

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

A Bill

ACT 1070 OF 1997
SENATE BILL 318

5 By: Senator Everett
6
7

For An Act To Be Entitled

"REVISED ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE."

Subtitle

"REVISED ARTICLE 5 OF THE UNIFORM
COMMERCIAL CODE."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. Chapter 5 of Title 4 of the Arkansas Code is amended to read
19 as follows:

20 "4-5-101. SHORT TITLE. This chapter may be cited as Uniform
21 Commercial Code--Letters of Credit.

22 ~~4-5-101. Short title.~~

23 ~~This chapter shall be known and may be cited as "Uniform Commercial Code~~
24 ~~Letters of Credit."~~

26 4-5-102. DEFINITIONS.

27 (a) In this chapter:

28 (1) Adviser means a person who, at the request of the issuer, a
29 confirmer, or another adviser, notifies or requests another adviser to notify
30 the beneficiary that a letter of credit has been issued, confirmed, or
31 amended.

32 (2) Applicant means a person at whose request or for whose
33 account a letter of credit is issued. The term includes a person who requests
34 an issuer to issue a letter of credit on behalf of another if the person
35 making the request undertakes an obligation to reimburse the issuer.

36 (3) Beneficiary means a person who under the terms of a letter

1 of credit is entitled to have its complying presentation honored. The term
2 includes a person to whom drawing rights have been transferred under a
3 transferable letter of credit.

4 (4) Confirmer means a nominated person who undertakes, at the
5 request or with the consent of the issuer, to honor a presentation under a
6 letter of credit issued by another.

7 (5) Dishonor of a letter of credit means failure timely to honor
8 or to take an interim action, such as acceptance of a draft, that may be
9 required by the letter of credit.

10 (6) Document means a draft or other demand, document of title,
11 investment security, certificate, invoice, or other record, statement, or
12 representation of fact, law, right, or opinion (i) which is presented in a
13 written or other medium permitted by the letter of credit or, unless
14 prohibited by the letter of credit, by the standard practice referred to in
15 Section 4-5-108(e) and (ii) which is capable of being examined for compliance
16 with the terms and conditions of the letter of credit. A document may not be
17 oral.

18 (7) Good faith means honesty in fact in the conduct or
19 transaction concerned.

20 (8) Honor of a letter of credit means performance of the
21 issuer's undertaking in the letter of credit to pay or deliver an item of
22 value. Unless the letter of credit otherwise provides, honor occurs

23 (i) upon payment,

24 (ii) if the letter of credit provides for acceptance, upon
25 acceptance of a draft and, at maturity, its payment, or

26 (iii) if the letter of credit provides for incurring a
27 deferred obligation, upon incurring the obligation and, at maturity, its
28 performance.

29 (9) Issuer means a bank or other person that issues a letter of
30 credit, but does not include an individual who makes an engagement for
31 personal, family, or household purposes.

32 (10) Letter of credit means a definite undertaking that
33 satisfies the requirements of Section 4-5-104 by an issuer to a beneficiary at
34 the request or for the account of an applicant or, in the case of a financial
35 institution, to itself or for its own account, to honor a documentary
36 presentation by payment or delivery of an item of value.

1 (11) Nominated person means a person whom the issuer (i)
 2 designates or authorizes to pay, accept, negotiate, or otherwise give value
 3 under a letter of credit and (ii) undertakes by agreement or custom and
 4 practice to reimburse.

5 (12) Presentation means delivery of a document to an issuer or
 6 nominated person for honor or giving of value under a letter of credit.

7 (13) Presenter means a person making a presentation as or on
 8 behalf of a beneficiary or nominated person.

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

12 (15) Successor of a beneficiary means a person who succeeds to
 13 substantially all of the rights of a beneficiary by operation of law,
 14 including a corporation with or into which the beneficiary has been merged or
 15 consolidated, an administrator, executor, personal representative, trustee in
 16 bankruptcy, debtor in possession, liquidator, and receiver.

17 (b) Definitions in other Chapters applying to this chapter and the
 18 sections in which they appear are:

19 Accept or Acceptance Section 4-3-409

20 Value Sections 4-3-303, 4-4-211

21 (c) Chapter 1 contains certain additional general definitions and
 22 principles of construction and interpretation applicable throughout this
 23 chapter.

24 ~~4-5-102. Scope.~~

25 ~~(1) This chapter applies:~~

26 ~~(a) To a credit issued by a bank if the credit requires a documentary~~
 27 ~~draft or a documentary demand for payment; and~~

28 ~~(b) To a credit issued by a person other than a bank if the credit~~
 29 ~~requires that the draft or demand for payment be accompanied by a document of~~
 30 ~~title; and~~

31 ~~(c) To a credit issued by a bank or other person if the credit is not~~
 32 ~~within subparagraphs (a) or (b) but conspicuously states that it is a letter~~
 33 ~~of credit or is conspicuously so entitled.~~

34 ~~(2) Unless the engagement meets the requirements of subsection (1),~~
 35 ~~this chapter does not apply to engagements to make advances or to honor drafts~~
 36 ~~or demands for payment, to authorities to pay or purchase, to guarantees or to~~

1 ~~general agreements.~~

2 ~~—— (3) This chapter deals with some but not all of the rules and concepts~~
 3 ~~of letters of credit as such rules or concepts have developed prior to~~
 4 ~~midnight, December 31, 1961, or may thereafter develop. The fact that this~~
 5 ~~chapter states a rule does not by itself require, imply, or negate application~~
 6 ~~of the same or a converse rule to a situation not provided for or to a person~~
 7 ~~not specified by this chapter.~~

8

9 4-5-103. SCOPE.

10 (a) This chapter applies to letters of credit and to certain rights and
 11 obligations arising out of transactions involving letters of credit.

12 (b) The statement of a rule in this chapter does not by itself require,
 13 imply, or negate application of the same or a different rule to a situation
 14 not provided for, or to a person not specified, in this chapter.

15 (c) With the exception of this subsection, subsections (a) and (d),
 16 Sections 4-5-102(a)(9) and (10), 4-5-106(d), and 4-5-114(d), and except to the
 17 extent prohibited in Sections 4-1-102(3) and 4-5-117(d), the effect of this
 18 chapter may be varied by agreement or by a provision stated or incorporated by
 19 reference in an undertaking. A term in an agreement or undertaking generally
 20 excusing liability or generally limiting remedies for failure to perform
 21 obligations is not sufficient to vary obligations prescribed by this chapter.

22 (d) Rights and obligations of an issuer to a beneficiary or a nominated
 23 person under a letter of credit are independent of the existence, performance,
 24 or nonperformance of a contract or arrangement out of which the letter of
 25 credit arises or which underlies it, including contracts or arrangements
 26 between the issuer and the applicant and between the applicant and the
 27 beneficiary.

28 ~~—— 4-5-103. Definitions.~~

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

30 ~~—— (a) "Credit" or "letter of credit" means an engagement by a bank or~~
 31 ~~other person made at the request of a customer and of a kind within the scope~~
 32 ~~of this chapter ([§] 4-5-102) that the issuer will honor drafts or other demands~~
 33 ~~for payment upon compliance with the conditions specified in the credit. A~~
 34 ~~credit may be either revocable or irrevocable. The engagement may be either an~~
 35 ~~agreement to honor or a statement that the bank or other person is authorized~~
 36 ~~to honor.~~

1 ~~_____ (b) A "documentary draft" or a "documentary demand for payment" is one~~
 2 ~~honor of which is conditioned upon the presentation of a document or~~
 3 ~~documents. "Document" means any paper including document of title, security,~~
 4 ~~invoice, certificate, notice of default, and the like.~~

5 ~~_____ (c) An "issuer" is a bank or other person issuing a credit.~~

6 ~~_____ (d) A "beneficiary" of a credit is a person who is entitled under its~~
 7 ~~terms to draw or demand payment.~~

8 ~~_____ (e) An "advising bank" is a bank which gives notification of the~~
 9 ~~issuance of a credit by another bank.~~

10 ~~_____ (f) A "confirming bank" is a bank which engages either that it will~~
 11 ~~itself honor a credit already issued by another bank or that such a credit~~
 12 ~~will be honored by the issuer or a third bank.~~

13 ~~_____ (g) A "customer" is a buyer or other person who causes an issuer to~~
 14 ~~issue a credit. The term also includes a bank which procures issuance or~~
 15 ~~confirmation on behalf of that bank's customer.~~

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

18 ~~_____ "Notation of credit". § 4-5-108.~~

19 ~~_____ "Presenter". § 4-5-112(3).~~

20 ~~_____ (3) Definitions in other chapters applying to this chapter and the~~
 21 ~~sections in which they appear are:~~

22 ~~_____ "Accept or acceptance". § 4-3-410.~~

23 ~~_____ "Contract for sale". § 4-2-106.~~

24 ~~_____ "Draft". § 4-3-104.~~

25 ~~_____ "Holder in due course". § 4-3-302.~~

26 ~~_____ "Midnight deadline". § 4-4-104.~~

27 ~~_____ "Security". § 4-8-102.~~

28 ~~_____ (4) In addition, chapter 1 of this title contains general definitions~~
 29 ~~and principles of construction and interpretation applicable throughout this~~
 30 ~~chapter.~~

31

32 4-5-104. FORMAL REQUIREMENTS. A letter of credit, confirmation,
 33 advice, transfer, amendment, or cancellation may be issued in any form that is
 34 a record and is authenticated (i) by a signature or (ii) in accordance with
 35 the agreement of the parties or the standard practice referred to in Section
 36 4-5-108(e).

1 ~~4-5-104. Formal requirements -- Signing.~~

2 ~~(1) Except as otherwise required in § 4-5-102(1)(c) on scope, no~~
 3 ~~particular form of phrasing is required for a credit. A credit must be in~~
 4 ~~writing and signed by the issuer and a confirmation must be in writing and~~
 5 ~~signed by the confirming bank. A modification of the terms of a credit or~~
 6 ~~confirmation must be signed by the issuer or confirming bank.~~

7 ~~(2) A telegram may be a sufficient signed writing if it identifies its~~
 8 ~~sender by an authorized authentication. The authentication may be in code, and~~
 9 ~~the authorized naming of the issuer in an advice of credit is a sufficient~~
 10 ~~signing.~~

11

12 4-5-105. CONSIDERATION. Consideration is not required to issue, amend,
 13 transfer, or cancel a letter of credit, advice, or confirmation.

14 ~~4-5-105. Consideration.~~

15 ~~No consideration is necessary to establish a credit or to enlarge or~~
 16 ~~otherwise modify its terms.~~

17

18 4-5-106. ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION.

19 (a) A letter of credit is issued and becomes enforceable according to
 20 its terms against the issuer when the issuer sends or otherwise transmits it
 21 to the person requested to advise or to the beneficiary. A letter of credit
 22 is revocable only if it so provides.

23 (b) After a letter of credit is issued, rights and obligations of a
 24 beneficiary, applicant, confirmer, and issuer are not affected by an amendment
 25 or cancellation to which that person has not consented except to the extent
 26 the letter of credit provides that it is revocable or that the issuer may
 27 amend or cancel the letter of credit without that consent.

28 (c) If there is no stated expiration date or other provision that
 29 determines its duration, a letter of credit expires one year after its stated
 30 date of issuance or, if none is stated, after the date on which it is issued.

31 (d) A letter of credit that states that it is perpetual expires five
 32 years after its stated date of issuance, or if none is stated, after the date
 33 on which it is issued.

34 ~~4-5-106. Time and effect of establishment of credit.~~

35 ~~(1) Unless otherwise agreed a credit is established:~~

36 ~~(a) As regards the customer as soon as a letter of credit is sent to~~

1 ~~him or the letter of credit or an authorized written advice of its issuance is~~
2 ~~sent to the beneficiary; and~~

3 ~~_____ (b) As regards the beneficiary when he receives a letter of credit or~~
4 ~~an authorized written advice of its issuance.~~

5 ~~_____ (2) Unless otherwise agreed once an irrevocable credit is established~~
6 ~~as regards the customer it can be modified or revoked only with the consent of~~
7 ~~the customer and once it is established as regards the beneficiary it can be~~
8 ~~modified or revoked only with his consent.~~

9 ~~_____ (3) Unless otherwise agreed after a revocable credit is established it~~
10 ~~may be modified or revoked by the issuer without notice to or consent from the~~
11 ~~customer or beneficiary.~~

12 ~~_____ (4) Notwithstanding any modification or revocation of a revocable~~
13 ~~credit any person authorized to honor or negotiate under the terms of the~~
14 ~~original credit is entitled to reimbursement for or honor of any draft or~~
15 ~~demand for payment duly honored or negotiated before receipt of notice of the~~
16 ~~modification or revocation and the issuer in turn is entitled to reimbursement~~
17 ~~from its customer.~~

18

19 4-5-107. CONFIRMER, NOMINATED PERSON, AND ADVISER.

20 (a) A confirmer is directly obligated on a letter of credit and has the
21 rights and obligations of an issuer to the extent of its confirmation. The
22 confirmer also has rights against and obligations to the issuer as if the
23 issuer were an applicant and the confirmer had issued the letter of credit at
24 the request and for the account of the issuer.

25 (b) A nominated person who is not a confirmer is not obligated to honor
26 or otherwise give value for a presentation.

27 (c) A person requested to advise may decline to act as an adviser. An
28 adviser that is not a confirmer is not obligated to honor or give value for a
29 presentation. An adviser undertakes to the issuer and to the beneficiary
30 accurately to advise the terms of the letter of credit, confirmation,
31 amendment, or advice received by that person and undertakes to the beneficiary
32 to check the apparent authenticity of the request to advise. Even if the
33 advice is inaccurate, the letter of credit, confirmation, or amendment is
34 enforceable as issued.

35 (d) A person who notifies a transferee beneficiary of the terms of a
36 letter of credit, confirmation, amendment, or advice has the rights and

1 obligations of an adviser under subsection (c). The terms in the notice to
 2 the transferee beneficiary may differ from the terms in any notice to the
 3 transferor beneficiary to the extent permitted by the letter of credit,
 4 confirmation, amendment, or advice received by the person who so notifies.

5 ~~4-5-107. Advice of credit - Confirmation - Error in statement of terms.~~

6 ~~(1) Unless otherwise specified an advising bank by advising a credit~~
 7 ~~issued by another bank does not assume any obligation to honor drafts drawn or~~
 8 ~~demands for payment made under the credit but it does assume obligation for~~
 9 ~~the accuracy of its own statement.~~

10 ~~(2) A confirming bank by confirming a credit becomes directly obligated~~
 11 ~~on the credit to the extent of its confirmation as though it were its issuer~~
 12 ~~and acquires the rights of an issuer.~~

13 ~~(3) Even though an advising bank incorrectly advises the terms of a~~
 14 ~~credit it has been authorized to advise the credit is established as against~~
 15 ~~the issuer to the extent of its original terms.~~

16 ~~(4) Unless otherwise specified the customer bears as against the issuer~~
 17 ~~all risks of transmission and reasonable translation or interpretation of any~~
 18 ~~message relating to a credit.~~

19

20 4-5-108. ISSUER'S RIGHTS AND OBLIGATIONS.

21 (a) Except as otherwise provided in Section 4-5-109, an issuer shall
 22 honor a presentation that, as determined by the standard practice referred to
 23 in subsection (e), appears on its face strictly to comply with the terms and
 24 conditions of the letter of credit. Except as otherwise provided in Section
 25 4-5-113 and unless otherwise agreed with the applicant, an issuer shall
 26 dishonor a presentation that does not appear so to comply.

27 (b) An issuer has a reasonable time after presentation, but not beyond
 28 the end of the seventh business day of the issuer after the day of its receipt
 29 of documents:

30 (1) to honor,

31 (2) if the letter of credit provides for honor to be completed
 32 more than seven business days after presentation, to accept a draft or incur a
 33 deferred obligation, or

34 (3) to give notice to the presenter of discrepancies in the
 35 presentation.

36 (c) Except as otherwise provided in subsection (d), an issuer is

1 precluded from asserting as a basis for dishonor any discrepancy if timely
2 notice is not given, or any discrepancy not stated in the notice if timely
3 notice is given.

4 (d) Failure to give the notice specified in subsection (b) or to
5 mention fraud, forgery, or expiration in the notice does not preclude the
6 issuer from asserting as a basis for dishonor fraud or forgery as described in
7 Section 4-5-109(a) or expiration of the letter of credit before presentation.

8 (e) An issuer shall observe standard practice of financial institutions
9 that regularly issue letters of credit. Determination of the issuer's
10 observance of the standard practice is a matter of interpretation for the
11 court. The court shall offer the parties a reasonable opportunity to present
12 evidence of the standard practice.

13 (f) An issuer is not responsible for:

14 (1) the performance or nonperformance of the underlying contract,
15 arrangement, or transaction,

16 (2) an act or omission of others, or

17 (3) observance or knowledge of the usage of a particular trade
18 other than the standard practice referred to in subsection (e).

19 (g) If an undertaking constituting a letter of credit under Section 4-
20 5-102(a)(10) contains nondocumentary conditions, an issuer shall disregard the
21 nondocumentary conditions and treat them as if they were not stated.

22 (h) An issuer that has dishonored a presentation shall return the
23 documents or hold them at the disposal of, and send advice to that effect to,
24 the presenter.

25 (i) An issuer that has honored a presentation as permitted or required
26 by this chapter:

27 (1) is entitled to be reimbursed by the applicant in immediately
28 available funds not later than the date of its payment of funds;

29 (2) takes the documents free of claims of the beneficiary or
30 presenter;

31 (3) is precluded from asserting a right of recourse on a draft
32 under Sections 4-3-414 and 4-3-415;

33 (4) except as otherwise provided in Sections 4-5-110 and 4-5-117,
34 is precluded from restitution of money paid or other value given by mistake to
35 the extent the mistake concerns discrepancies in the documents or tender which
36 are apparent on the face of the presentation; and

1 (5) is discharged to the extent of its performance under the
 2 letter of credit unless the issuer honored a presentation in which a required
 3 signature of a beneficiary was forged.

4 ~~4-5-108. "Notation credit" - Exhaustion of credit.~~

5 ~~(1) A credit which specifies that any person purchasing or paying~~
 6 ~~drafts drawn or demands for payment made under it must note the amount of the~~
 7 ~~draft or demand on the letter or advice of credit is a "notation credit."~~

8 ~~(2) Under a notation credit:~~

9 ~~(a) A person paying the beneficiary or purchasing a draft or demand for~~
 10 ~~payment from him acquires a right to honor only if the appropriate notation is~~
 11 ~~made and by transferring or forwarding for honor the documents under the~~
 12 ~~credit such a person warrants to the issuer that the notation has been made;~~
 13 ~~and~~

14 ~~(b) Unless the credit or a signed statement that an appropriate~~
 15 ~~notation has been made accompanies the draft or demand for payment the issuer~~
 16 ~~may delay honor until evidence of notation has been procured which is~~
 17 ~~satisfactory to it but its obligation and that of its customer continue for a~~
 18 ~~reasonable time not exceeding thirty (30) days to obtain such evidence.~~

19 ~~(3) If the credit is not a notation credit:~~

20 ~~(a) The issuer may honor complying drafts or demands for payment~~
 21 ~~presented to it in the order in which they are presented and is discharged pro~~
 22 ~~tanto by honor of any such draft or demand;~~

23 ~~(b) As between competing good faith purchasers of complying drafts or~~
 24 ~~demands the person first purchasing has priority over a subsequent purchaser~~
 25 ~~even though the later purchased draft or demand has been first honored.~~

26

27 4-5-109. FRAUD AND FORGERY.

28 (a) If a presentation is made that appears on its face strictly to
 29 comply with the terms and conditions of the letter of credit, but a required
 30 document is forged or materially fraudulent, or honor of the presentation
 31 would facilitate a material fraud by the beneficiary on the issuer or
 32 applicant:

33 (1) the issuer shall honor the presentation, if honor is demanded
 34 by (i) a nominated person who has given value in good faith and without notice
 35 of forgery or material fraud, (ii) a confirmer who has honored its
 36 confirmation in good faith, (iii) a holder in due course of a draft drawn

1 under the letter of credit which was taken after acceptance by the issuer or
 2 nominated person, or (iv) an assignee of the issuer's or nominated person's
 3 deferred obligation that was taken for value and without notice of forgery or
 4 material fraud after the obligation was incurred by the issuer or nominated
 5 person; and

6 (2) the issuer, acting in good faith, may honor or dishonor the
 7 presentation in any other case.

8 (b) If an applicant claims that a required document is forged or
 9 materially fraudulent or that honor of the presentation would facilitate a
 10 material fraud by the beneficiary on the issuer or applicant, a court of
 11 competent jurisdiction may temporarily or permanently enjoin the issuer from
 12 honoring a presentation or grant similar relief against the issuer or other
 13 persons only if the court finds that:

14 (1) the relief is not prohibited under the law applicable to an
 15 accepted draft or deferred obligation incurred by the issuer;

16 (2) a beneficiary, issuer, or nominated person who may be
 17 adversely affected is adequately protected against loss that it may suffer
 18 because the relief is granted;

19 (3) all of the conditions to entitle a person to the relief under
 20 the law of this State have been met; and

21 (4) on the basis of the information submitted to the court, the
 22 applicant is more likely than not to succeed under its claim of forgery or
 23 material fraud and the person demanding honor does not qualify for protection
 24 under subsection (a)(1).

25 ~~4-5-109. Issuers obligation to its customer.~~

26 ~~(1) An issuers obligation to its customer includes good faith and~~
 27 ~~observance of any general banking usage but unless otherwise agreed does not~~
 28 ~~include liability or responsibility:~~

29 ~~(a) For performance of the underlying contract for sale or other~~
 30 ~~transaction between the customer and the beneficiary; or~~

31 ~~(b) For any act or omission of any person other than itself or its own~~
 32 ~~branch or for loss or destruction of a draft, demand, or document in transit~~
 33 ~~or in the possession of others; or~~

34 ~~(c) Based on knowledge or lack of knowledge of any usage of any~~
 35 ~~particular trade.~~

36 ~~(2) An issuer must examine documents with care so as to ascertain that~~

1 ~~on their face they appear to comply with the terms of the credit but unless~~
 2 ~~otherwise agreed assumes no liability or responsibility for the genuineness,~~
 3 ~~falsification, or effect of any document which appears on such examination to~~
 4 ~~be regular on its face.~~

5 ~~_____ (3) A nonbank issuer is not bound by any banking usage of which it has~~
 6 ~~no knowledge.~~

7

8 4-5-110. WARRANTIES.

9 (a) If its presentation is honored, the beneficiary warrants:

10 (1) to the issuer, any other person to whom presentation is made,
 11 and the applicant that there is no fraud or forgery of the kind described in
 12 Section 4-5-109(a); and

13 (2) to the applicant that the drawing does not violate any
 14 agreement between the applicant and beneficiary or any other agreement
 15 intended by them to be augmented by the letter of credit.

16 (b) The warranties in subsection (a) are in addition to warranties
 17 arising under Chapter 3, 4, 7, and 8 because of the presentation or transfer
 18 of documents covered by any of those chapters.

19 ~~_____ 4-5-110. Availability of credit in portions - Presenters reservation of~~
 20 ~~lien or claim.~~

21 ~~_____ (1) Unless otherwise specified a credit may be used in portions in the~~
 22 ~~discretion of the beneficiary.~~

23 ~~_____ (2) Unless otherwise specified a person by presenting a documentary~~
 24 ~~draft or demand for payment under a credit relinquishes upon its honor all~~
 25 ~~claims to the documents, and a person by transferring such draft or demand or~~
 26 ~~causing such presentment authorizes such relinquishment. An explicit~~
 27 ~~reservation of claim makes the draft or demand noncomplying.~~

28

29 4-5-111. REMEDIES.

30 (a) If an issuer wrongfully dishonors or repudiates its obligation to
 31 pay money under a letter of credit before presentation, the beneficiary,
 32 successor, or nominated person presenting on its own behalf may recover from
 33 the issuer the amount that is the subject of the dishonor or repudiation. If
 34 the issuer's obligation under the letter of credit is not for the payment of
 35 money, the claimant may obtain specific performance or, at the claimant's
 36 election, recover an amount equal to the value of performance from the issuer.

1 In either case, the claimant may also recover incidental but not
2 consequential damages. The claimant is not obligated to take action to avoid
3 damages that might be due from the issuer under this subsection. If, although
4 not obligated to do so, the claimant avoids damages, the claimant's recovery
5 from the issuer must be reduced by the amount of damages avoided. The issuer
6 has the burden of proving the amount of damages avoided. In the case of
7 repudiation the claimant need not present any document.

8 (b) If an issuer wrongfully dishonors a draft or demand presented under
9 a letter of credit or honors a draft or demand in breach of its obligation to
10 the applicant, the applicant may recover damages resulting from the breach,
11 including incidental but not consequential damages, less any amount saved as a
12 result of the breach.

13 (c) If an adviser or nominated person other than a confirmer breaches
14 an obligation under this chapter or an issuer breaches an obligation not
15 covered in subsection (a) or (b), a person to whom the obligation is owed may
16 recover damages resulting from the breach, including incidental but not
17 consequential damages, less any amount saved as a result of the breach. To
18 the extent of the confirmation, a confirmer has the liability of an issuer
19 specified in this subsection and subsections (a) and (b).

20 (d) An issuer, nominated person, or adviser who is found liable under
21 subsection (a), (b), or (c) shall pay interest on the amount owed thereunder
22 from the date of wrongful dishonor or other appropriate date.

23 (e) Reasonable attorney's fees and other expenses of litigation must be
24 awarded to the prevailing party in an action in which a remedy is sought under
25 this chapter.

26 (f) Damages that would otherwise be payable by a party for breach of an
27 obligation under this chapter may be liquidated by agreement or undertaking,
28 but only in an amount or by a formula that is reasonable in light of the harm
29 anticipated.

30 ~~4-5-111. Warranties on transfer and presentment.~~

31 ~~(1) Unless otherwise agreed the beneficiary by transferring or~~
32 ~~presenting a documentary draft or demand for payment warrants to all~~
33 ~~interested parties that the necessary conditions of the credit have been~~
34 ~~complied with. This is in addition to any warranties arising under chapters 3,~~
35 ~~4, 7, and 8 of this title.~~

36 ~~(2) Unless otherwise agreed a negotiating, advising, confirming,~~

~~1 collecting, or issuing bank presenting or transferring a draft or demand for
2 payment under a credit warrants only the matters warranted by a collecting
3 bank under chapter 4 of this title and any such bank transferring a document
4 warrants only the matters warranted by an intermediary under chapters 7 and 8
5 of this title.~~

6

7 4-5-112. TRANSFER OF LETTER OF CREDIT.

8 (a) Except as otherwise provided in Section 4-5-113, unless a letter of
9 credit provides that it is transferable, the right of a beneficiary to draw or
10 otherwise demand performance under a letter of credit may not be transferred.

11 (b) Even if a letter of credit provides that it is transferable, the
12 issuer may refuse to recognize or carry out a transfer if:

13 (1) the transfer would violate applicable law; or

14 (2) the transferor or transferee has failed to comply with any
15 requirement stated in the letter of credit or any other requirement relating
16 to transfer imposed by the issuer which is within the standard practice
17 referred to in Section 4-5-108(e) or is otherwise reasonable under the
18 circumstances.

19 ~~4-5-112. Time allowed for honor or rejection - Withholding honor or
20 rejection by consent - "Presenter."~~

21 ~~(1) A bank to which a documentary draft or demand for payment is
22 presented under a credit may without dishonor of the draft, demand, or credit:~~

23 ~~(a) Defer honor until the close of the third banking day following
24 receipt of the documents; and~~

25 ~~(b) Further defer honor if the presenter has expressly or impliedly
26 consented thereto.~~

27 ~~Failure to honor within the time here specified constitutes dishonor of
28 the draft or demand and of the credit.~~

29 ~~(2) Upon dishonor the bank may unless otherwise instructed fulfill its
30 duty to return the draft or demand and the documents by holding them at the
31 disposal of the presenter and sending him an advice to that effect.~~

32 ~~(3) "Presenter" means any person presenting a draft or demand for
33 payment for honor under a credit even though that person is a confirming bank
34 or other correspondent which is acting under an issuers authorization.~~

35

36 4-5-113. TRANSFER BY OPERATION OF LAW.

1 (a) A successor of a beneficiary may consent to amendments, sign and
2 present documents, and receive payment or other items of value in the name of
3 the beneficiary without disclosing its status as a successor.

4 (b) A successor of a beneficiary may consent to amendments, sign and
5 present documents, and receive payment or other items of value in its own name
6 as the disclosed successor of the beneficiary. Except as otherwise provided
7 in subsection (e), an issuer shall recognize a disclosed successor of a
8 beneficiary as beneficiary in full substitution for its predecessor upon
9 compliance with the requirements for recognition by the issuer of a transfer
10 of drawing rights by operation of law under the standard practice referred to
11 in Section 4-5-108(e) or, in the absence of such a practice, compliance with
12 other reasonable procedures sufficient to protect the issuer.

13 (c) An issuer is not obliged to determine whether a purported successor
14 is a successor of a beneficiary or whether the signature of a purported
15 successor is genuine or authorized.

16 (d) Honor of a purported successor's apparently complying presentation
17 under subsection (a) or (b) has the consequences specified in Section 4-
18 5-108(i) even if the purported successor is not the successor of a
19 beneficiary. Documents signed in the name of the beneficiary or of a
20 disclosed successor by a person who is neither the beneficiary nor the
21 successor of the beneficiary are forged documents for the purposes of Section
22 4-5-109.

23 (e) An issuer whose rights of reimbursement are not covered by
24 subsection (d) or substantially similar law and any confirmer or nominated
25 person may decline to recognize a presentation under subsection (b).

26 (f) A beneficiary whose name is changed after the issuance of a letter
27 of credit has the same rights and obligations as a successor of a beneficiary
28 under this section.

29 ~~—— 4-5-113. Indemnities.~~

30 ~~—— (1) A bank seeking to obtain (whether for itself or another) honor,~~
31 ~~negotiation, or reimbursement under a credit may give an indemnity to induce~~
32 ~~such honor, negotiation, or reimbursement.~~

33 ~~—— (2) An indemnity agreement inducing honor, negotiation, or~~
34 ~~reimbursement:~~

35 ~~—— (a) Unless otherwise explicitly agreed applies to defects in the~~
36 ~~documents but not in the goods; and~~

~~1 (b) Unless a longer time is explicitly agreed expires at the end of ten
2 (10) business days following receipt of the documents by the ultimate customer
3 unless notice of objection is sent before such expiration date. The ultimate
4 customer may send notice of objection to the person from whom he received the
5 documents, and any bank receiving such notice is under a duty to send notice
6 to its transferor before its midnight deadline.~~

7

8 4-5-114. ASSIGNMENT OF PROCEEDS.

9 (a) In this section, "proceeds of a letter of credit" means the cash,
10 check, accepted draft, or other item of value paid or delivered upon honor or
11 giving of value by the issuer or any nominated person under the letter of
12 credit. The term does not include a beneficiary's drawing rights or documents
13 presented by the beneficiary.

14 (b) A beneficiary may assign its right to part or all of the proceeds
15 of a letter of credit. The beneficiary may do so before presentation as a
16 present assignment of its right to receive proceeds contingent upon its
17 compliance with the terms and conditions of the letter of credit.

18 (c) An issuer or nominated person need not recognize an assignment of
19 proceeds of a letter of credit until it consents to the assignment.

20 (d) An issuer or nominated person has no obligation to give or withhold
21 its consent to an assignment of proceeds of a letter of credit, but consent
22 may not be unreasonably withheld if the assignee possesses and exhibits the
23 letter of credit and presentation of the letter of credit is a condition to
24 honor.

25 (e) Rights of a transferee beneficiary or nominated person are
26 independent of the beneficiary's assignment of the proceeds of a letter of
27 credit and are superior to the assignee's right to the proceeds.

28 (f) Neither the rights recognized by this section between an assignee
29 and an issuer, transferee beneficiary, or nominated person nor the issuer's or
30 nominated person's payment of proceeds to an assignee or a third person affect
31 the rights between the assignee and any person other than the issuer,
32 transferee beneficiary, or nominated person. The mode of creating and
33 perfecting a security interest in or granting an assignment of a beneficiary's
34 rights to proceeds is governed by Chapter 9 or other law. Against persons
35 other than the issuer, transferee beneficiary, or nominated person, the rights
36 and obligations arising upon the creation of a security interest or other

1 assignment of a beneficiary's right to proceeds and its perfection are
 2 governed by Chapter 9 or other law.

3 ~~4-5-114. Issuers duty and privilege to honor - Right to reimbursement.~~

4 ~~(1) An issuer must honor a draft or demand for payment which complies~~
 5 ~~with the terms of the relevant credit regardless of whether the goods or~~
 6 ~~documents conform to the underlying contract for sale or other contract~~
 7 ~~between the customer and the beneficiary. The issuer is not excused from honor~~
 8 ~~of such a draft or demand by reason of an additional general term that all~~
 9 ~~documents must be satisfactory to the issuer, but an issuer may require that~~
 10 ~~specified documents must be satisfactory to it.~~

11 ~~(2) Unless otherwise agreed when documents appear on their face to~~
 12 ~~comply with the terms of a credit but a required document does not in fact~~
 13 ~~conform to the warranties made on negotiation or transfer of a document of~~
 14 ~~title ([§] 4-7-507) or of a certificated security ([§] 4-8-108) or is forged or~~
 15 ~~fraudulent or there is fraud in the transaction:~~

16 ~~(a) The issuer must honor the draft or demand for payment if honor is~~
 17 ~~demanded by a negotiating bank or other holder of the draft or demand which~~
 18 ~~has taken the draft or demand under the credit and under circumstances which~~
 19 ~~would make it a holder in due course ([§] 4-3-302) and in an appropriate case~~
 20 ~~would make it a person to whom a document of title has been duly negotiated ([§]~~
 21 ~~4-7-502) or a bona fide purchaser of a certificated security ([§] 4-8-302); and~~

22 ~~(b) In all other cases as against its customer, an issuer acting in~~
 23 ~~good faith may honor the draft or demand for payment despite notification from~~
 24 ~~the customer of fraud, forgery, or other defect not apparent on the face of~~
 25 ~~the documents but a court of appropriate jurisdiction may enjoin such honor.~~

26 ~~(3) Unless otherwise agreed an issuer which has duly honored a draft or~~
 27 ~~demand for payment is entitled to immediate reimbursement of any payment made~~
 28 ~~under the credit and to be put in effectively available funds not later than~~
 29 ~~the day before maturity of any acceptance made under the credit.~~

30

31 4-5-115. STATUTE OF LIMITATIONS. An action to enforce a right or
 32 obligation arising under this chapter must be commenced within one year after
 33 the expiration date of the relevant letter of credit or one year after the
 34 cause of action accrues, whichever occurs later. A cause of action accrues
 35 when the breach occurs, regardless of the aggrieved party's lack of knowledge
 36 of the breach.

1 ~~4-5-115. Remedy for improper dishonor or anticipatory repudiation.~~

2 ~~(1) When an issuer wrongfully dishonors a draft or demand for payment~~
3 ~~presented under a credit the person entitled to honor has with respect to any~~
4 ~~documents the rights of a person in the position of a seller (~~§ 4-2-707~~) and~~
5 ~~may recover from the issuer the face amount of the draft or demand together~~
6 ~~with incidental damages under ~~§ 4-2-710~~ on seller's incidental damages and~~
7 ~~interest but less any amount realized by resale or other use or disposition of~~
8 ~~the subject matter of the transaction. In the event no resale or other~~
9 ~~utilization is made the documents, goods, or other subject matter involved in~~
10 ~~the transaction must be turned over to the issuer on payment of judgment.~~

11 ~~(2) When an issuer wrongfully cancels or otherwise repudiates a credit~~
12 ~~before presentment of a draft or demand for payment drawn under it the~~
13 ~~beneficiary has the rights of a seller after anticipatory repudiation by the~~
14 ~~buyer under ~~§ 4-2-610~~ if he learns of the repudiation in time reasonably to~~
15 ~~avoid procurement of the required documents. Otherwise the beneficiary has an~~
16 ~~immediate right of action for wrongful dishonor.~~

17

18 4-5-116. CHOICE OF LAW AND FORUM.

19 (a) The liability of an issuer, nominated person, or adviser for action
20 or omission is governed by the law of the jurisdiction chosen by an agreement
21 in the form of a record signed or otherwise authenticated by the affected
22 parties in the manner provided in Section 4-5-104 or by a provision in the
23 person's letter of credit, confirmation, or other undertaking. The
24 jurisdiction whose law is chosen need not bear any relation to the
25 transaction.

26 (b) Unless subsection (a) applies, the liability of an issuer,
27 nominated person, or adviser for action or omission is governed by the law of
28 the jurisdiction in which the person is located. The person is considered to
29 be located at the address indicated in the person's undertaking. If more than
30 one address is indicated, the person is considered to be located at the
31 address from which the person's undertaking was issued. For the purpose of
32 jurisdiction, choice of law, and recognition of interbranch letters of credit,
33 but not enforcement of a judgment, all branches of a bank are considered
34 separate juridical entities and a bank is considered to be located at the
35 place where its relevant branch is considered to be located under this
36 subsection.

1 (c) Except as otherwise provided in this subsection, the liability of
2 an issuer, nominated person, or adviser is governed by any rules of custom or
3 practice, such as the Uniform Customs and Practice for Documentary Credits, to
4 which the letter of credit, confirmation, or other undertaking is expressly
5 made subject. If (i) this chapter would govern the liability of an issuer,
6 nominated person, or adviser under subsection (a) or (b), (ii) the relevant
7 undertaking incorporates rules of custom or practice, and (iii) there is
8 conflict between this chapter and those rules as applied to that undertaking,
9 those rules govern except to the extent of any conflict with the nonvariable
10 provisions specified in Section 4-5-103(c).

11 (d) If there is conflict between this chapter and Chapter 3, 4, 4A, or
12 9, this chapter governs.

13 (e) The forum for settling disputes arising out of an undertaking
14 within this chapter may be chosen in the manner and with the binding effect
15 that governing law may be chosen in accordance with subsection (a).

16 ~~4-5-116. Transfer and assignment.~~

17 ~~(1) The right to draw under a credit can be transferred or assigned~~
18 ~~only when the credit is expressly designated as transferable or assignable.~~

19 ~~(2) Even though the credit specifically states that it is~~
20 ~~nontransferable or nonassignable, the beneficiary may before performance of~~
21 ~~the conditions of the credit, assign his right to proceeds. Such an assignment~~
22 ~~is an assignment of an account under chapter 9 of this title on secured~~
23 ~~transactions and is governed by that chapter except that:~~

24 ~~(a) The assignment is ineffective until the letter of credit or advice~~
25 ~~of credit is delivered to the assignee, which delivery constitutes perfection~~
26 ~~of the security interest under chapter 9 of this title; and~~

27 ~~(b) The issuer may honor drafts or demands for payment drawn under the~~
28 ~~credit until it receives a notification of the assignment signed by the~~
29 ~~beneficiary which reasonably identifies the credit involved in the assignment~~
30 ~~and contains a request to pay the assignee; and~~

31 ~~(c) After what reasonably appears to be such a notification has been~~
32 ~~received, the issuer may without dishonor refuse to accept or pay even to a~~
33 ~~person otherwise entitled to honor until the letter of credit or advice of~~
34 ~~credit is exhibited to the issuer.~~

35 ~~(3) Except where the beneficiary has effectively assigned his right to~~
36 ~~draw or his right to proceeds, nothing in this section limits his right to~~

1 ~~transfer or negotiate drafts or demands drawn under the credit.~~

2

3 4-5-117. SUBROGATION OF ISSUER, APPLICANT, AND NOMINATED PERSON.

4 (a) An issuer that honors a beneficiary's presentation is subrogated to
 5 the rights of the beneficiary to the same extent as if the issuer were a
 6 secondary obligor of the underlying obligation owed to the beneficiary and of
 7 the applicant to the same extent as if the issuer were the secondary obligor
 8 of the underlying obligation owed to the applicant.

9 (b) An applicant that reimburses an issuer is subrogated to the rights
 10 of the issuer against any beneficiary, presenter, or nominated person to the
 11 same extent as if the applicant were the secondary obligor of the obligations
 12 owed to the issuer and has the rights of subrogation of the issuer to the
 13 rights of the beneficiary stated in subsection (a).

14 (c) A nominated person who pays or gives value against a draft or
 15 demand presented under a letter of credit is subrogated to the rights of:

16 (1) the issuer against the applicant to the same extent as if the
 17 nominated person were a secondary obligor of the obligation owed to the issuer
 18 by the applicant;

19 (2) the beneficiary to the same extent as if the nominated person
 20 were a secondary obligor of the underlying obligation owed to the beneficiary;
 21 and

22 (3) the applicant to same extent as if the nominated person were a
 23 secondary obligor of the underlying obligation owed to the applicant.

24 (d) Notwithstanding any agreement or term to the contrary, the rights
 25 of subrogation stated in subsections (a) and (b) do not arise until the issuer
 26 honors the letter of credit or otherwise pays and the rights in subsection (c)
 27 do not arise until the nominated person pays or otherwise gives value. Until
 28 then, the issuer, nominated person, and the applicant do not derive under this
 29 section present or prospective rights forming the basis of a claim, defense,
 30 or excuse."

31 ~~4-5-117. Insolvency of bank holding funds for documentary credit.~~

32 ~~(1) Where an issuer or an advising or confirming bank or a bank which~~
 33 ~~has for a customer procured issuance of a credit by another bank becomes~~
 34 ~~insolvent before final payment under the credit and the credit is one to which~~
 35 ~~this chapter is made applicable by § 4-5-102(1)(a) or (b) on scope, the~~
 36 ~~receipt or allocation of funds or collateral to secure or meet obligations~~

1 ~~under the credit shall have the following results:~~

2 ~~—— (a) To the extent of any funds or collateral turned over after or~~
 3 ~~before the insolvency as indemnity against or specifically for the purpose of~~
 4 ~~payment of drafts or demands for payment drawn under the designated credit,~~
 5 ~~the drafts or demands are entitled to payment in preference over depositors or~~
 6 ~~other general creditors of the issuer or bank; and~~

7 ~~—— (b) On expiration of the credit or surrender of the beneficiary's~~
 8 ~~rights under it unused any person who has given such funds or collateral is~~
 9 ~~similarly entitled to return thereof; and~~

10 ~~—— (c) A charge to a general or current account with a bank if~~
 11 ~~specifically consented to for the purpose of indemnity against or payment of~~
 12 ~~drafts or demands for payment drawn under the designated credit falls under~~
 13 ~~the same rules as if the funds had been drawn out in cash and then turned over~~
 14 ~~with specific instructions.~~

15 ~~—— (2) After honor or reimbursement under this section the customer or~~
 16 ~~other person for whose account the insolvent bank has acted is entitled to~~
 17 ~~receive the documents involved.~~

18

19 SECTION 2. Arkansas Code 4-1-105(2) is amended to read as follows:

20 "(2) Where one of the following provisions of this subtitle specifies
 21 the applicable law, that provision governs and a contrary agreement is
 22 effective only to the extent permitted by the law (including the conflict of
 23 laws rules) so specified:

24 Rights of creditors against sold goods, § 4-2-402;

25 Applicability of the chapter on leases, §§ 4-2A-105 and 4-2A-106;

26 Applicability of the chapter on bank deposits and collections, § 4-4-
 27 102;

28 Applicability of the chapter on investment securities, § 4-8-110;

29 Perfection provisions of the chapter on secured transactions, § 4-9-103.

30 Letters of Credit. Section 4-5-116."

31

32 SECTION 3. Arkansas Code 4-2-512(1) is amended to read as follows:

33 "(1) Where the contract requires payment before inspection
 34 nonconformity of the goods does not excuse the buyer from so making payment
 35 unless:

36 (a) The nonconformity appears without inspection; or

1 (b) despite tender of the required documents the circumstances would
 2 justify injunction against honor under ~~the provisions of this Act (Section~~
 3 ~~5-114 5-109(b))~~."

4

5 SECTION 4. Arkansas Code 4-9-103(1) is amended to read as follows:

6 "(1) Documents, Instruments, letters of credit and Ordinary Goods.

7 (a) This subsection applies to documents, ~~and~~ instruments, rights to
 8 proceeds of written letters of credit, and ~~to~~ goods other than those covered
 9 by a certificate of title described in subsection (2), mobile goods described
 10 in subsection (3), and minerals described in subsection (5).

11 (b) Except as otherwise provided in this subsection, perfection and the
 12 effect of perfection or nonperfection of a security interest in collateral are
 13 governed by the law of the jurisdiction where the collateral is when the last
 14 event occurs on which is based the assertion that the security interest is
 15 perfected or unperfected.

16 (c) If the parties to a transaction creating a purchase money security
 17 interest in goods in one jurisdiction understand at the time that the security
 18 interest attaches that the goods will be kept in another jurisdiction, then
 19 the law of the other jurisdiction governs the perfection and the effect of
 20 perfection or nonperfection of the security interest from the time it attaches
 21 until thirty (30) days after the debtor receives possession of the goods and
 22 thereafter if the goods are taken to the other jurisdiction before the end of
 23 the thirty-day period.

24 (d) When collateral is brought into and kept in this state while
 25 subject to a security interest perfected under the law of the jurisdiction
 26 from which the collateral was removed, the security interest remains
 27 perfected, but if action is required by part 3 [§§ 4-9-301 - 4-9-318] of this
 28 chapter to perfect the security interest:

29 (i) if the action is not taken before the expiration of the period of
 30 perfection in the other jurisdiction or the end of four (4) months after the
 31 collateral is brought into this state, whichever period first expires, the
 32 security interest becomes unperfected at the end of that period and is
 33 thereafter deemed to have been unperfected as against a person who became a
 34 purchaser after removal;

35 (ii) if the action is taken before the expiration of the period
 36 specified in subparagraph (i), the security interest continues perfected

1 thereafter;

2 (iii) for the purpose of priority over a buyer of consumer goods (§ 4-
3 9-307(2)), the period of the effectiveness of a filing in the jurisdiction
4 from which the collateral is removed is governed by the rules with respect to
5 perfection in subparagraphs (i) and (ii)."

6

7 SECTION 5. Arkansas Code 4-9-104 is amended to read as follows:

8 "4-9-104. Transactions excluded from chapter.

9 This chapter does not apply:

10 (a) To a security interest subject to any statute of the United States
11 to the extent that such statute governs the rights of parties to and third
12 parties affected by transactions in particular types of property; or

13 (b) To a landlords lien; or

14 (c) To a lien given by statute or other rule of law for services or
15 materials except as provided in § 4-9-310 on priority of such liens; or

16 (d) To a transfer of a claim for wages, salary, or other compensation
17 of an employee; or

18 (e) To a transfer by a government or governmental subdivision or
19 agency; or

20 (f) To a sale of accounts or chattel paper as part of a sale of the
21 business out of which they arose, or an assignment of accounts or chattel
22 paper which is for the purpose of collection only, or a transfer of a right to
23 payment under a contract to an assignee who is also to do the performance
24 under the contract or a transfer of a single account to an assignee in whole
25 or partial satisfaction of a preexisting indebtedness; or

26 (g) To a transfer of an interest in or claim in or under any policy of
27 insurance, except as provided with respect to proceeds (§ 4-9-306) and
28 priorities in proceeds (§ 4-9-312); or

29 (h) To a right represented by a judgment (other than a judgment taken
30 on a right to payment which was collateral); or

31 (i) To any right of setoff; or

32 (j) Except to the extent that provision is made for fixtures in § 4-9-
33 313, to the creation or transfer of an interest in or lien on real estate,
34 including a lease or rents thereunder; or

35 (k) To a transfer in whole or in part of any claim arising out of tort;
36 or

1 (1) To a transfer of an interest in any deposit account (§ 4-9-105(1)),
 2 except as provided with respect to proceeds (§ 4-9-306), and priorities in
 3 proceeds (§ 4-9-312); or
 4 (m) to a transfer of an interest in a letter of credit other than the
 5 rights to proceeds of a written letter of credit."

6
 7 SECTION 6. Arkansas Code 4-9-105(3) is amended to read as follows:
 8 "(3) The following definitions in other chapters apply to this
 9 chapter:

- 10 Broker . § 4-8-102.
- 11 Certificated security . § 4-8-102.
- 12 Check . § 4-3-104.
- 13 Clearing corporation . § 4-8-102.
- 14 Contract for sale . § 4-2-106.
- 15 Control . § 4-8-106.
- 16 Delivery . § 4-8-301.
- 17 Entitlement holder . § 4-8-102.
- 18 Financial asset . § 4-8-102.
- 19 Holder in due course . § 4-3-302.
- 20 Letter of credit . § 4-5-102.
- 21 Note . § 4-3-104.
- 22 Proceeds of a letter of credit . § 4-5-114(a).
- 23 Sale . § 4-2-106.
- 24 Securities intermediary . § 4-8-102.
- 25 Security . § 4-8-102.
- 26 Security certificate . § 4-8-102.
- 27 Security entitlement . § 4-8-102.
- 28 Uncertificated security . § 4-8-102."

29
 30 SECTION 7. Arkansas Code 4-9-106 is amended to read as follows:

31 "4-9-106. Definitions: "Account"; "General intangibles." "Account"
 32 means any right to payment for goods sold or leased or for services rendered
 33 which is not evidenced by an instrument or chattel paper, whether or not it
 34 has been earned by performance. "General intangibles" means any personal
 35 property (including things in action) other than goods, accounts, chattel
 36 paper, documents, instruments, investment property, rights to proceeds of

1 written letters of credit, and money. All rights to payment earned or
2 unearned under a charter or other contract involving the use or hire of a
3 vessel and all rights incident to the charter or contract are accounts.

4

5 SECTION 8. Arkansas Code 4-9-304(1) is amended to read as follows:

6 "(1) A security interest in chattel paper or negotiable documents may
7 be perfected by filing. A security interest in the rights to proceeds of a
8 written letter of credit can be perfected only by the secured party's taking
9 possession of the letter of credit. A security interest in money or
10 instruments (other than instruments which constitute part of chattel paper)
11 can be perfected only by the secured party's taking possession, except as
12 provided in subsections (4) and (5) of this section and subsections (2) and
13 (3) of Section 4-9-306 on proceeds."

14

15 SECTION 9. APPLICABILITY. This Act applies to a letter of credit that
16 is issued on or after the effective date of this Act. This Act does not apply
17 to a transaction, event, obligation, or duty arising out of or associated with
18 a letter of credit that was issued before the effective date of this Act.

19

20 SECTION 10. SAVINGS CLAUSE. A transaction arising out of or associated
21 with a letter of credit that was issued before the effective date of this Act
22 and the rights, obligations, and interests flowing from that transaction are
23 governed by any statute or other law amended or repealed by this Act as if
24 repeal or amendment had not occurred and may be terminated, completed,
25 consummated, or enforced under that statute or other law.

26

27 SECTION 11. All provisions of this act of a general and permanent
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
29 Code Revision Commission shall incorporate the same in the Code.

30

31 SECTION 12. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

36

1 SECTION 13. All laws and parts of laws in conflict with this act are
2 hereby repealed.

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