UNIFORM COMMERCIAL CODE - GENERAL

PROVISIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: ____________

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- repeals Title 70A, Chapter 1, General Provisions;
- enacts the revised Article 1 of the Uniform Commercial Code as Title 70A, Chapter 1a, General Provisions, including provisions related to:
  - the construction and interpretation of the Uniform Commercial Code;
  - the relationship between the Uniform Commercial Code and other laws;
  - the applicability of the Uniform Commercial Code; and
  - defining terms;
- amends other provisions of the Uniform Commercial Code, to conform with the adoption of Title 70A, Chapter 1a, General Provisions; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:
AMENDS:

11-14-501, as renumbered and amended by Chapter 105, Laws of Utah 2005
15-8-4, as last amended by Chapter 12, Laws of Utah 1994
24-1-3, as last amended by Chapter 296, Laws of Utah 2004
32A-11a-102, as last amended by Chapter 1, Laws of Utah 2000
41-1a-601, as last amended by Chapter 252, Laws of Utah 2000
46-4-103, as enacted by Chapter 74, Laws of Utah 2000
46-4-403, as last amended by Chapter 42, Laws of Utah 2006
70A-2-103, as last amended by Chapter 42, Laws of Utah 2006
70A-2-202, as enacted by Chapter 154, Laws of Utah 1965
70A-2a-103, as last amended by Chapter 42, Laws of Utah 2006
70A-2a-501, as last amended by Chapter 237, Laws of Utah 1993
70A-2a-518, as last amended by Chapter 237, Laws of Utah 1993
70A-2a-519, as last amended by Chapter 237, Laws of Utah 1993
70A-2a-527, as last amended by Chapter 237, Laws of Utah 1993
70A-2a-528, as last amended by Chapter 237, Laws of Utah 1993
70A-3-103, as last amended by Chapter 60, Laws of Utah 1998
70A-4-104, as last amended by Chapter 42, Laws of Utah 2006
70A-4a-105, as last amended by Chapter 237, Laws of Utah 1993
70A-4a-106, as last amended by Chapter 237, Laws of Utah 1993
70A-4a-204, as last amended by Chapter 237, Laws of Utah 1993
70A-5-103, as repealed and reenacted by Chapter 241, Laws of Utah 1997
70A-8-101, as last amended by Chapter 71, Laws of Utah 2005
70A-7a-102, as enacted by Chapter 42, Laws of Utah 2006
70A-9a-102, as last amended by Chapter 42, Laws of Utah 2006
70A-9a-102.1, as last amended by Chapter 42, Laws of Utah 2006
70A-10-104, as last amended by Chapter 42, Laws of Utah 2006
70C-2-204, as enacted by Chapter 159, Laws of Utah 1985

ENACTS:

70A-1a-101, Utah Code Annotated 1953
70A-1a-102, Utah Code Annotated 1953
70A-1a-103, Utah Code Annotated 1953
70A-1a-104, Utah Code Annotated 1953
70A-1a-105, Utah Code Annotated 1953
70A-1a-106, Utah Code Annotated 1953
70A-1a-107, Utah Code Annotated 1953
70A-1a-108, Utah Code Annotated 1953
70A-1a-201, Utah Code Annotated 1953
70A-1a-202, Utah Code Annotated 1953
70A-1a-203, Utah Code Annotated 1953
70A-1a-204, Utah Code Annotated 1953
70A-1a-205, Utah Code Annotated 1953
70A-1a-206, Utah Code Annotated 1953
70A-1a-301, Utah Code Annotated 1953
70A-1a-302, Utah Code Annotated 1953
70A-1a-303, Utah Code Annotated 1953
70A-1a-304, Utah Code Annotated 1953
70A-1a-305, Utah Code Annotated 1953
70A-1a-306, Utah Code Annotated 1953
70A-1a-307, Utah Code Annotated 1953
70A-1a-308, Utah Code Annotated 1953
70A-1a-309, Utah Code Annotated 1953
70A-1a-310, Utah Code Annotated 1953

REPEALS:
70A-1-101, as enacted by Chapter 154, Laws of Utah 1965
70A-1-102, as enacted by Chapter 154, Laws of Utah 1965
70A-1-103, as enacted by Chapter 154, Laws of Utah 1965
70A-1-104, as enacted by Chapter 154, Laws of Utah 1965
70A-1-105, as last amended by Chapter 252, Laws of Utah 2000
70A-1-106, as enacted by Chapter 154, Laws of Utah 1965
70A-1-107, as enacted by Chapter 154, Laws of Utah 1965
70A-1-108, as enacted by Chapter 154, Laws of Utah 1965
Be it enacted by the Legislature of the state of Utah:

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


(1) As used in this section:

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

(b) "Governmental unit" has the meaning assigned in Section 70A-9a-102[(45)].

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

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

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

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

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

(b) (i) The lien is a perfected lien upon the effective date of the security agreement.
(ii) The physical delivery, filing, or recording of a security agreement or financing statement under the Uniform Commercial Code or otherwise, or any other similar act, is not necessary to perfect the lien.

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

(d) The lien of the pledge has priority:

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

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

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

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

(ii) provision for payment has been made; or

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

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

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

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

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

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

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

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

(b) a lease of a safe deposit box;

(c) a lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property; or
S.B. 91

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

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

24-1-3. Definitions.

As used in this section:

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

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

(3) "Claimant" means:

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

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

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

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

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

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

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

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

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

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

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

(ii) was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or
(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

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

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

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

(10) "Legislative body" means:

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

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

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

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

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

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

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

(15) "Prosecuting attorney" means:

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

(b) any district attorney or deputy district attorney;
(c) any county attorney or assistant county attorney; and
(d) any other attorney authorized to commence an action on behalf of the state under
this chapter or other provisions of state law.

(16) "Seize for forfeiture" means seizure of property:
(a) by a law enforcement officer or law enforcement agency, including a constructive
seizure; and
(b) accompanied by an assertion by the officer or agency or by a prosecuting attorney
that the property is seized for forfeiture in accordance with this chapter.

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


As used in this chapter:

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

(2) (a) "Distributorship agreement" means any written contract, agreement, or
arrangement between a supplier and a wholesaler pursuant to which the wholesaler has the
right to purchase, resell, and distribute in a designated geographical area any brand of beer
manufactured, imported, or distributed by the supplier.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Except as provided under Subsection (2), a lien upon a vehicle, vessel, or outboard motor, except a lien dependent upon possession, is not valid against the creditors of an owner acquiring a lien by levy or attachment, or subsequent purchasers, or encumbrancers without notice until Sections 41-1a-602 through 41-1a-606 have been complied with.

(2) Security interests in inventory consisting in part of vehicles subject to registration under this chapter, that are held for sale by a person in the business of selling goods of that kind, shall be perfected under Section 70A-9a-310, except that buyers in the ordinary course of business, as defined in Section 70A-1a-306, take free of the security interests as provided in Section 70A-9a-320.

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

46-4-103. Scope.

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

(2) This chapter does not apply to:

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

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

(i) Sections 70A-1-107 and 70A-1-206; and

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

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

(4) A transaction subject to this chapter is also subject to other applicable substantive
(5) Nothing in this chapter requires any county recorder to accept for recording any instrument in electronic form.

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

46-4-403. Transferable records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 1a. UNIFORM COMMERCIAL CODE - GENERAL PROVISIONS


70A-1a-101. Title.

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

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

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

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

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

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

Applicability of supplemental principles of law.

(1) This title must be liberally construed and applied to promote its underlying purposes and policies, which are:
(a) to simplify, clarify, and modernize the law governing commercial transactions;
(b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
(c) to make uniform the law among the various jurisdictions.

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

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

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

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

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

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

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

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

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

In this title, unless the statutory context otherwise requires:

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

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

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

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

Section captions are part of this title.

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

**70A-1a-108. Relation to electronic signatures in global and national commerce act.**
This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this chapter modifies, limits, or supersedes Section 7001(c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act.

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

Part 2. General Definitions and Principles of Interpretation

70A-1a-201. General definitions.

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

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

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

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

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

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

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

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

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

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

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

(j) "Conspicuous," with reference to a term, means so written, displayed, or presented
that a reasonable person against which it is to operate ought to have noticed it. Whether a term
is conspicuous or not is a decision for the court. Conspicuous terms include the following:
(i) a heading in capitals equal to or greater in size than the surrounding text, or in
contrasting type, font, or color to the surrounding text of the same or lesser size; and
(ii) language in the body of a record or display in larger type than the surrounding text,
or in contrasting type, font, or color to the surrounding text of the same size, or set off from
surrounding text of the same size by symbols or other marks that call attention to the language.
(k) "Consumer" means an individual who enters into a transaction primarily for
personal, family, or household purposes.
(l) "Contract," as distinguished from "agreement," means the total legal obligation that
results from the parties' agreement as determined by this title as supplemented by any other
applicable laws.
(m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any
representative of creditors, including an assignee for the benefit of creditors, a trustee in
bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or
assignor's estate.
(n) "Defendant" includes a person in the position of defendant in a counterclaim,
cross-claim, or third-party claim.
(o) "Delivery," with respect to an instrument, document of title, or chattel paper, means
voluntary transfer of possession.
"Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

"Fault" means a default, breach, or wrongful act or omission.

"Fungible goods" means:

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

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

"Genuine" means free of forgery or counterfeiting.

"Good faith," except as otherwise provided in Chapter 5, Uniform Commercial Code - Letters of Credit, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

"Holder" means:

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

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

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

"Insolvent" means:

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

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

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

"Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
(y) "Organization" means a person other than an individual.

(z) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

(aa) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(bb) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(cc) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(dd) "Purchaser" means a person that takes by purchase.

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

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

(gg) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(hh) "Right" includes remedy.

(ii) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9a, Uniform Commercial Code - Secured Transactions.

"Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 70A-2-401, but a buyer may also acquire a "security interest" by complying with Chapter 9a, Uniform Commercial Code - Secured Transactions. Except as otherwise provided in Section 70A-2-505, the right of a seller
or lessor of goods under Chapter 2, Uniform Commercial Code - Sales, or 2A, Uniform Commercial Code - Leases, to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Chapter 9a, Uniform Commercial Code - Secured Transactions. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 70A-2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to Section 70A-1a-203.

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

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

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

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

(ll) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

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

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

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

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


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

(a) has actual knowledge of it:
(b) has received a notice or notification of it; or

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

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

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

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

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

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

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

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

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

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

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

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;
(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
(d) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because:
(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
(b) the lessee assumes risk of loss of the goods;
(c) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
(d) the lessee has an option to renew the lease or to become the owner of the goods;
(e) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
(f) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
(a) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
(b) when the option to become the owner of the goods is granted to the lessee, the price
is stated to be the fair market value of the goods determined at the time the option is to be
performed.

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

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

70A-1a-204. Value.

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

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

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

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

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

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

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

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

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

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

70A-1a-206. Presumptions.

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

Section 22. Section 70A-1a-301 is enacted to read:
Part 3. Territorial Applicability and General Rules

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

(1) In this section:

(a) "Domestic transaction" means a transaction other than an international transaction.

(b) "International transaction" means a transaction that bears a reasonable relation to a country other than the United States.

(2) This section applies to a transaction to the extent that it is governed by another chapter of this title.

(3) Except as otherwise provided in this section:

(a) an agreement by parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of this state or of another state is effective, whether or not the transaction bears a relation to the state designated; and

(b) an agreement by parties to an international transaction that any or all of their rights and obligations are to be determined by the law of this state or of another state or country is effective, whether or not the transaction bears a relation to the state or country designated.

(4) In the absence of an agreement effective under Subsection (3), and except as provided in Subsections (5) and (7), the rights and obligations of the parties are determined by the law that would be selected by application of this state's conflict of laws principles.

(5) If one of the parties to a transaction is a consumer, the following rules apply:

(a) An agreement referred to in Subsection (3) is not effective unless the transaction bears a reasonable relation to the state or country designated.

(b) Application of the law of the state or country determined pursuant to Subsection (3) or (4) may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which both is protective of consumers and may not be varied by agreement:

(i) of the state or country in which the consumer principally resides, unless Subsection (5)(b)(ii) applies; or

(ii) if the transaction is a sale of goods, of the state or country in which the consumer both makes the contract and takes delivery of those goods, if such state or country is not the state or country in which the consumer principally resides.

(6) An agreement otherwise effective under Subsection (3) is not effective to the extent
that application of the law of the state or country designated would be contrary to a fundamental policy of the state or country whose law would govern in the absence of agreement under Subsection (4).

(7) To the extent that this title governs a transaction, if one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a) Section 70A-2-402;
(b) Sections 70A-2a-105 and 70A-2-106;
(c) Section 70A-4-102;
(d) Section 70A-4a-507;
(e) Section 70A-5-116;
(f) Section 70A-8-110; and
(g) Sections 70A-9a-301 through 70A-9a-307.

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

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

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

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

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

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

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

(1) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
(a) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
(b) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

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

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

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

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

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

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

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

(6) Subject to Section 70A-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

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

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

70A-1a-304. Obligation of good faith.
Every contract or duty within this title imposes an obligation of good faith in its
performance and enforcement.

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

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

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

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

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

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

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

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


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

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

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

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

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

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

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

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

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

70A-1a-310. Subordinated obligations.

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

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

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

(1) In this chapter unless the context otherwise requires:
    (a) "Buyer" means a person who buys or contracts to buy goods.
    [(b) "Good faith" in the case of a merchant means honesty in fact and the observance of
reasonable commercial standards of fair dealing in the trade;]
    [(c) "Receipt" of goods means taking physical possession of them.
    [(d) "Seller" means a person who sells or contracts to sell goods.
    (2) Other definitions applying to this chapter or to specified parts thereof, and the
sections in which they appear are:
    (a) "Acceptance." Section 70A-2-606.
    (b) "Banker's credit." Section 70A-2-325.
    (c) "Between merchants." Section 70A-2-104.
    (d) "Cancellation." Subsection 70A-2-106(4).
    (e) "Commercial unit." Section 70A-2-105.
    (f) "Confirmed credit." Section 70A-2-325.
    (g) "Conforming to contract." Section 70A-2-106.
    (h) "Contract for sale." Section 70A-2-106.
    (i) "Cover." Section 70A-2-712.
    (j) "Entrusting." Section 70A-2-403.
(k) "Financing agency." Section 70A-2-104.
(l) "Future goods." Section 70A-2-105.
(m) "Goods." Section 70A-2-105.
(n) "Identification." Section 70A-2-501.
(o) "Installment contract." Section 70A-2-612.
(p) "Letter of Credit." Section 70A-2-325.
(q) "Lot." Section 70A-2-105.
(r) "Merchant." Section 70A-2-104.
(s) "Overseas." Section 70A-2-323.
(t) "Person in position of seller." Section 70A-2-707.
(u) "Present sale." Section 70A-2-106.
(v) "Sale." Section 70A-2-106.
(w) "Sale on approval." Section 70A-2-326.
(x) "Sale or return." Section 70A-2-326.
(y) "Termination." Section 70A-2-106.
(3) "Control" as provided in Section 70A-7a-106, and the following definitions in other chapters apply to this chapter:

(a) "Check." Section 70A-3-104.
(b) "Consignee." Section 70A-7a-102.
(c) "Consignor." Section 70A-7a-102.
(d) "Consumer goods." Section 70A-9a-102.
(e) "Dishonor." Section 70A-3-502.
(f) "Draft." Section 70A-3-104.

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

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

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

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

[(a) (1)] by course of performance, course of dealing, or usage of trade (Section
70A-1-205) [or by course of performance (Section 70A-2-208)]; and

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

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

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

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

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

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

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

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

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

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

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

(i) the lessor does not select, manufacture, or supply the goods;
(ii) the lessee acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) "Chattel paper," Subsection 70A-9a-102(11)[;]
927 (e) "Consumer goods," Subsection 70A-9a-102(23);
928 (f) "Document," Subsection 70A-9a-102(30);
929 (g) "Entrusting," Section 70A-2-403;
930 (h) "General intangible," Subsection 70A-9a-102(42);
931 (i) "Good faith," Section 70A-2-103;
932 (j) "Instrument," Subsection 70A-9a-102(47);
933 (k) "Merchant," Section 70A-2-104;
934 (l) "Mortgage," Subsection 70A-9a-102(55);
935 (m) "Pursuant to commitment," Subsection 70A-9a-102(68);
936 (n) "Receipt," Section 70A-2-103;
937 (o) "Sale," Section 70A-2-106;
938 (p) "Sale on approval," Section 70A-2-326;
939 (q) "Sale or return," Section 70A-2-326;
940 (r) "Seller," Section 70A-2-103.
941 (4) In addition, Title 70A, Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.
942 Section 35. Section 70A-2a-501 is amended to read:
944 (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.
945 (2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.
946 (3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.
947 (4) Except as otherwise provided in Section 70A-1-106 Subsection 70A-1a-305(1), in this chapter, or in the lease agreement, the rights and remedies referred to in Subsections (2) and (3) are cumulative.
(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this section as to the goods, or under other applicable law as to both the real property and the goods in accordance with that person's rights and remedies in respect of the real property, in which case this section does not apply.

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

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

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

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

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

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

(3) If a lessee's cover is by lease agreement that qualifies for treatment under Subsection (2), the lessee may elect to proceed under Subsection (2) or Section 70A-2a-519. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor under Section 70A-2a-519 as if the lessee had elected not to cover.

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

70A-2a-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.
(1) Except as otherwise provided with respect to damages liquidated in the lease agreement as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement of the parties as provided in [Subsection 70A-1-102 (3) and Section] Sections 70A-1a-302 and 70A-2a-503, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement whether or not the lease agreement qualifies for treatment under Subsection 70A-2a-518(2), or is by purchase or otherwise, the measure of damages for default by the lessor under Section 70A-2a-508 is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

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

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

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

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

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

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

(a) accrued and unpaid rent as of the date of the commencement of the term of the new
lease agreement;
(b) the present value, as of the date of the commencement of the term of the new lease
agreement, of the difference between the total rent for the then remaining lease term of the
original lease agreement minus the present value, as of the same date, of the rent under the new
lease agreement applicable to that period of the new lease term which is comparable to the then
remaining term of the original lease agreement; and
(c) any incidental damages allowed under Section 70A-2a-530, less expenses saved in
consequence of the lessee's default.

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

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for
value as a result of a disposition under this section takes the goods free of the original lease
contract and any rights of the original lessee even though the lessor fails to comply with one or
more of the requirements of this chapter.

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

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

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

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

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

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

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

(2) If the measure of damages provided in Subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 70A-2a-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

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

70A-3-103. Definitions.

(1) In this chapter:

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

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

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

[(d) "Good faith" means honesty in fact in the conduct or transaction concerned:] [(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.]

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

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

[(g)] (g) "Party" means a party to an instrument.

[(h)] (h) "Promise" means a written undertaking to pay money signed by the person
undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise
unless the obligor also undertakes to pay the obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) "Consideration," Section 70A-3-303[.]
The following definitions in other chapters apply to this chapter:

- "Bank," Section 70A-4-105.
- "Banking day," Section 70A-4-104.
- "Clearinghouse," Section 70A-4-104.
- "Collecting bank," Section 70A-4-105.
- "Depositary bank," Section 70A-4-105.
Section 41. Section 70A-4-104 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) "Depositary bank," Section 70A-4-105[;]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) "Order," Section 70A-3-103[;]
(4) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 42. Section 70A-4a-105 is amended to read:

70A-4a-105. Other definitions.

(1) In this chapter:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking, and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]
"Prove" with respect to a fact means to meet the burden of establishing the fact under Subsection [70A-1-201(8)] 70A-1a-201(2)(h).

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

(a) "Acceptance," Section 70A-4a-209.[;]
(b) "Beneficiary," Section 70A-4a-103[;].
(c) "Beneficiary's bank," Section 70A-4a-103[;].
(d) "Executed," Section 70A-4a-301[;].
(e) "Execution date," Section 70A-4a-301[;].
(f) "Funds transfer system rule," Section 70A-4a-501[;].
(g) "Funds transfer," Section 70A-4a-104[;].
(h) "Intermediary bank," Section 70A-4a-104[;].
(i) "Originator," Section 70A-4a-104[;].
(j) "Originator's bank," Section 70A-4a-104[;].
(k) "Payment by beneficiary's bank to beneficiary," Section 70A-4a-405[;].
(l) "Payment by originator to beneficiary," Section 70A-4a-406[;].
(m) "Payment by sender, to receiving bank," Section 70A-4a-403[;].
(n) "Payment date," Section 70A-4a-401[;].
(o) "Payment order," Section 70A-4a-103[;].
(p) "Receiving bank," Section 70A-4a-103[;].
(q) "Security procedure," Section 70A-4a-201[;].
r) "Sender," Section 70A-4a-103.

(3) The following definitions in Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, apply to this chapter:

(a) "Clearinghouse," Section 70A-4-104[;].
(b) "Item," Section 70A-4-104[;].
(c) "Suspends payments," Section 70A-4-104.

(4) In addition, [Title 70A,] Chapter [1] 1a, Uniform Commercial Code [-]- General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

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

70A-4a-106. Time payment order is received.
(1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Subsection 70A-1-201(27) Section 70A-1a-202. A receiving bank may fix a cutoff time or times on a funds transfer business day, as a cutoff time for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to receipt of payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds transfer business day or after the appropriate cutoff time on a funds transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds transfer business day.

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

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

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

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

(b) However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer’s account was debited with respect to the order.
The bank is not entitled to any recovery from the customer on account of a failure
by the customer to give notification as stated in this section.
(2) Reasonable time under Subsection (1) may be fixed by agreement as stated in
Subsection [70A-1-204(1)] 70A-1a-302(2), but the obligation of a receiving bank to refund
payment as stated in Subsection (1) may not otherwise be varied by agreement.
Section 45. Section 70A-5-103 is amended to read:
70A-5-103. Scope.
(1) This chapter applies to letters of credit and to certain rights and obligations arising
out of transactions involving letters of credit.
(2) The statement of a rule in this chapter does not by itself require, imply, or negate
application of the same or a different rule to a situation not provided for, or to a person not
specified, in this chapter.
(3) With the exception of this Subsection (3), Subsections (1) and (4), Subsections
70A-5-102(9) and (10), 70A-5-106(4), and 70A-5-114(4), and except to the extent prohibited
in [Subsections 70A-1-102(3)] Section 70A-1a-302 and Subsection 70A-5-117(4), the effect of
this chapter may be varied by agreement or by a provision stated or incorporated by reference
in an undertaking. A term in an agreement or undertaking generally excusing liability or
generally limiting remedies for failure to perform obligations is not sufficient to vary
obligations prescribed by this chapter.
(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a
letter of credit are independent of the existence, performance, or nonperformance of a contract
or arrangement out of which the letter of credit arises or which underlies it, including contracts
or arrangements between the issuer and the applicant and between the applicant and the
beneficiary.
Section 46. Section 70A-7a-102 is amended to read:
70A-7a-102. Definitions and index of definitions.
(1) In this chapter, unless the context otherwise requires:
(a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other
document of title acknowledges possession of goods and contracts to deliver them.
(b) "Carrier" means a person that issues a bill of lading.
(c) "Consignee" means a person named in a bill of lading to which or to whose order
the bill promises delivery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Lessee in the ordinary course of business," Section 70A-2a-103.
1361 (c) "Receipt" of goods, Section 70A-2-103.
1362 (3) In addition, Chapter [1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.
1365 Section 47. Section 70A-8-101 is amended to read:
1367 (1) As used in this chapter:
1368 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
1369 (b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.
1370 (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
1371 (d) "Certificated security" means a security that is represented by a certificate.
1372 (e) "Clearing corporation" means:
1373 (i) a person that is registered as a "clearing agency" under the federal securities laws;
1374 (ii) a federal reserve bank; or
1375 (iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.
1376 (f) "Communicate" means to:
1377 (i) send a signed writing; or
1378 (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.
1379 (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that
person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) (i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:

(A) a security;

(B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if that securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

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

[j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing:]

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

[k] "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

[l] "Registered form," as applied to a certificated security, means a form in which:

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

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.
"Securities intermediary" means:

(i) a clearing corporation; or

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

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

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

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

(iii) which:

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

or

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

"Security certificate" means a certificate representing a security.

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

"Uncertificated security" means a security that is not represented by a certificate.

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

(a) "Appropriate person," Section 70A-8-106;

(b) "Control," Section 70A-8-105;

(c) "Delivery," Section 70A-8-301;

(d) "Investment company security," Section 70A-8-102;

(e) "Issuer," Section 70A-8-201;

(f) "Overissue," Section 70A-8-210;

(g) "Protected purchaser," Section 70A-8-303;

(h) "Securities account," Section 70A-8-501.
(3) In addition, Chapter [1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

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

Section 48. Section 70A-9a-102 is amended to read:

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

In this chapter:

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

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

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

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(b) "Account" includes health-care-insurance receivables.

(c) "Account" does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) investment property;
(v) letter-of-credit rights or letters of credit; or
(vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) (a) "Account debtor" means a person obligated on an account, chattel paper, or general intangible.
    (b) "Account debtor" does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:
    (a) authenticated by a secured party;
    (b) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
    (c) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:
    (a) which secures payment or performance of an obligation for:
        (i) goods or services furnished in connection with a debtor's farming operation; or
        (ii) rent on real property leased by a debtor in connection with its farming operation;
    (b) which is created by statute in favor of a person that:
        (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
        (ii) leased real property to a debtor in connection with the debtor's farming operation; and
    (c) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:
    (a) oil, gas, or other minerals that are subject to a security interest that:
        (i) is created by a debtor having an interest in the minerals before extraction; and
        (ii) attaches to the minerals as extracted; or
    (b) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:
(a) to sign; or
(b) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) (a) "Bank" means an organization that is engaged in the business of banking.
(b) "Bank" includes:
(i) a depository institution as defined in Section 7-1-103; and
(ii) a trust company.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) (a) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this Subsection (11), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.
(b) "Chattel paper" does not include:
(i) charters or other contracts involving the use or hire of a vessel; or
(ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained or for use with the card.
(c) If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien.
"Collateral" includes:
(a) proceeds to which a security interest attaches;
(b) accounts, chattel paper, payment intangibles, and promissory notes that have been
sold; and
(c) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:
(a) the claimant is an organization; or
(b) the claimant is an individual and the claim:
   (i) arose in the course of the claimant's business or profession; and
   (ii) does not include damages arising out of personal injury to or the death of an
   individual.

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

(15) "Commodity contract" means a commodity futures contract, an option on a
commodity futures contract, a commodity option, or another contract if the contract or option
is:
   (a) traded on or subject to the rules of a board of trade that has been designated as a
   contract market for such a contract pursuant to federal commodities laws; or
   (b) traded on a foreign commodity board of trade, exchange, or market, and is carried
   on the books of a commodity intermediary for a commodity customer.

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

(17) "Commodity intermediary" means a person that:
   (a) is registered as a futures commission merchant under federal commodities law; or
   (b) in the ordinary course of its business provides clearance or settlement services for a
   board of trade that has been designated as a contract market pursuant to federal commodities
   law.

(18) "Communicate" means:
   (a) to send a written or other tangible record;
   (b) to transmit a record by any means agreed upon by the persons sending and
   receiving the record; or
   (c) in the case of transmission of a record to or by a filing office, to transmit a record
   by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.
"Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(a) the merchant:
   (i) deals in goods of that kind under a name other than the name of the person making delivery;
   (ii) is not an auctioneer; and
   (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

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

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

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

"Consignor" means a person that delivers goods to a consignee in a consignment.

"Consumer debtor" means a debtor in a consumer transaction.

"Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

"Consumer-goods transaction" means a consumer transaction in which:

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

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

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

"Consumer transaction" means a transaction in which:

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

(b) a security interest secures the obligation; and

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

"Consumer transaction" includes consumer-goods transactions.

"Continuation statement" means an amendment of a financing statement which:
(a) identifies, by its file number, the initial financing statement to which it relates; and
(b) indicates that it is a continuation statement for, or that it is filed to continue the
effectiveness of, the identified financing statement.

(28) "Debtor" means:
(a) a person having an interest, other than a security interest or other lien, in the
collateral, whether or not the person is an obligor;
(b) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
(c) a consignee.

(29) (a) "Deposit account" means a demand, time, savings, passbook, or similar
account maintained with a bank.
(b) "Deposit account" does not include investment property or accounts evidenced by
an instrument.

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

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records
consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property.
"Encumbrance" includes mortgages and other liens on real property.

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

(34) "Farm products" means goods, other than standing timber, with respect to which
the debtor is engaged in a farming operation and which are:
(a) crops grown, growing, or to be grown, including:
(i) crops produced on trees, vines, and bushes; and
(ii) aquatic goods produced in aquacultural operations;
(b) livestock, born or unborn, including aquatic goods produced in aquacultural
operations;
(c) supplies used or produced in a farming operation; or
(d) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or
any other farming, livestock, or aquacultural operation.
"File number" means the number assigned to an initial financing statement pursuant to Subsection 70A-9a-519(1).

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

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

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

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

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

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

(a) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction.

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

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

"Goods" means all things that are movable when a security interest attaches.

(i) fixtures;

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

(iii) the unborn young of animals;

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

(v) manufactured homes.

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

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

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

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

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

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

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

(45) "Health-care-insurance receivable" means an interest in or claim under a
policy of insurance which is a right to payment of a monetary obligation for health-care goods
or services provided.

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

(b) "Instrument" does not include:

(i) investment property;

(ii) letters of credit; or

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

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

(a) are leased by a person as lessor;

(b) are held by a person for sale or lease or to be furnished under a contract of service;
(c) are furnished by a person under a contract of service; or
(d) consist of raw materials, work in process, or materials used or consumed in a
business.

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

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

(50) (a) "Letter-of-credit right" means a right to payment or performance under a
letter of credit, whether or not the beneficiary has demanded or is at the time entitled to
demand payment or performance.
(b) "Letter-of-credit right" does not include the right of a beneficiary to demand
payment or performance under a letter of credit.

(51) "Lien creditor" means:
(a) a creditor that has acquired a lien on the property involved by attachment, levy, or
the like;
(b) an assignee for benefit of creditors from the time of assignment;
(c) a trustee in bankruptcy from the date of the filing of the petition; or
(d) a receiver in equity from the time of appointment.

(52) (a) "Manufactured home" means a structure, transportable in one or more
sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or
more in length, or, when erected on site, is 320 or more square feet, and which is built on a
permanent chassis and designed to be used as a dwelling with or without a permanent
foundation when connected to the required utilities, and includes the plumbing, heating,
air-conditioning, and electrical systems contained therein.
(b) "Manufactured home" includes any structure that meets all of the requirements of
this Subsection (52) except the size requirements and with respect to which the
manufacturer voluntarily files a certification required by the United States Secretary of Housing
and Urban Development and complies with the standards established under Title 42 of the
United States Code.

(53) "Manufactured-home transaction" means a secured transaction:
(a) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
(b) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

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

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

[(57)] (56) (a) "New value" means:
(i) money;
(ii) money's worth in property, services, or new credit; or
(iii) release by a transferee of an interest in property previously transferred to the transferee.

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

[(58)] (57) "Noncash proceeds" means proceeds other than cash proceeds.

[(59)] (58) (a) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:
(i) owes payment or other performance of the obligation;
(ii) has provided property other than the collateral to secure payment or other performance of the obligation; or
(iii) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(b) "Obligor" does not include issuers or nominated persons under a letter of credit.

[(60)] (59) "Original debtor," except as used in Subsection 70A-9a-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Subsection 70A-9a-203(4).

[(61)] (60) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

[(62)] (61) "Person related to," with respect to an individual, means:
(a) the spouse of the individual;
(b) a brother, brother-in-law, sister, or sister-in-law of the individual;
(c) an ancestor or lineal descendant of the individual or the individual's spouse; or
(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to," with respect to an organization, means:
(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
(b) an officer or director of, or a person performing similar functions with respect to, the organization;
(c) an officer or director of, or a person performing similar functions with respect to, a person described in Subsection [(63) (62) (a)];
(d) the spouse of an individual described in Subsection [(63) (62) (a), (b), or (c)]; or
(e) an individual who is related by blood or marriage to an individual described in Subsection [(63) (62) (a), (b), (c), or (d) and shares the same home with the individual.

"Proceeds," except as used in Subsection 70A-9a-609(2), means the following property:
(a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
(b) whatever is collected on, or distributed on account of, collateral;
(c) rights arising out of collateral;
(d) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
(e) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

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

"Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 70A-9a-620, 70A-9a-621, and 70A-9a-622.
"Public-finance transaction" means a secured transaction in connection with which:

(a) debt securities are issued;
(b) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
(c) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

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

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

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

"Secondary obligor" means an obligor to the extent that:
(a) the obligor's obligation is secondary; or
(b) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

"Secured party" means:
(a) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
(b) a person that holds an agricultural lien;
(c) a consignor;
(d) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
(e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
(f) a person that holds a security interest arising under Section 70A-2-401, 70A-2-505, 70A-4-210, or 70A-5-118 or Subsection 70A-2-711(3) or 70A-2a-508(5).

[(73)] (72) "Security agreement" means an agreement that creates or provides for a security interest.

[(74)] (73) "Send," in connection with a record or notification, means:

(a) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(b) to cause the record or notification to be received within the time that it would have been received if properly sent under Subsection [(74)] (73)(a).

[(75)] (74) (a) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program.

(b) "Software" does not include a computer program that is included in the definition of goods.

[(76)] (75) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[(77)] (76) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

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

[(79)] (78) "Termination statement" means an amendment of a financing statement which:

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

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

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

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

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

(c) transmitting goods by pipeline or sewer; or
Section 49. Section 70A-9a-102.1 is amended to read:

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

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

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

(b) "Beneficiary" Section 70A-5-102.

(c) "Broker" Section 70A-8-101.

(d) "Certificated security" Section 70A-8-101.

(e) "Check" Section 70A-3-104.

(f) "Clearing corporation" Section 70A-8-101.

(g) "Contract for sale" Section 70A-2-106.

(h) "Customer" Section 70A-4-104.

(i) "Entitlement holder" Section 70A-8-101.

(j) "Financial asset" Section 70A-8-101.

(k) "Holder in due course" Section 70A-3-302.

(l) (i) "Issuer" (with respect to a letter of credit or letter-of-credit right) Section 70A-5-102.

(ii) "Issuer" (with respect to a security) Section 70A-8-201.

(iii) "Issuer" (with respect to documents of title) Section 70A-7a-102.

(m) "Lease" Section 70A-2a-103.

(n) "Lease agreement" Section 70A-2a-103.

(o) "Lease contract" Section 70A-2a-103.

(p) "Leasehold interest" Section 70A-2a-103.

(q) "Lessee" Section 70A-2a-103.

(r) "Lessee in ordinary course of business" Section 70A-2a-103.

(s) "Lessor" Section 70A-2a-103.

(t) "Lessor's residual interest" Section 70A-2a-103.

(u) "Letter of credit" Section 70A-5-102.

(v) "Merchant" Section 70A-2-104.

(w) "Negotiable instrument" Section 70A-3-104.
1888 (x) "Nominated person" Section 70A-5-102.
1889 (y) "Note" Section 70A-3-104.
1890 (z) "Proceeds of a letter of credit" Section 70A-5-114.
1891 (aa) "Prove" Section 70A-3-103.
1892 (bb) "Sale" Section 70A-2-106.
1893 (cc) "Securities account" Section 70A-8-501.
1894 (dd) "Securities intermediary" Section 70A-8-101.
1895 (ee) "Security" Section 70A-8-101.
1897 (gg) "Security entitlement" Section 70A-8-101.
1898 (hh) "Uncertificated security" Section 70A-8-101.
1899 (2) Chapter [1, 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.
1900 Section 50. Section 70A-10-104 is amended to read:
1901 70A-10-104. Laws not repealed.
1902 Chapter 7a, Uniform Commercial Code - Documents of Title, does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title as defined in Section [70A-1-201] 70A-1a-201.
1909 Section 51. Section 70C-2-204 is amended to read:
1910 70C-2-204. Certain negotiable instruments prohibited.
1911 With respect to a consumer credit sale not involving real property, the seller may not take a negotiable instrument under Section 70A-3-104 other than a check as evidence of the obligation of the buyer. A holder is not in good faith under Subsection [70A-1-201(19)] 70A-1a-201(2)(t) if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course under Section 70A-3-302 is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties under Section 70C-7-201.
1917 Section 52. Repealer.
1918 This bill repeals:
Section 70A-1-101, Short title.

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

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

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

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

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

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

Section 70A-1-108, Severability.

Section 70A-1-109, Section captions.

Section 70A-1-201, General definitions.

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

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

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

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

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

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

Section 70A-2-208, Course of performance or practical construction.

Section 70A-2a-207, Course of performance or practical construction.

Legislative Review Note
as of 11-27-06 1:04 PM

Office of Legislative Research and General Counsel
Fiscal Note

2007 General Session
State of Utah

State Impact
Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact
Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/2/2007, 8:09:51 AM, Lead Analyst: Eckersley, S.
Office of the Legislative Fiscal Analyst