnings in a lottery or other game of chance operated or sponsored by a state,
- 1803 governmental unit of a state, or person licensed or authorized to operate the game by a state or
- 1804 governmental unit of a state.
- 1805 (b) "Account" includes health-care-insurance receivables.
- 1806 (c) "Account" does not include:
- 1807 (i) rights to payment evidenced by chattel paper or an instrument;
- 1808 (ii) commercial tort claims;
- 1809 (iii) deposit accounts;
- 1810 (iv) investment property;
- 1811 (v) letter-of-credit rights or letters of credit; or
- 1812 (vi) rights to payment for money or funds advanced or sold, other than rights arising
- 1813 out of the use of a credit or charge card or information contained on or for use with the card.
- 1814 (3) (a) "Account debtor" means a person obligated on an account, chattel paper, or
- 1815 general intangible.
- 1816 (b) "Account debtor" does not include persons obligated to pay a negotiable
- 1817 instrument, even if the instrument constitutes part of chattel paper.
- 1818 (4) "Accounting," except as used in "accounting for," means a record:
- 1819 (a) authenticated by a secured party;
- 1820 (b) indicating the aggregate unpaid secured obligations as of a date not more than 35
- 1821 days earlier or 35 days later than the date of the record; and
- 1822 (c) identifying the components of the obligations in reasonable detail.
- 1823 (5) "Agricultural lien" means an interest, other than a security interest, in farm
- 1824 products:
- 1825 (a) which secures payment or performance of an obligation for:

- 1826 (i) goods or services furnished in connection with a debtor's farming operation; or
- 1827 (ii) rent on real property leased by a debtor in connection with its farming operation;
- 1828 (b) which is created by statute in favor of a person that:
- 1829 (i) in the ordinary course of its business furnished goods or services to a debtor in
- 1830 connection with a debtor's farming operation; or
- 1831 (ii) leased real property to a debtor in connection with the debtor's farming operation;
- 1832 and
- 1833 (c) whose effectiveness does not depend on the person's possession of the personal
- 1834 property.
- 1835 (6) "As-extracted collateral" means:
- 1836 (a) oil, gas, or other minerals that are subject to a security interest that:
- 1837 (i) is created by a debtor having an interest in the minerals before extraction; and
- 1838 (ii) attaches to the minerals as extracted; or
- 1839 (b) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other
- 1840 minerals in which the debtor had an interest before extraction.
- 1841 (7) "Authenticate" means:
- 1842 (a) to sign; or
- 1843 (b) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in
- 1844 whole or in part, with the present intent of the authenticating person to identify the person and
- 1845 adopt or accept a record.
- 1846 (8) (a) "Bank" means an organization that is engaged in the business of banking.
- 1847 (b) "Bank" includes:
- 1848 (i) a depository institution as defined in Section 7-1-103; and
- 1849 (ii) a trust company.
- 1850 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the
- 1851 like.
- 1852 (10) "Certificate of title" means a certificate of title with respect to which a statute
- 1853 provides for the security interest in question to be indicated on the certificate as a condition or
- 1854 result of the security interest's obtaining priority over the rights of a lien creditor with respect to
- 1855 the collateral.
- 1856 (11) (a) "Chattel paper" means a record or records that evidence both a monetary

1857 obligation and a security interest in specific goods, a security interest in specific goods and
1858 software used in the goods, a security interest in specific goods and license of software used in
1859 the goods, a lease of specific goods, or a lease of specific goods and license of software used in
1860 the goods. In this Subsection (11), "monetary obligation" means a monetary obligation secured
1861 by the goods or owed under a lease of the goods and includes a monetary obligation with
1862 respect to software used in the goods.

1863 (b) "Chattel paper" does not include:

1864 (i) charters or other contracts involving the use or hire of a vessel; or

1865 (ii) records that evidence a right to payment arising out of the use of a credit or charge
1866 card or information contained or for use with the card.

1867 (c) If a transaction is evidenced by records that include an instrument or series of
1868 instruments, the group of records taken together constitutes chattel paper.

1869 (12) "Collateral" means the property subject to a security interest or agricultural lien.
1870 "Collateral" includes:

1871 (a) proceeds to which a security interest attaches;

1872 (b) accounts, chattel paper, payment intangibles, and promissory notes that have been
1873 sold; and

1874 (c) goods that are the subject of a consignment.

1875 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

1876 (a) the claimant is an organization; or

1877 (b) the claimant is an individual and the claim:

1878 (i) arose in the course of the claimant's business or profession; and

1879 (ii) does not include damages arising out of personal injury to or the death of an
1880 individual.

1881 (14) "Commodity account" means an account maintained by a commodity intermediary
1882 in which a commodity contract is carried for a commodity customer.

1883 (15) "Commodity contract" means a commodity futures contract, an option on a
1884 commodity futures contract, a commodity option, or another contract if the contract or option
1885 is:

1886 (a) traded on or subject to the rules of a board of trade that has been designated as a
1887 contract market for such a contract pursuant to federal commodities laws; or

1888 (b) traded on a foreign commodity board of trade, exchange, or market, and is carried
1889 on the books of a commodity intermediary for a commodity customer.

1890 (16) "Commodity customer" means a person for which a commodity intermediary
1891 carries a commodity contract on its books.

1892 (17) "Commodity intermediary" means a person that:

1893 (a) is registered as a futures commission merchant under federal commodities law; or

1894 (b) in the ordinary course of its business provides clearance or settlement services for a
1895 board of trade that has been designated as a contract market pursuant to federal commodities
1896 law.

1897 (18) "Communicate" means:

1898 (a) to send a written or other tangible record;

1899 (b) to transmit a record by any means agreed upon by the persons sending and
1900 receiving the record; or

1901 (c) in the case of transmission of a record to or by a filing office, to transmit a record
1902 by any means prescribed by filing-office rule.

1903 (19) "Consignee" means a merchant to which goods are delivered in a consignment.

1904 (20) "Consignment" means a transaction, regardless of its form, in which a person
1905 delivers goods to a merchant for the purpose of sale and:

1906 (a) the merchant:

1907 (i) deals in goods of that kind under a name other than the name of the person making
1908 delivery;

1909 (ii) is not an auctioneer; and

1910 (iii) is not generally known by its creditors to be substantially engaged in selling the
1911 goods of others;

1912 (b) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at
1913 the time of delivery;

1914 (c) the goods are not consumer goods immediately before delivery; and

1915 (d) the transaction does not create a security interest that secures an obligation.

1916 (21) "Consignor" means a person that delivers goods to a consignee in a consignment.

1917 (22) "Consumer debtor" means a debtor in a consumer transaction.

1918 (23) "Consumer goods" means goods that are used or bought for use primarily for

1919 personal, family, or household purposes.

1920 (24) "Consumer-goods transaction" means a consumer transaction in which:

1921 (a) an individual incurs an obligation primarily for personal, family, or household
1922 purposes; and

1923 (b) a security interest in consumer goods secures the obligation.

1924 (25) "Consumer obligor" means an obligor who is an individual and who incurred the
1925 obligation as part of a transaction entered into primarily for personal, family, or household
1926 purposes.

1927 (26) (a) "Consumer transaction" means a transaction in which:

1928 (i) an individual incurs an obligation primarily for personal, family, or household
1929 purposes;

1930 (ii) a security interest secures the obligation; and

1931 (iii) the collateral is held or acquired primarily for personal, family, or household
1932 purposes.

1933 (b) "Consumer transaction" includes consumer-goods transactions.

1934 (27) "Continuation statement" means an amendment of a financing statement which:

1935 (a) identifies, by its file number, the initial financing statement to which it relates; and

1936 (b) indicates that it is a continuation statement for, or that it is filed to continue the
1937 effectiveness of, the identified financing statement.

1938 (28) "Debtor" means:

1939 (a) a person having an interest, other than a security interest or other lien, in the
1940 collateral, whether or not the person is an obligor;

1941 (b) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

1942 (c) a consignee.

1943 (29) (a) "Deposit account" means a demand, time, savings, passbook, or similar
1944 account maintained with a bank.

1945 (b) "Deposit account" does not include investment property or accounts evidenced by
1946 an instrument.

1947 (30) "Document" means a document of title or a receipt of the type described in
1948 Subsection [~~70A-7-201~~] 70A-7a-201(2).

1949 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records

1950 consisting of information stored in an electronic medium.

1951 (32) "Encumbrance" means a right, other than an ownership interest, in real property.

1952 "Encumbrance" includes mortgages and other liens on real property.

1953 (33) "Equipment" means goods other than inventory, farm products, or consumer

1954 goods.

1955 (34) "Farm products" means goods, other than standing timber, with respect to which
1956 the debtor is engaged in a farming operation and which are:

1957 (a) crops grown, growing, or to be grown, including:

1958 (i) crops produced on trees, vines, and bushes; and

1959 (ii) aquatic goods produced in aquacultural operations;

1960 (b) livestock, born or unborn, including aquatic goods produced in aquacultural
1961 operations;

1962 (c) supplies used or produced in a farming operation; or

1963 (d) products of crops or livestock in their unmanufactured states.

1964 (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or
1965 any other farming, livestock, or aquacultural operation.

1966 (36) "File number" means the number assigned to an initial financing statement
1967 pursuant to Subsection 70A-9a-519(1).

1968 (37) "Filing office" means an office designated in Section 70A-9a-501 as the place to
1969 file a financing statement.

1970 (38) "Filing-office rule" means a rule adopted pursuant to Section 70A-9a-526.

1971 (39) "Financing statement" means a record or records composed of an initial financing
1972 statement and any filed record relating to the initial financing statement.

1973 (40) (a) "Fixture filing" means the filing of a financing statement covering goods that
1974 are or are to become fixtures and satisfying Subsections 70A-9a-502(1) and (2).

1975 (b) "Fixture filing" includes the filing of a financing statement covering goods of a
1976 transmitting utility which are or are to become fixtures.

1977 (41) "Fixtures" means goods that have become so related to particular real property that
1978 an interest in them arises under real property law.

1979 (42) (a) "General intangible" means any personal property, including things in action,
1980 other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,

1981 instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or
1982 other minerals before extraction.

1983 (b) "General intangible" includes payment intangibles and software.

1984 (43) "Good faith" means honesty in fact and the observance of reasonable commercial
1985 standards of fair dealing.

1986 (44) (a) "Goods" means all things that are movable when a security interest attaches.

1987 (b) "Goods" includes:

1988 (i) fixtures;

1989 (ii) standing timber that is to be cut and removed under a conveyance or contract for
1990 sale;

1991 (iii) the unborn young of animals;

1992 (iv) crops grown, growing, or to be grown, even if the crops are produced on trees,
1993 vines, or bushes; and

1994 (v) manufactured homes.

1995 (c) "Goods" also includes a computer program embedded in goods and any supporting
1996 information provided in connection with a transaction relating to the program if:

1997 (i) the program is associated with the goods in such a manner that it customarily is
1998 considered part of the goods; or

1999 (ii) by becoming the owner of the goods, a person acquires a right to use the program
2000 in connection with the goods.

2001 (d) "Goods" does not include a computer program embedded in goods that consist
2002 solely of the medium in which the program is embedded.

2003 (e) "Goods" also does not include accounts, chattel paper, commercial tort claims,
2004 deposit accounts, documents, general intangibles, instruments, investment property,
2005 letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

2006 (45) (a) "Governmental unit" means a subdivision, agency, department, county, parish,
2007 municipality, or other unit of the government of the United States, a state, or a foreign country.

2008 (b) "Governmental unit" includes an organization having a separate corporate existence
2009 if the organization is eligible to issue debt on which interest is exempt from income taxation
2010 under the laws of the United States.

2011 (46) "Health-care-insurance receivable" means an interest in or claim under a policy of

2012 insurance which is a right to payment of a monetary obligation for health-care goods or
2013 services provided.

2014 (47) (a) "Instrument" means a negotiable instrument or any other writing that evidences
2015 a right to the payment of a monetary obligation, is not itself a security agreement or lease, and
2016 is of a type that in ordinary course of business is transferred by delivery with any necessary
2017 indorsement or assignment.

2018 (b) "Instrument" does not include:

2019 (i) investment property;

2020 (ii) letters of credit; or

2021 (iii) writings that evidence a right to payment arising out of the use of a credit or charge
2022 card or information contained on or for use with the card.

2023 (48) "Inventory" means goods, other than farm products, which:

2024 (a) are leased by a person as lessor;

2025 (b) are held by a person for sale or lease or to be furnished under a contract of service;

2026 (c) are furnished by a person under a contract of service; or

2027 (d) consist of raw materials, work in process, or materials used or consumed in a
2028 business.

2029 (49) "Investment property" means a security, whether certificated or uncertificated,
2030 security entitlement, securities account, commodity contract, or commodity account.

2031 (50) "Jurisdiction of organization," with respect to a registered organization, means the
2032 jurisdiction under whose law the organization is organized.

2033 (51) (a) "Letter-of-credit right" means a right to payment or performance under a letter
2034 of credit, whether or not the beneficiary has demanded or is at the time entitled to demand
2035 payment or performance.

2036 (b) "Letter-of-credit right" does not include the right of a beneficiary to demand
2037 payment or performance under a letter of credit.

2038 (52) "Lien creditor" means:

2039 (a) a creditor that has acquired a lien on the property involved by attachment, levy, or
2040 the like;

2041 (b) an assignee for benefit of creditors from the time of assignment;

2042 (c) a trustee in bankruptcy from the date of the filing of the petition; or

2043 (d) a receiver in equity from the time of appointment.

2044 (53) (a) "Manufactured home" means a structure, transportable in one or more sections,
2045 which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in
2046 length, or, when erected on site, is 320 or more square feet, and which is built on a permanent
2047 chassis and designed to be used as a dwelling with or without a permanent foundation when
2048 connected to the required utilities, and includes the plumbing, heating, air-conditioning, and
2049 electrical systems contained therein.

2050 (b) "Manufactured home" includes any structure that meets all of the requirements of
2051 this Subsection (53) except the size requirements and with respect to which the manufacturer
2052 voluntarily files a certification required by the United States Secretary of Housing and Urban
2053 Development and complies with the standards established under Title 42 of the United States
2054 Code.

2055 (54) "Manufactured-home transaction" means a secured transaction:

2056 (a) that creates a purchase-money security interest in a manufactured home, other than
2057 a manufactured home held as inventory; or

2058 (b) in which a manufactured home, other than a manufactured home held as inventory,
2059 is the primary collateral.

2060 (55) "Mortgage" means a consensual interest in real property, including fixtures, which
2061 secures payment or performance of an obligation.

2062 (56) "New debtor" means a person that becomes bound as debtor under Subsection
2063 70A-9a-203(4) by a security agreement previously entered into by another person.

2064 (57) (a) "New value" means:

2065 (i) money;

2066 (ii) money's worth in property, services, or new credit; or

2067 (iii) release by a transferee of an interest in property previously transferred to the
2068 transferee.

2069 (b) "New value" does not include an obligation substituted for another obligation.

2070 (58) "Noncash proceeds" means proceeds other than cash proceeds.

2071 (59) (a) "Obligor" means a person that, with respect to an obligation secured by a
2072 security interest in or an agricultural lien on the collateral:

2073 (i) owes payment or other performance of the obligation;

- 2074 (ii) has provided property other than the collateral to secure payment or other
2075 performance of the obligation; or
- 2076 (iii) is otherwise accountable in whole or in part for payment or other performance of
2077 the obligation.
- 2078 (b) "Obligor" does not include issuers or nominated persons under a letter of credit.
- 2079 (60) "Original debtor," except as used in Subsection 70A-9a-310(3), means a person
2080 that, as debtor, entered into a security agreement to which a new debtor has become bound
2081 under Subsection 70A-9a-203(4).
- 2082 (61) "Payment intangible" means a general intangible under which the account debtor's
2083 principal obligation is a monetary obligation.
- 2084 (62) "Person related to," with respect to an individual, means:
- 2085 (a) the spouse of the individual;
- 2086 (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
- 2087 (c) an ancestor or lineal descendant of the individual or the individual's spouse; or
- 2088 (d) any other relative, by blood or marriage, of the individual or the individual's spouse
2089 who shares the same home with the individual.
- 2090 (63) "Person related to," with respect to an organization, means:
- 2091 (a) a person directly or indirectly controlling, controlled by, or under common control
2092 with the organization;
- 2093 (b) an officer or director of, or a person performing similar functions with respect to,
2094 the organization;
- 2095 (c) an officer or director of, or a person performing similar functions with respect to, a
2096 person described in Subsection (63)(a);
- 2097 (d) the spouse of an individual described in Subsection (63)(a), (b), or (c); or
- 2098 (e) an individual who is related by blood or marriage to an individual described in
2099 Subsection (63)(a), (b), (c), or (d) and shares the same home with the individual.
- 2100 (64) "Proceeds," except as used in Subsection 70A-9a-609(2), means the following
2101 property:
- 2102 (a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of
2103 collateral;
- 2104 (b) whatever is collected on, or distributed on account of, collateral;

2105 (c) rights arising out of collateral;

2106 (d) to the extent of the value of collateral, claims arising out of the loss,
2107 nonconformity, or interference with the use of, defects or infringement of rights in, or damage
2108 to, the collateral; or

2109 (e) to the extent of the value of collateral and to the extent payable to the debtor or the
2110 secured party, insurance payable by reason of the loss or nonconformity of, defects or
2111 infringement of rights in, or damage to, the collateral.

2112 (65) "Promissory note" means an instrument that evidences a promise to pay a
2113 monetary obligation, does not evidence an order to pay, and does not contain an
2114 acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

2115 (66) "Proposal" means a record authenticated by a secured party which includes the
2116 terms on which the secured party is willing to accept collateral in full or partial satisfaction of
2117 the obligation it secures pursuant to Sections 70A-9a-620, 70A-9a-621, and 70A-9a-622.

2118 (67) "Public-finance transaction" means a secured transaction in connection with
2119 which:

2120 (a) debt securities are issued;

2121 (b) all or a portion of the securities issued have an initial stated maturity of at least 20
2122 years; and

2123 (c) the debtor, obligor, secured party, account debtor or other person obligated on
2124 collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security
2125 interest is a state or a governmental unit of a state.

2126 (68) "Pursuant to commitment," with respect to an advance made or other value given
2127 by a secured party, means pursuant to the secured party's obligation, whether or not a
2128 subsequent event of default or other event not within the secured party's control has relieved or
2129 may relieve the secured party from its obligation.

2130 (69) "Record," except as used in "for record," "of record," "record or legal title," and
2131 "record owner," means information that is inscribed on a tangible medium or which is stored in
2132 an electronic or other medium and is retrievable in perceivable form.

2133 (70) "Registered organization" means an organization organized solely under the law
2134 of a single state or the United States and as to which the state or the United States must
2135 maintain a public record showing the organization to have been organized.

- 2136 (71) "Secondary obligor" means an obligor to the extent that:
2137 (a) the obligor's obligation is secondary; or
2138 (b) the obligor has a right of recourse with respect to an obligation secured by collateral
2139 against the debtor, another obligor, or property of either.
- 2140 (72) "Secured party" means:
2141 (a) a person in whose favor a security interest is created or provided for under a
2142 security agreement, whether or not any obligation to be secured is outstanding;
2143 (b) a person that holds an agricultural lien;
2144 (c) a consignor;
2145 (d) a person to which accounts, chattel paper, payment intangibles, or promissory notes
2146 have been sold;
2147 (e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose
2148 favor a security interest or agricultural lien is created or provided for; or
2149 (f) a person that holds a security interest arising under Section 70A-2-401, 70A-2-505,
2150 70A-4-210, or 70A-5-118 or Subsection 70A-2-711(3) or 70A-2a-508(5).
- 2151 (73) "Security agreement" means an agreement that creates or provides for a security
2152 interest.
- 2153 (74) "Send," in connection with a record or notification, means:
2154 (a) to deposit in the mail, deliver for transmission, or transmit by any other usual
2155 means of communication, with postage or cost of transmission provided for, addressed to any
2156 address reasonable under the circumstances; or
2157 (b) to cause the record or notification to be received within the time that it would have
2158 been received if properly sent under Subsection (74)(a).
- 2159 (75) (a) "Software" means a computer program and any supporting information
2160 provided in connection with a transaction relating to the program.
2161 (b) "Software" does not include a computer program that is included in the definition
2162 of goods.
- 2163 (76) "State" means a state of the United States, the District of Columbia, Puerto Rico,
2164 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
2165 of the United States.
- 2166 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that

2167 supports the payment or performance of an account, chattel paper, a document, a general
2168 intangible, an instrument, or investment property.

2169 (78) "Tangible chattel paper" means chattel paper evidenced by a record or records
2170 consisting of information that is inscribed on a tangible medium.

2171 (79) "Termination statement" means an amendment of a financing statement which:

2172 (a) identifies, by its file number, the initial financing statement to which it relates; and

2173 (b) indicates either that it is a termination statement or that the identified financing
2174 statement is no longer effective.

2175 (80) "Transmitting utility" means a person primarily engaged in the business of:

2176 (a) operating a railroad, subway, street railway, or trolley bus;

2177 (b) transmitting communications electrically, electromagnetically, or by light;

2178 (c) transmitting goods by pipeline or sewer; or

2179 (d) transmitting or producing and transmitting electricity, steam, gas, or water.

2180 Section 67. Section **70A-9a-102.1** is amended to read:

2181 **70A-9a-102.1. Definitions from other chapters.**

2182 (1) [~~The~~] "Control" as provided in Section 70A-7a-106 and the following definitions in
2183 other chapters of this title apply to this chapter:

2184 (a) "Applicant" Section 70A-5-102.

2185 (b) "Beneficiary" Section 70A-5-102.

2186 (c) "Broker" Section 70A-8-101.

2187 (d) "Certificated security" Section 70A-8-101.

2188 (e) "Check" Section 70A-3-104.

2189 (f) "Clearing corporation" Section 70A-8-101.

2190 (g) "Contract for sale" Section 70A-2-106.

2191 (h) "Customer" Section 70A-4-104.

2192 (i) "Entitlement holder" Section 70A-8-101.

2193 (j) "Financial asset" Section 70A-8-101.

2194 (k) "Holder in due course" Section 70A-3-302.

2195 (l) (i) "Issuer" (with respect to a letter of credit or letter-of-credit right) Section
2196 70A-5-102.

2197 (ii) "Issuer" (with respect to a security) Section 70A-8-201.

- 2198 (iii) "Issuer" (with respect to documents of title) Section 70A-7a-102.
- 2199 (m) "Lease" Section 70A-2a-103.
- 2200 (n) "Lease agreement" Section 70A-2a-103.
- 2201 (o) "Lease contract" Section 70A-2a-103.
- 2202 (p) "Leasehold interest" Section 70A-2a-103.
- 2203 (q) "Lessee" Section 70A-2a-103.
- 2204 (r) "Lessee in ordinary course of business" Section 70A-2a-103.
- 2205 (s) "Lessor" Section 70A-2a-103.
- 2206 (t) "Lessor's residual interest" Section 70A-2a-103.
- 2207 (u) "Letter of credit" Section 70A-5-102.
- 2208 (v) "Merchant" Section 70A-2-104.
- 2209 (w) "Negotiable instrument" Section 70A-3-104.
- 2210 (x) "Nominated person" Section 70A-5-102.
- 2211 (y) "Note" Section 70A-3-104.
- 2212 (z) "Proceeds of a letter of credit" Section 70A-5-114.
- 2213 (aa) "Prove" Section 70A-3-103.
- 2214 (bb) "Sale" Section 70A-2-106.
- 2215 (cc) "Securities account" Section 70A-8-501.
- 2216 (dd) "Securities intermediary" Section 70A-8-101.
- 2217 (ee) "Security" Section 70A-8-101.
- 2218 (ff) "Security certificate" Section 70A-8-101.
- 2219 (gg) "Security entitlement" Section 70A-8-101.
- 2220 (hh) "Uncertificated security" Section 70A-8-101.
- 2221 (2) Chapter 1, General Provisions, contains general definitions and principles of
- 2222 construction and interpretation applicable throughout this chapter.
- 2223 Section 68. Section **70A-9a-203** is amended to read:
- 2224 **70A-9a-203. Attachment and enforceability of security interest -- Proceeds --**
- 2225 **Supporting obligations -- Formal requisites.**
- 2226 (1) A security interest attaches to collateral when it becomes enforceable against the
- 2227 debtor with respect to the collateral, unless an agreement expressly postpones the time of
- 2228 attachment.

2229 (2) Except as otherwise provided in Subsections (3) through (9), a security interest is
2230 enforceable against the debtor and third parties with respect to the collateral only if:

2231 (a) value has been given;

2232 (b) the debtor has rights in the collateral or the power to transfer rights in the collateral
2233 to a secured party; and

2234 (c) one of the following conditions is met:

2235 (i) the debtor has authenticated a security agreement that provides a description of the
2236 collateral and, if the security interest covers timber to be cut, a description of the land
2237 concerned;

2238 (ii) the collateral is not a certificated security and is in the possession of the secured
2239 party under Section 70A-9a-313 pursuant to the debtor's security agreement;

2240 (iii) the collateral is a certificated security in registered form and the security certificate
2241 has been delivered to the secured party under Section 70A-8-301 pursuant to the debtor's
2242 security agreement; or

2243 (iv) the collateral is deposit accounts, electronic chattel paper, investment property, or
2244 letter-of-credit rights, or electronic documents, and the secured party has control under Section
2245 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107 pursuant to the debtor's
2246 security agreement.

2247 (3) Subsection (2) is subject to Section 70A-4-210 on the security interest of a
2248 collecting bank, Section 70A-5-118 on the security interest of a letter-of-credit issuer or
2249 nominated person, Section 70A-9a-110 on a security interest arising under Chapter 2 or 2a, and
2250 Section 70A-9a-206 on security interests in investment property.

2251 (4) A person becomes bound as debtor by a security agreement entered into by another
2252 person if, by operation of law other than this chapter or by contract:

2253 (a) the security agreement becomes effective to create a security interest in the person's
2254 property; or

2255 (b) the person becomes generally obligated for the obligations of the other person,
2256 including the obligation secured under the security agreement, and acquires or succeeds to all
2257 or substantially all of the assets of the other person.

2258 (5) If a new debtor becomes bound as debtor by a security agreement entered into by
2259 another person:

2260 (a) the agreement satisfies Subsection (2)(c) with respect to existing or after-acquired
2261 property of the new debtor to the extent the property is described in the agreement; and

2262 (b) another agreement is not necessary to make a security interest in the property
2263 enforceable.

2264 (6) The attachment of a security interest in collateral gives the secured party the rights
2265 to proceeds provided by Section 70A-9a-315 and is also attachment of a security interest in a
2266 supporting obligation for the collateral.

2267 (7) The attachment of a security interest in a right to payment or performance secured
2268 by a security interest or other lien on personal or real property is also attachment of a security
2269 interest in the security interest, mortgage, or other lien.

2270 (8) The attachment of a security interest in a securities account is also attachment of a
2271 security interest in the security entitlements carried in the securities account.

2272 (9) The attachment of a security interest in a commodity account is also attachment of a
2273 security interest in the commodity contracts carried in the commodity account.

2274 Section 69. Section **70A-9a-207** is amended to read:

2275 **70A-9a-207. Rights and duties of secured party having possession or control of**
2276 **collateral.**

2277 (1) Except as otherwise provided in Subsection (4), a secured party shall use
2278 reasonable care in the custody and preservation of collateral in the secured party's possession.
2279 In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to
2280 preserve rights against prior parties unless otherwise agreed.

2281 (2) Except as otherwise provided in Subsection (4), if a secured party has possession of
2282 collateral:

2283 (a) reasonable expenses, including the cost of insurance and payment of taxes or other
2284 charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable
2285 to the debtor and are secured by the collateral;

2286 (b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in
2287 any effective insurance coverage;

2288 (c) the secured party shall keep the collateral identifiable, but fungible collateral may
2289 be commingled; and

2290 (d) the secured party may use or operate the collateral:

2291 (i) for the purpose of preserving the collateral or its value;
2292 (ii) as permitted by an order of a court having competent jurisdiction; or
2293 (iii) except in the case of consumer goods, in the manner and to the extent agreed by
2294 the debtor.

2295 (3) Except as otherwise provided in Subsection (4), a secured party having possession
2296 of collateral or control of collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105,
2297 70A-9a-106, or 70A-9a-107:

2298 (a) may hold as additional security any proceeds, except money or funds, received from
2299 the collateral;

2300 (b) shall apply money or funds received from the collateral to reduce the secured
2301 obligation, unless remitted to the debtor; and

2302 (c) may create a security interest in the collateral.

2303 (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or
2304 promissory notes or a consignor:

2305 (a) Subsection (1) does not apply unless the secured party is entitled under an
2306 agreement:

2307 (i) to charge back uncollected collateral; or

2308 (ii) otherwise to full or limited recourse against the debtor or a secondary obligor based
2309 on the nonpayment or other default of an account debtor or other obligor on the collateral; and

2310 (b) Subsections (2) and (3) do not apply.

2311 Section 70. Section **70A-9a-208** is amended to read:

2312 **70A-9a-208. Additional duties of secured party having control of collateral.**

2313 (1) This section applies to cases in which there is no outstanding secured obligation
2314 and the secured party is not committed to make advances, incur obligations, or otherwise give
2315 value.

2316 (2) Within ten days after receiving an authenticated demand by the debtor:

2317 (a) a secured party having control of a deposit account under Subsection
2318 70A-9a-104(1)(b) shall send to the bank with which the deposit account is maintained an
2319 authenticated statement that releases the bank from any further obligation to comply with
2320 instructions originated by the secured party;

2321 (b) a secured party having control of a deposit account under Subsection

2322 70A-9a-104(1)(c) shall:

2323 (i) pay the debtor the balance on deposit in the deposit account; or

2324 (ii) transfer the balance on deposit into a deposit account in the debtor's name;

2325 (c) a secured party, other than a buyer, having control of electronic chattel paper under

2326 Section 70A-9a-105 shall:

2327 (i) communicate the authoritative copy of the electronic chattel paper to the debtor or
2328 its designated custodian;

2329 (ii) if the debtor designates a custodian that is the designated custodian with which the
2330 authoritative copy of the electronic chattel paper is maintained for the secured party,
2331 communicate to the custodian an authenticated record releasing the designated custodian from
2332 any further obligation to comply with instructions originated by the secured party and
2333 instructing the custodian to comply with instructions originated by the debtor; and

2334 (iii) take appropriate action to enable the debtor or its designated custodian to make
2335 copies of or revisions to the authoritative copy which add or change an identified assignee of
2336 the authoritative copy without the consent of the secured party;

2337 (d) a secured party having control of investment property under Subsection
2338 70A-8-105(4)(b) or 70A-9a-106(2) shall send to the securities intermediary or commodity
2339 intermediary with which the security entitlement or commodity contract is maintained an
2340 authenticated record that releases the securities intermediary or commodity intermediary from
2341 any further obligation to comply with entitlement orders or directions originated by the secured
2342 party; ~~and~~

2343 (e) a secured party having control of a letter-of-credit right under Section 70A-9a-107
2344 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the
2345 letter of credit to the secured party an authenticated release from any further obligation to pay
2346 or deliver proceeds of the letter of credit to the secured party~~[-];~~ and

2347 (f) a secured party having control of an electronic document shall:

2348 (i) give control of the electronic document to the debtor or the debtor's designated
2349 custodian;

2350 (ii) if the debtor designates a custodian that is the designated custodian with which the
2351 authoritative copy of the electronic document is maintained for the secured party, communicate
2352 to the custodian an authenticated record releasing the designated custodian from any further

2353 obligation to comply with instructions originated by the secured party and instructing the
2354 custodian to comply with instructions originated by the debtor; and

2355 (iii) take appropriate action to enable to the debtor or its designated custodian to make
2356 copies of or revisions to the authoritative copy without the consent of the secured party.

2357 Section 71. Section **70A-9a-301** is amended to read:

2358 **70A-9a-301. Law governing perfection and priority of security interests.**

2359 Except as otherwise provided in Sections 70A-9a-303 through 70A-9a-306, the

2360 following rules determine the law governing perfection, the effect of perfection or

2361 nonperfection, and the priority of a security interest in collateral:

2362 (1) Except as otherwise provided in this section, while a debtor is located in a
2363 jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or
2364 nonperfection, and the priority of a security interest in collateral.

2365 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction
2366 governs perfection, the effect of perfection or nonperfection, and the priority of a possessory
2367 security interest in that collateral.

2368 (3) Except as otherwise provided in Subsection (4), while tangible negotiable
2369 documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the
2370 local law of that jurisdiction governs:

2371 (a) perfection of a security interest in the goods by filing a fixture filing;

2372 (b) perfection of a security interest in timber to be cut; and

2373 (c) the effect of perfection or nonperfection and the priority of a nonpossessory security
2374 interest in the collateral.

2375 (4) The local law of the jurisdiction in which the wellhead or minehead is located
2376 governs perfection, the effect of perfection or nonperfection, and the priority of a security
2377 interest in as-extracted collateral.

2378 Section 72. Section **70A-9a-310** is amended to read:

2379 **70A-9a-310. When filing required to perfect security interest or agricultural lien**
2380 **-- Security interests and agricultural liens to which filing provisions do not apply.**

2381 (1) Except as otherwise provided in Subsection (2) and Subsection 70A-9a-312(2), a
2382 financing statement must be filed to perfect all security interests and agricultural liens.

2383 (2) The filing of a financing statement is not necessary to perfect a security interest:

- 2384 (a) that is perfected under Subsection 70A-9a-308(4), (5), (6), or (7);
- 2385 (b) that is perfected under Section 70A-9a-309 when it attaches;
- 2386 (c) in property subject to a statute, regulation, or treaty described in Subsection
- 2387 70A-9a-311(1);
- 2388 (d) in goods in possession of a bailee which is perfected under Subsection
- 2389 70A-9a-312(4)(a) or (b);
- 2390 (e) in certificated securities, documents, goods, or instruments which is perfected
- 2391 without filing, control, or possession under Subsection 70A-9a-312(5), (6), or (7);
- 2392 (f) in collateral in the secured party's possession under Section 70A-9a-313;
- 2393 (g) in a certificated security which is perfected by delivery of the security certificate to
- 2394 the secured party under Section 70A-9a-313;
- 2395 (h) in deposit accounts, electronic chattel paper, electronic documents, investment
- 2396 property, or letter-of-credit rights which is perfected by control under Section 70A-9a-314;
- 2397 (i) in proceeds which is perfected under Section 70A-9a-315; or
- 2398 (j) that is perfected under Section 70A-9a-316.
- 2399 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing
- 2400 under this chapter is not required to continue the perfected status of the security interest against
- 2401 creditors of and transferees from the original debtor.
- 2402 Section 73. Section **70A-9a-312** is amended to read:
- 2403 **70A-9a-312. Perfection of security interests in chattel paper, deposit accounts,**
- 2404 **documents, goods covered by documents, instruments, investment property,**
- 2405 **letter-of-credit rights, and money -- Perfection by permissive filing -- Temporary**
- 2406 **perfection without filing or transfer of possession.**
- 2407 (1) A security interest in chattel paper, negotiable documents, instruments, or
- 2408 investment property may be perfected by filing.
- 2409 (2) Except as otherwise provided in Subsections 70A-9a-315(3) and (4) for proceeds:
- 2410 (a) a security interest in a deposit account may be perfected only by control under
- 2411 Section 70A-9a-314;
- 2412 (b) and except as otherwise provided in Subsection 70A-9a-308(4), a security interest
- 2413 in a letter-of-credit right may be perfected only by control under Section 70A-9a-314; and
- 2414 (c) a security interest in money may be perfected only by the secured party's taking

2415 possession under Section 70A-9a-313.

2416 (3) While goods are in the possession of a bailee that has issued a negotiable document
2417 covering the goods:

2418 (a) a security interest in the goods may be perfected by perfecting a security interest in
2419 the document; and

2420 (b) a security interest perfected in the document has priority over any security interest
2421 that becomes perfected in the goods by another method during that time.

2422 (4) While goods are in the possession of a bailee that has issued a nonnegotiable
2423 document covering the goods, a security interest in the goods may be perfected by:

2424 (a) issuance of a document in the name of the secured party;

2425 (b) the bailee's receipt of notification of the secured party's interest; or

2426 (c) filing as to the goods.

2427 (5) A security interest in certificated securities, negotiable documents, or instruments is
2428 perfected without filing or the taking of possession or control for a period of 20 days from the
2429 time it attaches to the extent that it arises for new value given under an authenticated security
2430 agreement.

2431 (6) A perfected security interest in a negotiable document or goods in possession of a
2432 bailee, other than one that has issued a negotiable document for the goods, remains perfected
2433 for 20 days without filing if the secured party makes available to the debtor the goods or
2434 documents representing the goods for the purpose of:

2435 (a) ultimate sale or exchange; or

2436 (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or
2437 otherwise dealing with them in a manner preliminary to their sale or exchange.

2438 (7) A perfected security interest in a certificated security or instrument remains
2439 perfected for 20 days without filing if the secured party delivers the security certificate or
2440 instrument to the debtor for the purpose of:

2441 (a) ultimate sale or exchange; or

2442 (b) presentation, collection, enforcement, renewal, or registration of transfer.

2443 (8) After the 20-day period specified in Subsection (5), (6), or (7) expires, perfection
2444 depends upon compliance with this chapter.

2445 Section 74. Section **70A-9a-313** is amended to read:

2446 **70A-9a-313. When possession by or delivery to secured party perfects security**
2447 **interest without filing.**

2448 (1) Except as otherwise provided in Subsection (2), a secured party may perfect a
2449 security interest in tangible negotiable documents, goods, instruments, money, or tangible
2450 chattel paper by taking possession of the collateral. A secured party may perfect a security
2451 interest in certificated securities by taking delivery of the certificated securities under Section
2452 70A-8-301.

2453 (2) With respect to goods covered by a certificate of title issued by this state, a secured
2454 party may perfect a security interest in the goods by taking possession of the goods only in the
2455 circumstances described in Subsection 70A-9a-316(4).

2456 (3) With respect to collateral other than certificated securities and goods covered by a
2457 document, a secured party takes possession of collateral in the possession of a person other
2458 than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary
2459 course of the debtor's business, when:

2460 (a) the person in possession authenticates a record acknowledging that it holds
2461 possession of the collateral for the secured party's benefit; or

2462 (b) the person takes possession of the collateral after having authenticated a record
2463 acknowledging that it will hold possession of collateral for the secured party's benefit.

2464 (4) If perfection of a security interest depends upon possession of the collateral by a
2465 secured party, perfection occurs no earlier than the time the secured party takes possession and
2466 continues only while the secured party retains possession.

2467 (5) A security interest in a certificated security in registered form is perfected by
2468 delivery when delivery of the certificated security occurs under Section 70A-8-301 and remains
2469 perfected by delivery until the debtor obtains possession of the security certificate.

2470 (6) A person in possession of collateral is not required to acknowledge that it holds
2471 possession for a secured party's benefit.

2472 (7) If a person acknowledges that it holds possession for the secured party's benefit:

2473 (a) the acknowledgment is effective under Subsection (3) or Subsection 70A-8-301(1),
2474 even if the acknowledgment violates the rights of a debtor; and

2475 (b) unless the person otherwise agrees or law other than this chapter otherwise
2476 provides, the person does not owe any duty to the secured party and is not required to confirm

2477 the acknowledgment to another person.

2478 (8) A secured party having possession of collateral does not relinquish possession by
2479 delivering the collateral to a person other than the debtor or a lessee of the collateral from the
2480 debtor in the ordinary course of the debtor's business if the person was instructed before the
2481 delivery or is instructed contemporaneously with the delivery:

2482 (a) to hold possession of the collateral for the secured party's benefit; or

2483 (b) to redeliver the collateral to the secured party.

2484 (9) A secured party does not relinquish possession, even if a delivery under Subsection
2485 (8) violates the rights of a debtor. A person to which collateral is delivered under Subsection
2486 (8) does not owe any duty to the secured party and is not required to confirm the delivery to
2487 another person unless the person otherwise agrees or law other than this chapter otherwise
2488 provides.

2489 Section 75. Section **70A-9a-314** is amended to read:

2490 **70A-9a-314. Perfection by control.**

2491 (1) A security interest in investment property, deposit accounts, letter-of-credit rights,
2492 or electronic chattel paper, or electronic documents may be perfected by control of the
2493 collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107.

2494 (2) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit
2495 rights, or electronic documents is perfected by control under Section 70A-7a-106, 70A-9a-104,
2496 70A-9a-105, or 70A-9a-107 when the secured party obtains control and remains perfected by
2497 control only while the secured party retains control.

2498 (3) A security interest in investment property is perfected by control under Section
2499 70A-9a-106 from the time the secured party obtains control and remains perfected by control
2500 until:

2501 (a) the secured party does not have control; and

2502 (b) one of the following occurs:

2503 (i) if the collateral is a certificated security, the debtor has or acquires possession of the
2504 security certificate;

2505 (ii) if the collateral is an uncertificated security, the issuer has registered or registers the
2506 debtor as the registered owner; or

2507 (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement

2508 holder.

2509 Section 76. Section **70A-9a-317** is amended to read:

2510 **70A-9a-317. Interests that take priority over or take free of security interest or**
2511 **agricultural lien.**

2512 (1) A security interest or agricultural lien is subordinate to the rights of:

2513 (a) a person entitled to priority under Section 70A-9a-322; and

2514 (b) except as otherwise provided in Subsection (5), a person that becomes a lien
2515 creditor before the earlier of the time:

2516 (i) the security interest or agricultural lien is perfected; or

2517 (ii) one of the conditions specified in Subsection 70A-9a-203(2)(c) is met and a
2518 financing statement covering the collateral is filed.

2519 (2) Except as otherwise provided in Subsection (5), a buyer, other than a secured party,
2520 of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes
2521 free of a security interest or agricultural lien if the buyer gives value and receives delivery of
2522 the collateral without knowledge of the security interest or agricultural lien and before it is
2523 perfected.

2524 (3) Except as otherwise provided in Subsection (5), a lessee of goods takes free of a
2525 security interest or agricultural lien if the lessee gives value and receives delivery of the
2526 collateral without knowledge of the security interest or agricultural lien and before it is
2527 perfected.

2528 (4) A licensee of a general intangible or a buyer, other than a secured party, of accounts,
2529 electronic chattel paper, electronic documents, general intangibles, or investment property
2530 other than a certificated security takes free of a security interest if the licensee or buyer gives
2531 value without knowledge of the security interest and before it is perfected.

2532 (5) Except as otherwise provided in Sections 70A-9a-320 and 70A-9a-321, if a person
2533 files a financing statement with respect to a purchase-money security interest before or within
2534 20 days after the debtor receives delivery of the collateral, the security interest takes priority
2535 over the rights of a buyer, lessee, or lien creditor which arise between the time the security
2536 interest attaches and the time of filing.

2537 Section 77. Section **70A-9a-331** is amended to read:

2538 **70A-9a-331. Priority of rights of purchasers of instruments, documents, and**

2539 **securities under other chapters -- Priority of interests in financial assets and security**
2540 **entitlements under Chapter 8, Uniform Commercial Code - Investment Securities.**

2541 (1) This chapter does not limit the rights of a holder in due course of a negotiable
2542 instrument, a holder to which a negotiable document of title has been duly negotiated, or a
2543 protected purchaser of a security. These holders or purchasers take priority over an earlier
2544 security interest, even if perfected, to the extent provided in Chapters 3, [7] Uniform
2545 Commercial Code - Negotiable Instruments, 7a, Uniform Commercial Code - Documents of
2546 Title, and 8, Uniform Commercial Code - Investment Securities.

2547 (2) This chapter does not limit the rights of or impose liability on a person to the extent
2548 that the person is protected against the assertion of a claim under Chapter 8, Uniform
2549 Commercial Code - Investment Securities.

2550 (3) Filing under this chapter does not constitute notice of a claim or defense to the
2551 holders, or purchasers, or persons described in Subsections (1) and (2).

2552 Section 78. Section **70A-9a-338** is amended to read:

2553 **70A-9a-338. Priority of security interest or agricultural lien perfected by filed**
2554 **financing statement providing certain incorrect information.**

2555 If a security interest or agricultural lien is perfected by a filed financing statement
2556 providing information described in Subsection 70A-9a-516(2)(e) which is incorrect at the time
2557 the financing statement is filed:

2558 (1) the security interest or agricultural lien is subordinate to a conflicting perfected
2559 security interest in the collateral to the extent that the holder of the conflicting security interest
2560 gives value in reasonable reliance upon the incorrect information; and

2561 (2) a purchaser, other than a secured party, of the collateral takes free of the security
2562 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect
2563 information, the purchaser gives value and, in the case of tangible chattel paper, tangible
2564 documents, goods, instruments, or a security certificate, receives delivery of the collateral.

2565 Section 79. Section **70A-9a-601** is amended to read:

2566 **70A-9a-601. Rights after default -- Judicial enforcement -- Consignor or buyer**
2567 **of accounts, chattel paper, payment intangibles, or promissory notes.**

2568 (1) After default, a secured party has the rights provided in this part and, except as
2569 otherwise provided in Section 70A-9a-602, those provided by agreement of the parties. A

2570 secured party:

2571 (a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security
2572 interest, or agricultural lien by any available judicial procedure; and

2573 (b) if the collateral is documents, may proceed either as to the documents or as to the
2574 goods they cover.

2575 (2) A secured party in possession of collateral or control of collateral under Section
2576 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107 has the rights and duties
2577 provided in Section 70A-9a-207.

2578 (3) The rights under Subsections (1) and (2) are cumulative and may be exercised
2579 simultaneously.

2580 (4) Except as otherwise provided in Subsection (7) and Section 70A-9a-605, after
2581 default, a debtor and an obligor have the rights provided in this part and by agreement of the
2582 parties.

2583 (5) If a secured party has reduced its claim to judgment, the lien of any levy that may
2584 be made upon the collateral by virtue of an execution based upon the judgment relates back to
2585 the earliest of:

2586 (a) the date of perfection of the security interest or agricultural lien in the collateral;

2587 (b) the date of filing a financing statement covering the collateral; or

2588 (c) any date specified in a statute under which the agricultural lien was created.

2589 (6) A sale pursuant to an execution is a foreclosure of the security interest or
2590 agricultural lien by judicial procedure within the meaning of this section. A secured party may
2591 purchase at the sale and thereafter hold the collateral free of any other requirements of this
2592 chapter.

2593 (7) Except as otherwise provided in Subsection 70A-9a-607(3), this part imposes no
2594 duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment
2595 intangibles, or promissory notes.

2596 Section 80. Section **70A-10-104** is amended to read:

2597 **70A-10-104. Laws not repealed.**

2598 [~~The chapter on Documents of Title (Chapter 7)] Chapter 7a, Uniform Commercial
2599 Code - Documents of Title, does not repeal or modify any laws prescribing the form or
2600 contents of documents of title or the services or facilities to be afforded by bailees, or otherwise~~

2601 regulating bailees' businesses in respects not specifically dealt with herein; but the fact that
2602 such laws are violated does not affect the status of a document of title which otherwise
2603 complies with the definition of a document of title [€] as defined in Section 70A-1-201[§].

2604 Section 81. Section **72-9-404** is amended to read:

2605 **72-9-404. Bills of lading -- Form.**

2606 Bills of lading issued by any motor carrier for the transportation of goods within this
2607 state shall conform to this chapter, rules made under this chapter, and Title 70A, Chapter [7]
2608 7a, Part 3, Bills of Lading -- Special Provisions, that are not in conflict with this chapter.

2609 Section 82. **Repealer.**

2610 This bill repeals:

2611 Section **70A-7-101, Short title.**

2612 Section **70A-7-102, Definitions and index of definitions.**

2613 Section **70A-7-103, Relation of chapter to treaty, statute, tariff, classification or**
2614 **regulation.**

2615 Section **70A-7-104, Negotiable and nonnegotiable warehouse receipt, bill of lading**
2616 **or other document of title.**

2617 Section **70A-7-105, Construction against negative implication.**

2618 Section **70A-7-201, Who may issue a warehouse receipt -- Storage under**
2619 **government bond.**

2620 Section **70A-7-202, Form of warehouse receipt -- Essential terms -- Optional terms.**

2621 Section **70A-7-203, Liability for nonreceipt or misdescription.**

2622 Section **70A-7-204, Duty of care -- Contractual limitation of warehouseman's**
2623 **liability.**

2624 Section **70A-7-205, Title under warehouse receipt defeated in certain cases.**

2625 Section **70A-7-206, Termination of storage at warehouseman's option.**

2626 Section **70A-7-207, Goods must be kept separate -- Fungible goods.**

2627 Section **70A-7-208, Altered warehouse receipts.**

2628 Section **70A-7-209, Lien of warehouseman.**

2629 Section **70A-7-210, Enforcement of warehouseman's lien -- Notice and advertising**
2630 **requirements.**

2631 Section **70A-7-301, Liability for nonreceipt or misdescription -- "Said to contain"**

- 2632 -- "Shipper's load and count" -- Improper handling.
- 2633 Section 70A-7-302, Through bills of lading and similar documents.
- 2634 Section 70A-7-303, Diversion -- Reconsignment -- Change of instructions.
- 2635 Section 70A-7-304, Bills of lading in a set.
- 2636 Section 70A-7-305, Destination bills.
- 2637 Section 70A-7-306, Altered bills of lading.
- 2638 Section 70A-7-307, Lien of carrier.
- 2639 Section 70A-7-308, Enforcement of carrier's lien.
- 2640 Section 70A-7-309, Duty of care -- Contractual limitation of carrier's liability.
- 2641 Section 70A-7-401, Irregularities in issue of receipt or bill or conduct of issuer.
- 2642 Section 70A-7-402, Duplicate receipt or bill -- Overissue.
- 2643 Section 70A-7-403, Obligation of warehouseman or carrier to deliver -- Excuse.
- 2644 Section 70A-7-404, No liability for good faith delivery pursuant to receipt or bill.
- 2645 Section 70A-7-501, Form of negotiation and requirements of "due negotiation."
- 2646 Section 70A-7-502, Rights acquired by due negotiation.
- 2647 Section 70A-7-503, Document of title to goods defeated in certain cases.
- 2648 Section 70A-7-504, Rights acquired in the absence of due negotiation -- Effect of
- 2649 diversion -- Seller's stoppage of delivery.
- 2650 Section 70A-7-505, Indorser not a guarantor for other parties.
- 2651 Section 70A-7-506, Delivery without indorsement -- Right to compel indorsement.
- 2652 Section 70A-7-507, Warranties on negotiation or transfer of receipt or bill.
- 2653 Section 70A-7-508, Warranties of collecting bank as to documents.
- 2654 Section 70A-7-509, Receipt or bill -- When adequate compliance with commercial
- 2655 contract.
- 2656 Section 70A-7-601, Lost and missing documents.
- 2657 Section 70A-7-602, Attachment of goods covered by a negotiable document.
- 2658 Section 70A-7-603, Conflicting claims -- Interpleader.

Legislative Review Note
as of 12-7-05 1:10 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel