

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1493

5 By: Representative Maloch
6 By: Senator Luker
7
8

For An Act To Be Entitled

9
10 AN ACT TO ADOPT REVISED ARTICLE 7 OF THE UNIFORM
11 COMMERCIAL CODE CONCERNING DOCUMENTS OF TITLE; TO
12 MAKE CONFORMING CHANGES TO EXISTING LAW; AND FOR
13 OTHER PURPOSES.
14

Subtitle

15
16 TO ADOPT REVISED ARTICLE 7 OF THE
17 UNIFORM COMMERCIAL CODE CONCERNING
18 DOCUMENTS OF TITLE AND TO MAKE
19 CONFORMING CHANGES TO EXISTING LAW.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 4, Chapter 7 is amended to read as
25 follows:

26 ~~Part 1—General.~~

27 ~~4-7-101. Short title.~~

28 ~~This chapter shall be known and may be cited as Uniform Commercial Code~~
29 ~~—Documents of Title.~~
30

31 ~~4-7-102. Definitions and index of definitions.~~

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

33 ~~(a) "Bailee" means the person who by a warehouse receipt, bill~~
34 ~~of lading, or other document of title acknowledges possession of goods and~~
35 ~~contracts to deliver them.~~

36 ~~(b) "Consignee" means the person named in a bill to whom or to~~



1 ~~whose order the bill promises delivery.~~

2 ~~(c) "Consignor" means the person named in a bill as the person~~
 3 ~~from whom the goods have been received for shipment.~~

4 ~~(d) "Delivery order" means a written order to deliver goods~~
 5 ~~directed to a warehouseman, carrier, or other person who in the ordinary~~
 6 ~~course of business issues warehouse receipts or bills of lading.~~

7 ~~(e) "Document" means document of title as defined in the general~~
 8 ~~definitions in chapter 1 of this title (§ 4-1-201).~~

9 ~~(f) "Goods" means all things which are treated as movable for~~
 10 ~~the purposes of a contract of storage or transportation.~~

11 ~~(g) "Issuer" means a bailee who issues a document except that in~~
 12 ~~relation to an unaccepted delivery order it means the person who orders the~~
 13 ~~possessor of goods to deliver. Issuer includes any person for whom an agent~~
 14 ~~or employee purports to act in issuing a document if the agent or employee~~
 15 ~~has real or apparent authority to issue documents, notwithstanding that the~~
 16 ~~issuer received no goods or that the goods were misdescribed or that in any~~
 17 ~~other respect the agent or employee violated his instructions.~~

18 ~~(h) "Warehouseman" is a person engaged in the business of~~
 19 ~~storing goods for hire.~~

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

22 ~~"Duly negotiate". Section 4-7-501.~~

23 ~~"Person entitled under the document". Section 4-7-403(4).~~

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

26 ~~"Contract for sale". Section 4-2-106.~~

27 ~~"Overseas". Section 4-2-323.~~

28 ~~"Receipt" of goods. Section 4-2-103.~~

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

32
 33 ~~4-7-103. Relation of article to treaty, statute, tariff,~~
 34 ~~classification, or regulation.~~

35 ~~To the extent that any treaty or statute of the United States,~~
 36 ~~regulatory statute of this state or tariff, classification or regulation~~

~~filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.~~

~~4-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading, or other document of title.~~

~~(1) A warehouse receipt, bill of lading, or other document of title is negotiable~~

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

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

~~(2) Any other document is non negotiable. A bill of lading in which it is stated that the goods are cosigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.~~

~~4-7-105. Construction against negative implication.~~

~~The omission from either part 2 (§ 4-7-201 et seq.) or part 3 (§ 4-7-301 et seq.) of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.~~

~~Part 2.~~

~~Warehouse Receipts: Special Provisions.~~

~~4-7-201. Who may issue a warehouse receipt—Storage under government bond.~~

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

~~(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.~~

~~4-7-202. Form of warehouse receipt—Essential terms—Optional terms.~~

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

2 ~~(2) Unless a warehouse receipt embodies within its written or printed~~
 3 ~~terms each of the following, the warehouseman is liable for damages caused by~~
 4 ~~the omission to a person injured thereby:~~

5 ~~(a) the location of the warehouse where the goods are stored;~~

6 ~~(b) the date of issue of the receipt;~~

7 ~~(c) the consecutive number of the receipt;~~

8 ~~(d) a statement whether the goods received will be delivered to~~
 9 ~~the bearer, to a specified person, or to a specified person or his order;~~

10 ~~(e) the rate of storage and handling charges, except that where~~
 11 ~~goods are stored under a field warehousing arrangement a statement of that~~
 12 ~~fact is sufficient on a nonnegotiable receipt;~~

13 ~~(f) a description of the goods or of the packages containing~~
 14 ~~them;~~

15 ~~(g) the signature of the warehouseman, which may be made by his~~
 16 ~~authorized agent;~~

17 ~~(h) if the receipt is issued for goods of which the warehouseman~~
 18 ~~is owner, either solely or jointly or in common with others, the fact of such~~
 19 ~~ownership; and~~

20 ~~(i) a statement of the amount of advances made and of~~
 21 ~~liabilities incurred for which the warehouseman claims a lien or security~~
 22 ~~interest (§ 4-7-209). If the precise amount of such advances made or of such~~
 23 ~~liabilities incurred is, at the time of the issue of the receipt, unknown to~~
 24 ~~the warehouseman or to his agent who issues it, a statement of the fact that~~
 25 ~~advances have been made or liabilities incurred and the purpose thereof is~~
 26 ~~sufficient.~~

27 ~~(3) A warehouseman may insert in his receipt any other terms which are~~
 28 ~~not contrary to the provisions of this subtitle and do not impair his~~
 29 ~~obligation of delivery (§ 4-7-403) or his duty of care (§ 4-7-204). Any~~
 30 ~~contrary provisions shall be ineffective.~~

31
 32 ~~4-7-203. Liability for non receipt or misdescription.~~

33 ~~A party to or purchaser for value in good faith of a document of title~~
 34 ~~other than a bill of lading relying in either case upon the description~~
 35 ~~therein of the goods may recover from the issuer damages caused by the non-~~
 36 ~~receipt or misdescription of the goods except to the extent that the document~~

1 conspicuously indicates that the issuer does not know whether any part or all
 2 of the goods in fact were received or conform to the description, as where
 3 the description is in terms of marks or labels or kind, quantity, or
 4 condition, or the receipt or description is qualified by "contents,
 5 condition, and quality unknown", "said to contain" or the like, if such
 6 indication be true, or the party or purchaser otherwise has notice.

7
 8 ~~4-7-204. Duty of care—Contractual limitation of warehouseman's~~
 9 ~~liability.~~

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

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

27 ~~(3) Reasonable provisions as to the time and manner of presenting~~
 28 ~~claims and instituting actions based on the bailment may be included in the~~
 29 ~~warehouse receipt or tariff.~~

30
 31 ~~4-7-205. Title under warehouse receipt defeated in certain cases.~~

32 ~~A buyer in the ordinary course of business of fungible goods, except~~
 33 ~~the grains listed below, sold and delivered by a warehouseman who is also in~~
 34 ~~the business of buying and selling such goods takes free of any claim under a~~
 35 ~~warehouse receipt even though it has been duly negotiated. This section shall~~
 36 ~~not apply to rice, soybeans, wheat, corn, rye, oats, barley, flaxseed,~~

1 ~~sorghum, mixed grain, nor other food grains or oilseeds.~~

2
3 ~~4-7-206. Termination of storage at warehouseman's option.~~

4 ~~(1) A warehouseman may on notifying the person on whose account the~~
5 ~~goods are held and any other person known to claim an interest in the goods~~
6 ~~require payment of any charges and removal of the goods from the warehouse at~~
7 ~~the termination of the period of storage fixed by the document, or, if no~~
8 ~~period is fixed, within a stated period not less than thirty (30) days after~~
9 ~~the notification. If the goods are not removed before the date specified in~~
10 ~~the notification, the warehouseman may sell them in accordance with the~~
11 ~~provisions of the section on enforcement of a warehouseman's lien (§ 4-7-~~
12 ~~210).~~

13 ~~(2) If a warehouseman in good faith believes that the goods are about~~
14 ~~to deteriorate or decline in value to less than the amount of his lien within~~
15 ~~the time prescribed in subsection (1) for notification, advertisement and~~
16 ~~sale, the warehouseman may specify in the notification any reasonable shorter~~
17 ~~time for removal of the goods and in case the goods are not removed may sell~~
18 ~~them at public sale held not less than one (1) week after a single~~
19 ~~advertisement or posting.~~

20 ~~(3) If as a result of a quality or condition of the goods of which the~~
21 ~~warehouseman had no notice at the time of deposit the goods are a hazard to~~
22 ~~other property or to the warehouse or to persons, the warehouseman may sell~~
23 ~~the goods at public or private sale without advertisement on reasonable~~
24 ~~notification to all persons known to claim an interest in the goods. If the~~
25 ~~warehouseman after a reasonable effort is unable to sell the goods he may~~
26 ~~dispose of them in any lawful manner and shall incur no liability by reason~~
27 ~~of such disposition.~~

28 ~~(4) The warehouseman must deliver the goods to any person entitled to~~
29 ~~them under this chapter upon due demand made at any time prior to sale or~~
30 ~~other disposition under this section.~~

31 ~~(5) The warehouseman may satisfy his lien from the proceeds of any~~
32 ~~sale or disposition under this section but must hold the balance for delivery~~
33 ~~on the demand of any person to whom he would have been bound to deliver the~~
34 ~~goods.~~

35
36 ~~4-7-207. Goods must be kept separate—Fungible goods.~~

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

5 ~~(2) Fungible goods so commingled are owned in common by the persons~~
 6 ~~entitled thereto and the warehouseman is severally liable to each owner for~~
 7 ~~that owner's share. Where because of overissue a mass of fungible goods is~~
 8 ~~insufficient to meet all the receipts which the warehouseman has issued~~
 9 ~~against it, the persons entitled include all holders to whom overissued~~
 10 ~~receipts have been duly negotiated.~~

11
 12 ~~4-7-208. Altered warehouse receipts.~~

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

18
 19 ~~4-7-209. Lien of warehouseman.~~

20 ~~(1) A warehouseman has a lien against the bailor on the goods covered~~
 21 ~~by a warehouse receipt or on the proceeds thereof in his possession for~~
 22 ~~charges for storage or transportation (including demurrage and terminal~~
 23 ~~charges), insurance, labor, or charges present or future in relation to the~~
 24 ~~goods, and for expenses necessary for preservation of the goods or reasonably~~
 25 ~~incurred in their sale pursuant to law. If the person on whose account the~~
 26 ~~goods are held is liable for like charges or expenses in relation to other~~
 27 ~~goods whenever deposited and it is stated in the receipt that a lien is~~
 28 ~~claimed for charges and expenses in relation to other goods, the warehouseman~~
 29 ~~also has a lien against him for such charges and expenses whether or not the~~
 30 ~~other goods have been delivered by the warehouseman. But against a person to~~
 31 ~~whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien~~
 32 ~~is limited to charges in an amount or at a rate specified on the receipt or~~
 33 ~~if no charges are so specified then to a reasonable charge for storage of the~~
 34 ~~goods covered by the receipt subsequent to the date of the receipt.~~

35 ~~(2) The warehouseman may also reserve a security interest against the~~
 36 ~~bailor for a maximum amount specified on the receipt for charges other than~~

1 those specified in subsection (1), such as for money advanced and interest.
 2 Such a security interest is governed by the chapter on secured transactions
 3 (chapter 9 of this title).

4 (3)(a) A warehouseman's lien for charges and expenses under subsection
 5 (1) or a security interest under subsection (2) is also effective against any
 6 person who so entrusted the bailor with possession of the goods that a pledge
 7 of them by him to a good faith purchaser for value would have been valid but
 8 is not effective against a person as to whom the document confers no right in
 9 the goods covered by it under § 4-7-503.

10 (b) A warehouseman's lien on household goods for charges and
 11 expenses in relation to the goods under subsection (1) is also effective
 12 against all persons if the depositor was the legal possessor of the goods at
 13 the time of deposit. "Household goods" means furniture, furnishings, and
 14 personal effects used by the depositor in a dwelling.

15 (4) A warehouseman loses his lien on any goods which he voluntarily
 16 delivers or which he unjustifiably refuses to deliver.

17 18 4-7-210. Enforcement of warehouseman's lien.

19 (1) Except as provided in subsection (2), a warehouseman's lien may be
 20 enforced by public or private sale of the goods in block or in parcels, at
 21 any time or place and on any terms which are commercially reasonable, after
 22 notifying all persons known to claim an interest in the goods. Such
 23 notification must include a statement of the amount due, the nature of the
 24 proposed sale and the time and place of any public sale. The fact that a
 25 better price could have been obtained by a sale at a different time or in a
 26 different method from that selected by the warehouseman is not of itself
 27 sufficient to establish that the sale was not made in a commercially
 28 reasonable manner. If the warehouseman either sells the goods in the usual
 29 manner in any recognized market therefor, or if he sells at the price current
 30 in such market at the time of his sale, or if he has otherwise sold in
 31 conformity with commercially reasonable practices among dealers in the type
 32 of goods sold, he has sold in a commercially reasonable manner. A sale of
 33 more goods than apparently necessary to be offered to insure satisfaction of
 34 the obligation is not commercially reasonable except in cases covered by the
 35 preceding sentence.

36 (2) A warehouseman's lien on goods other than goods stored by a

1 ~~merchant in the course of his business may be enforced only as follows:~~

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

4 ~~(b) The notification must be delivered in person or sent by~~
5 ~~registered letter to the last known address of any person to be notified.~~

6 ~~(c) The notification must include an itemized statement of the~~
7 ~~claim, a description of the goods subject to the lien, a demand for payment~~
8 ~~with a specified time not less than ten (10) days after receipt of the~~
9 ~~notification, and a conspicuous statement that unless the claim is paid~~
10 ~~within that time the goods will be advertised for sale and sold by auction at~~
11 ~~a specified time and place.~~

12 ~~(d) The sale must conform to the terms of the notification.~~

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

15 ~~(f) After the expiration of the time given in the notification,~~
16 ~~an advertisement of the sale must be published once a week for two (2) weeks~~
17 ~~consecutively in a newspaper of general circulation where the sale is to be~~
18 ~~held. The advertisement must include a description of the goods, the name of~~
19 ~~the person on whose account they are being held, and the time and place of~~
20 ~~the sale. The sale must take place at least fifteen (15) days after the first~~
21 ~~publication. If there is no newspaper of general circulation where the sale~~
22 ~~is to be held, the advertisement must be posted at least ten (10) days before~~
23 ~~the sale in not less than six (6) conspicuous places in the neighborhood of~~
24 ~~the proposed sale.~~

25 ~~(3) Before any sale pursuant to this section any person claiming a~~
26 ~~right in the goods may pay the amount necessary to satisfy the lien and the~~
27 ~~reasonable expenses incurred under this section. In that event the goods must~~
28 ~~not be sold, but must be retained by the warehouseman subject to the terms of~~
29 ~~the receipt and this chapter.~~

30 ~~(4) The warehouseman may buy at any public sale pursuant to this~~
31 ~~section.~~

32 ~~(5) A purchaser in good faith of goods sold to enforce a~~
33 ~~warehouseman's lien takes the goods free of any rights of persons against~~
34 ~~whom the lien was valid, despite noncompliance by the warehouseman with the~~
35 ~~requirements of this section.~~

36 ~~(6) The warehouseman may satisfy his lien from the proceeds of any~~

1 sale pursuant to this section but must hold the balance, if any, for delivery
 2 on demand to any person to whom he would have been bound to deliver the
 3 goods.

4 (7) The rights provided by this section shall be in addition to all
 5 other rights allowed by law to a creditor against his debtor.

6 (8) Where a lien is on goods stored by a merchant in the course of his
 7 business the lien may be enforced in accordance with either subsection (1) or
 8 (2).

9 (9) The warehouseman is liable for damages caused by failure to comply
 10 with the requirements for sale under this section and in case of willful
 11 violation is liable for conversion.

13 Part 3.

14 Bills of Lading; Special Provisions.

16 4-7-301. Liability for non receipt or misdescription—"Said to
 17 contain"—"Shipper's load and count"—Improper handling.

18 (1) A consignee of a non negotiable bill who has been given value in
 19 good faith or a holder to whom a negotiable bill has been duly negotiated
 20 relying in either case upon the description therein of the goods, or upon the
 21 date therein shown, may recover from the issuer damages caused by the
 22 misdating of the bill or the non receipt or misdescription of the goods,
 23 except to the extent that the document indicates that the issuer does not
 24 know whether any part or all of the goods in fact were received or conform to
 25 the description, as where the description is in terms of marks or labels or
 26 kind, quantity, or condition or the receipt or description is qualified by
 27 "contents or condition of contents of packages unknown", "said to contain",
 28 "shipper's weight, load and count" or the like, if such indication be true.

29 (2) When goods are loaded by an issuer who is a common carrier, the
 30 issuer must count the packages of goods if package freight and ascertain the
 31 kind and quantity if bulk freight. In such cases "shipper's weight, load and
 32 count" or other words indicating that the description was made by the shipper
 33 are ineffective except as to freight concealed by packages.

34 (3) When bulk freight is loaded by a shipper who makes available to
 35 the issuer adequate facilities for weighing such freight, an issuer who is a
 36 common carrier must ascertain the kind and quantity within a reasonable time

1 after receiving the written request of the shipper to do so. In such cases
2 "shipper's weight" or other words of like purport are ineffective.

3 (4) The issuer may by inserting in the bill the words "shipper's
4 weight, load and count" or other words of like purport indicate that the
5 goods were loaded by the shipper; and if such statement be true the issuer
6 shall not be liable for damages caused by the improper loading. But their
7 omission does not imply liability for such damages.

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

15
16 4-7-302. Through bills of lading and similar documents.

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

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

32 (3) The issuer of such through bill of lading or other document shall
33 be entitled to recover from the connecting carrier or such other person in
34 possession of the goods when the breach of the obligation under the document
35 occurred, the amount it may be required to pay to anyone entitled to recover
36 on the document therefor, as may be evidenced by any receipt, judgment, or

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

~~4-7-303. Diversion—Reconsignment—Change of instructions.~~

~~(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:~~

~~(a) the holder of a negotiable bill; or~~

~~(b) the consignor on a non negotiable bill notwithstanding contrary instructions from the consignee; or~~

~~(c) the consignee on a non negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or~~

~~(d) the consignee on a non negotiable bill if he is entitled as against the consignor to dispose of them.~~

~~(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.~~

~~4-7-304. Bills of lading in a set.~~

~~(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.~~

~~(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one (1) bill.~~

~~(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.~~

~~(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the~~

1 ~~whole set.~~

2 ~~(5) The bailee is obliged to deliver in accordance with part 4 of this~~
 3 ~~chapter (§ 4-7-401 et seq.) against the first presented part of a bill of~~
 4 ~~lading lawfully drawn in a set. Such delivery discharges the bailee's~~
 5 ~~obligation on the whole bill.~~

6
 7 ~~4-7-305. Destination bills.~~

8 ~~(1) Instead of issuing a bill of lading to the consignor at the place~~
 9 ~~of shipment a carrier may at the request of the consignor procure the bill to~~
 10 ~~be issued at destination or at any other place designated in the request.~~

11 ~~(2) Upon request of anyone entitled as against the carrier to control~~
 12 ~~the goods while in transit and on surrender of any outstanding bill of lading~~
 13 ~~or other receipt covering such goods, the issuer may procure a substitute~~
 14 ~~bill to be issued at any place designated in the request.~~

15
 16 ~~4-7-306. Altered bills of lading.~~

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

19
 20 ~~4-7-307. Lien of carrier.~~

21 ~~(1) A carrier has a lien on the goods covered by a bill of lading for~~
 22 ~~charges subsequent to the date of its receipt of the goods for storage or~~
 23 ~~transportation (including demurrage and terminal charges) and for expenses~~
 24 ~~necessary for preservation of the goods incident to their transportation or~~
 25 ~~reasonably incurred in their sale pursuant to law. But against a purchaser~~
 26 ~~for value of a negotiable bill of lading a carrier's lien is limited to~~
 27 ~~charges stated in the bill or the applicable tariffs, or if no charges are~~
 28 ~~stated then to a reasonable charge.~~

29 ~~(2) A lien for charges and expenses under subsection (1) on goods~~
 30 ~~which the carrier was required by law to receive for transportation is~~
 31 ~~effective against the consignor or any person entitled to the goods unless~~
 32 ~~the carrier had notice that the consignor lacked authority to subject the~~
 33 ~~goods to such charges and expenses. Any other lien under subsection (1) is~~
 34 ~~effective against the consignor and any person who permitted the bailor to~~
 35 ~~have control or possession of the goods unless the carrier had notice that~~
 36 ~~the bailor lacked such authority.~~

1 ~~(3) A carrier loses his lien on any goods which he voluntarily~~
 2 ~~delivers or which he unjustifiably refuses to deliver.~~

3
 4 ~~4-7-308. Enforcement of carrier's lien.~~

5 ~~(1) A carrier's lien may be enforced by public or private sale of the~~
 6 ~~goods, in block or in parcels, at any time or place and on any terms which~~
 7 ~~are commercially reasonable, after notifying all persons known to claim an~~
 8 ~~interest in the goods. Such notification must include a statement of the~~
 9 ~~amount due, the nature of the proposed sale and the time and place of any~~
 10 ~~public sale. The fact that a better price could have been obtained by a sale~~
 11 ~~at a different time or in a different method from that selected by the~~
 12 ~~carrier is not of itself sufficient to establish that the sale was not made~~
 13 ~~in a commercially reasonable manner. If the carrier either sells the goods in~~
 14 ~~the usual manner in any recognized market therefor or if he sells at the~~
 15 ~~price current in such market at the time of his sale or if he has otherwise~~
 16 ~~sold in conformity with commercially reasonable practices among dealers in~~
 17 ~~the type of goods sold he has sold in a commercially reasonable manner. A~~
 18 ~~sale of more goods than apparently necessary to be offered to ensure~~
 19 ~~satisfaction of the obligation is not commercially reasonable except in cases~~
 20 ~~covered by the preceding sentence.~~

21 ~~(2) Before any sale pursuant to this section any person claiming a~~
 22 ~~right in the goods may pay the amount necessary to satisfy the lien and the~~
 23 ~~reasonable expenses incurred under this section. In that event the goods must~~
 24 ~~not be sold, but must be retained by the carrier subject to the terms of the~~
 25 ~~bill and this chapter.~~

26 ~~(3) The carrier may buy at any public sale pursuant to this section.~~

27 ~~(4) A purchaser in good faith of goods sold to enforce a carrier's~~
 28 ~~lien takes the goods free of any rights of persons against whom the lien was~~
 29 ~~valid, despite noncompliance by the carrier with the requirements of this~~
 30 ~~section.~~

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

34 ~~(6) The rights provided by this section shall be in addition to all~~
 35 ~~other rights allowed by law to a creditor against his debtor.~~

36 ~~(7) A carrier's lien may be enforced in accordance with either~~

subsection (1) or the procedure set forth in subsection (2) of § 4-7-210.

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

4-7-309. Duty of care—Contractual limitation of carrier's liability.

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

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

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

Part 4.

Warehouse Receipts and Bills of Lading: General Obligations.

4-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

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

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

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

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

(d) the person issuing the document does not come within the

1 definition of warehouseman if it purports to be a warehouse receipt.

3 ~~4-7-402. Duplicate receipt or bill—Overissue.~~

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

12 ~~4-7-403. Obligation of warehouseman or carrier to deliver—Excuse.~~

13 ~~(1) The bailee must deliver the goods to a person entitled under the~~
 14 ~~document who complies with subsections (2) and (3), unless and to the extent~~
 15 ~~that the bailee establishes any of the following:~~

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

18 ~~(b) damage to or delay, loss or destruction of the goods for~~
 19 ~~which the bailee is not liable, provided the burden of establishing~~
 20 ~~negligence in such cases is on the person entitled under the document;~~

21 ~~(c) previous sale or other disposition of the goods in lawful~~
 22 ~~enforcement of a lien or on warehouseman's lawful termination of storage;~~

23 ~~(d) the exercise by a seller of his right to stop delivery~~
 24 ~~pursuant to the provisions of the chapter on sales (§ 4-2-705);~~

25 ~~(e) a diversion, reconsignment, or other disposition pursuant to~~
 26 ~~the provisions of this chapter (§ 4-7-303) or tariff regulating such right;~~

27 ~~(f) release, satisfaction or any other fact affording a personal~~
 28 ~~defense against the claimant;~~

29 ~~(g) any other lawful excuse.~~

30 ~~(2) A person claiming goods covered by a document of title must~~
 31 ~~satisfy the bailee's lien where the bailee so requests or where the bailee is~~
 32 ~~prohibited by law from delivering the goods until the charges are paid.~~

33 ~~(3) Unless the person claiming is one against whom the document~~
 34 ~~confers no right under § 4-7-503(1), he must surrender for cancellation or~~
 35 ~~notation of partial deliveries any outstanding negotiable document covering~~
 36 ~~the goods, and the bailee must cancel the document or conspicuously note the~~

~~partial delivery thereon or be liable to any person to whom the document is
duly negotiated.~~

~~(4) "Person entitled under the document" means holder in the case of a
negotiable document, or the person to whom delivery is to be made by the
terms of or pursuant to written instructions under a non negotiable document.~~

~~4-7-404. No liability for good faith delivery pursuant to receipt or
bill.~~

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

~~Part 5.~~

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

~~4-7-501. Form of negotiation and requirements of "due negotiation."~~

~~(1) A negotiable document of title running to the order of a named
person is negotiated by his indorsement and delivery. After his indorsement
in blank or to bearer any person can negotiate it by delivery alone.~~

~~(2)(a) A negotiable document of title is also negotiated by delivery
alone when by its original terms it runs to bearer.~~

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

~~(3) Negotiation of a negotiable document of title after it has been
indorsed to a specified person requires indorsement by the special indorsee
as well as delivery.~~

~~(4) A negotiable document of title is "duly negotiated" when it is
negotiated in the manner stated in this section to a holder who purchases it
in good faith without notice of any defense against or claim to it on the
part of any person and for value, unless it is established that the
negotiation is not in the regular course of business or financing or involves~~

1 ~~receiving the document in settlement or payment of a money obligation.~~

2 ~~(5) Indorsement of a non negotiable document neither makes it~~
 3 ~~negotiable nor adds to the transferee's rights.~~

4 ~~(6) The naming in a negotiable bill of a person to be notified of the~~
 5 ~~arrival of the goods does not limit the negotiability of the bill nor~~
 6 ~~constitute notice to a purchaser thereof of any interest of such person in~~
 7 ~~the goods.~~

8
 9 ~~4-7-502. Rights acquired by due negotiation.~~

10 ~~(1) Subject to the following section and to the provisions of § 4-7-~~
 11 ~~205 on fungible goods, a holder to whom a negotiable document of title has~~
 12 ~~been duly negotiated acquires thereby:~~

13 ~~(a) title to the document;~~

14 ~~(b) title to the goods;~~

15 ~~(c) all rights accruing under the law of agency or estoppel~~
 16 ~~including rights to goods delivered to the bailee after the document was~~
 17 ~~issued; and~~

18 ~~(d) the direct obligations of the issuer to hold or deliver the~~
 19 ~~goods according to the terms of the document free of any defense or claim by~~
 20 ~~him except those arising under the terms of the document or under this~~
 21 ~~chapter. In the case of a delivery order the bailee's obligation accrues only~~
 22 ~~upon acceptance and the obligation acquired by the holder is that the issuer~~
 23 ~~and any indorser will procure the acceptance of the bailee.~~

24 ~~(2) Subject to the following section, title and rights so acquired are~~
 25 ~~not defeated by any stoppage of the goods represented by the document or by~~
 26 ~~surrender of such goods by the bailee, and are not impaired even though the~~
 27 ~~negotiation or any prior negotiation constituted a breach of duty or even~~
 28 ~~though any person has been deprived of possession of the document by~~
 29 ~~misrepresentation, fraud, accident, mistake, duress, loss, theft or~~
 30 ~~conversion, or even though a previous sale or other transfer of the goods or~~
 31 ~~document has been made to a third person.~~

32
 33 ~~4-7-503. Document of title to goods defeated in certain cases.~~

34 ~~(1) A document of title confers no right in goods against a person who~~
 35 ~~before issuance of the document had a legal interest or a perfected security~~
 36 ~~interest in them and who neither:~~

~~(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (§ 4-7-403) or with power of disposition under this subtitle (§§ 4-2-403 and 4-9-320) or other statute or rule of law; nor~~

~~(b) acquiesced in the procurement by the bailor or his nominee of any document of title.~~

~~(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.~~

~~(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this chapter, § 4-7-401 et seq., pursuant to its own bill of lading discharges the carrier's obligation to deliver.~~

~~4-7-504. Rights acquired in the absence of due negotiation—Effect of diversion—Seller's stoppage of delivery.~~

~~(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.~~

~~(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:~~

~~(a) by those creditors of the transferor who could treat the sale as void under § 4-2-402; or~~

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

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

~~(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they~~

1 have been delivered to a buyer in ordinary course of business and in any
2 event defeats the consignee's rights against the bailee.

3 (4) ~~Delivery pursuant to a non negotiable document may be stopped by a~~
4 ~~seller under § 4-2-705, and subject to the requirement of due notification~~
5 ~~there provided. A bailee honoring the seller's instructions is entitled to be~~
6 ~~indemnified by the seller against any resulting loss or expense.~~

7
8 4-7-505. ~~Indorser not a guarantor for other parties.~~

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

11
12 4-7-506. ~~Delivery without indorsement—Right to compel indorsement.~~

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

17
18 4-7-507. ~~Warranties on negotiation or transfer of receipt or bill.~~

19 Where a person negotiates or transfers a document of title for value
20 otherwise than as a mere intermediary under the next following section, then
21 unless otherwise agreed he warrants to his immediate purchaser only in
22 addition to any warranty made in selling the goods

23 (a) ~~that the document is genuine; and~~

24 (b) ~~that he has no knowledge of any fact which would impair its~~
25 ~~validity or worth; and~~

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

28
29 4-7-508. ~~Warranties of collecting bank as to documents.~~

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

~~4-7-509. Receipt or bill—When adequate compliance with commercial contract.~~

~~The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the chapters on sales (chapter 2 of this title) and on letters of credit (chapter 5 of this title).~~

~~Part 6.~~

~~Warehouse Receipts and Bills of Lading; Miscellaneous Provisions.~~

~~4-7-601. Lost and missing documents.~~

~~(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.~~

~~(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one (1) year after the delivery.~~

~~4-7-602. Attachment of goods covered by a negotiable document.~~

~~Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the~~

~~document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.~~

~~4-7-603. Conflicting claims—Interpleader.~~

~~If more than one (1) person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.~~

CHAPTER 7 – DOCUMENTS OF TITLE

PART 1 – GENERAL

4-7-101. Short title.

This chapter may be cited as Uniform Commercial Code – Documents of Title.

4-7-102. Definitions and index of definitions.

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

(1) "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.

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

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

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

(5) "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.

(6) [Reserved.]

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

(8) "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.

(9) "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.

(10) [Reserved.]

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

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

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

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

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

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

(1) "Contract for sale", § 4-2-106.

(2) "Lessee in the ordinary course of business", § 4-2A-103.

(3) "Receipt" of goods, § 4-2-103.

(c) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

4-7-103. Relation of chapter to treaty or statute.

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

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law

1 does not affect the status of a document of title that otherwise is within
 2 the definition of a document of title.

3 (c) This act modifies, limits, and supersedes the federal Electronic
 4 Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et.
 5 seq.) but does not modify, limit, or supersede Section 101(c) of that act (15
 6 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the
 7 notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

8 (d) To the extent there is a conflict between the Uniform Electronic
 9 Transactions Act and this chapter, this chapter governs.

10
 11 4-7-104. Negotiable and nonnegotiable document of title.

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

15 (b) A document of title other than one described in subsection (a) is
 16 nonnegotiable. A bill of lading that states that the goods are consigned to
 17 a named person is not made negotiable by a provision that the goods are to be
 18 delivered only against an order in a record signed by the same or another
 19 named person.

20 (c) A document of title is nonnegotiable if, at the time it is issued,
 21 the document has a conspicuous legend, however expressed, that it is
 22 nonnegotiable.

23
 24 4-7-105. Reissuance in alternative medium.

25 (a) Upon request of a person entitled under an electronic document of
 26 title, the issuer of the electronic document may issue a tangible document of
 27 title as a substitute for the electronic document if:

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

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

32 (b) Upon issuance of a tangible document of title in substitution for
 33 an electronic document of title in accordance with subsection (a):

34 (1) the electronic document ceases to have any effect or
 35 validity; and

36 (2) the person that procured issuance of the tangible document

1 warrants to all subsequent persons entitled under the tangible document that
2 the warrantor was a person entitled under the electronic document when the
3 warrantor surrendered control of the electronic document to the issuer.

4 (c) Upon request of a person entitled under a tangible document of
5 title, the issuer of the tangible document may issue an electronic document
6 of title as a substitute for the tangible document if:

7 (1) the person entitled under the tangible document surrenders
8 possession of the document to the issuer; and

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

11 (d) Upon issuance of an electronic document of title in substitution
12 for a tangible document of title in accordance with subsection (c):

13 (1) the tangible document ceases to have any effect or validity;
14 and

15 (2) the person that procured issuance of the electronic document
16 warrants to all subsequent persons entitled under the electronic document
17 that the warrantor was a person entitled under the tangible document when the
18 warrantor surrendered possession of the tangible document to the issuer.

19
20 4-7-106. Control of electronic document of title.

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

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

28 (1) a single authoritative copy of the document exists which is
29 unique, identifiable, and, except as otherwise provided in paragraphs (4),
30 (5), and (6), unalterable;

31 (2) the authoritative copy identifies the person asserting
32 control as:

33 (A) the person to which the document was issued; or

34 (B) if the authoritative copy indicates that the document
35 has been transferred, the person to which the document was most recently
36 transferred;

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

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

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

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

10
11 PART 2 – WAREHOUSE RECEIPTS: SPECIAL PROVISIONS
12

13 4-7-201. Person that may issue a warehouse receipt – Storage under
14 bond.

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

16 (b) If goods, including distilled spirits and agricultural
17 commodities, are stored under a statute requiring a bond against withdrawal
18 or a license for the issuance of receipts in the nature of warehouse
19 receipts, a receipt issued for the goods is deemed to be a warehouse receipt
20 even if issued by a person that is the owner of the goods and is not a
21 warehouse.

22
23 4-7-202. Form of warehouse receipt – Effect of omission.

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

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

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

29 (2) the date of issue of the receipt;

30 (3) the unique identification code of the receipt;

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

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

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

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

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

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

12 (c) A warehouse may insert in its receipt any terms that are not
 13 contrary to the Uniform Commercial Code and do not impair its obligation of
 14 delivery under § 4-7-403 or its duty of care under § 4-7-204. Any contrary
 15 provision is ineffective.

16
 17 4-7-203. Liability for nonreceipt or misdescription.

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

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

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

30
 31 4-7-204. Duty of care – Contractual limitation of warehouse's
 32 liability.

33 (a) A warehouse is liable for damages for loss of or injury to the
 34 goods caused by its failure to exercise care with regard to the goods that a
 35 reasonably careful person would exercise under similar circumstances. Unless
 36 otherwise agreed, the warehouse is not liable for damages that could not have

1 been avoided by the exercise of that care.

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

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

14
15 4-7-205. Title under warehouse receipt defeated in certain cases.

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

20
21 4-7-206. Termination of storage at warehouse's option.

22 (a) A warehouse, by giving notice to the person on whose account the
23 goods are held and any other person known to claim an interest in the goods,
24 may require payment of any charges and removal of the goods from the
25 warehouse at the termination of the period of storage fixed by the document
26 of title or, if a period is not fixed, within a stated period not less than
27 30 days after the warehouse gives notice. If the goods are not removed
28 before the date specified in the notice, the warehouse may sell them pursuant
29 to § 4-7-210.

30 (b) If a warehouse in good faith believes that goods are about to
31 deteriorate or decline in value to less than the amount of its lien within
32 the time provided in subsection (a) and § 4-7-210, the warehouse may specify
33 in the notice given under subsection (a) any reasonable shorter time for
34 removal of the goods and, if the goods are not removed, may sell them at
35 public sale held not less than one week after a single advertisement or
36 posting.

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

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

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

16
 17 4-7-207. Goods must be kept separate -- Fungible goods.

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

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

28
 29 4-7-208. Altered warehouse receipts.

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

35
 36 4-7-209. Lien of warehouse.

1 (a) A warehouse has a lien against the bailor on the goods covered by
2 a warehouse receipt or storage agreement or on the proceeds thereof in its
3 possession for charges for storage or transportation, including demurrage and
4 terminal charges, insurance, labor, or other charges, present or future, in
5 relation to the goods, and for expenses necessary for preservation of the
6 goods or reasonably incurred in their sale pursuant to law. If the person on
7 whose account the goods are held is liable for similar charges or expenses in
8 relation to other goods whenever deposited and it is stated in the warehouse
9 receipt or storage agreement that a lien is claimed for charges and expenses
10 in relation to other goods, the warehouse also has a lien against the goods
11 covered by the warehouse receipt or storage agreement or on the proceeds
12 thereof in its possession for those charges and expenses, whether or not the
13 other goods have been delivered by the warehouse. However, as against a
14 person to which a negotiable warehouse receipt is duly negotiated, a
15 warehouse's lien is limited to charges in an amount or at a rate specified in
16 the warehouse receipt or, if no charges are so specified, to a reasonable
17 charge for storage of the specific goods covered by the receipt subsequent to
18 the date of the receipt.

19 (b) A warehouse may also reserve a security interest against the
20 bailor for the maximum amount specified on the receipt for charges other than
21 those specified in subsection (a), such as for money advanced and interest.
22 The security interest is governed by chapter 9 of this title (§ 4-9-101 et
23 seq.).

24 (c) A warehouse's lien for charges and expenses under subsection (a)
25 or a security interest under subsection (b) is also effective against any
26 person that so entrusted the bailor with possession of the goods that a
27 pledge of them by the bailor to a good-faith purchaser for value would have
28 been valid. However, the lien or security interest is not effective against
29 a person that before issuance of a document of title had a legal interest or
30 a perfected security interest in the goods and that did not:

31 (1) deliver or entrust the goods or any document of title
32 covering the goods to the bailor or the bailor's nominee with:

- 33 (A) actual or apparent authority to ship, store, or sell;
34 (B) power to obtain delivery under § 4-7-403; or
35 (C) power of disposition under § 4-2-403, § 4-2A-304(2), §
36 4-2A-305(2), § 4-9-320, or § 4-9-321(c) or other statute or rule of law; or

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

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

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

10
11 4-7-210. Enforcement of warehouse's lien.

12 (a) Except as otherwise provided in subsection (b), a warehouse's lien
13 may be enforced by public or private sale of the goods, in bulk or in
14 packages, at any time or place and on any terms that are commercially
15 reasonable, after notifying all persons known to claim an interest in the
16 goods. The notification must include a statement of the amount due, the
17 nature of the proposed sale, and the time and place of any public sale. The
18 fact that a better price could have been obtained by a sale at a different
19 time or in a method different from that selected by the warehouse is not of
20 itself sufficient to establish that the sale was not made in a commercially
21 reasonable manner. The warehouse sells in a commercially reasonable manner
22 if the warehouse sells the goods in the usual manner in any recognized market
23 therefore, sells at the price current in that market at the time of the sale,
24 or otherwise sells in conformity with commercially reasonable practices among
25 dealers in the type of goods sold. A sale of more goods than apparently
26 necessary to be offered to ensure satisfaction of the obligation is not
27 commercially reasonable, except in cases covered by the preceding sentence.

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

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

33 (2) The notification must include an itemized statement of the
34 claim, a description of the goods subject to the lien, a demand for payment
35 within a specified time not less than 10 days after receipt of the
36 notification, and a conspicuous statement that unless the claim is paid

1 within that time the goods will be advertised for sale and sold by auction at
2 a specified time and place.

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

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

6 (5) After the expiration of the time given in the notification,
7 an advertisement of the sale must be published once a week for two weeks
8 consecutively in a newspaper of general circulation where the sale is to be
9 held. The advertisement must include a description of the goods, the name of
10 the person on whose account the goods are being held, and the time and place
11 of the sale. The sale must take place at least 15 days after the first
12 publication. If there is no newspaper of general circulation where the sale
13 is to be held, the advertisement must be posted at least 10 days before the
14 sale in not fewer than six conspicuous places in the neighborhood of the
15 proposed sale.

16 (c) Before any sale pursuant to this section, any person claiming a
17 right in the goods may pay the amount necessary to satisfy the lien and the
18 reasonable expenses incurred in complying with this section. In that event,
19 the goods may not be sold but must be retained by the warehouse subject to
20 the terms of the receipt and this article.

21 (d) A warehouse may buy at any public sale held pursuant to this
22 section.

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

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

30 (g) The rights provided by this section are in addition to all other
31 rights allowed by law to a creditor against a debtor.

32 (h) If a lien is on goods stored by a merchant in the course of its
33 business, the lien may be enforced in accordance with subsection (a) or (b).

34 (i) A warehouse is liable for damages caused by failure to comply with
35 the requirements for sale under this section and, in case of willful
36 violation, is liable for conversion.

PART 3 – BILLS OF LADING: SPECIAL PROVISIONS

4-7-301. Liability for nonreceipt or misdescription -- "Said to contain" -- "Shipper's weight, load, and count" -- Improper handling.

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

(b) If goods are loaded by the issuer of a bill of lading;

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

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

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

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

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity,

1 condition, and weight, as furnished by the shipper, and the shipper shall
2 indemnify the issuer against damage caused by inaccuracies in those
3 particulars. This right of indemnity does not limit the issuer's
4 responsibility or liability under the contract of carriage to any person
5 other than the shipper.

6
7 4-7-302. Through bills of lading and similar documents of title.

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

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

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

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

32 (2) the amount of any expense reasonably incurred by the issuer
33 in defending any action commenced by any person entitled to recover on the
34 bill or other document for the breach.

35
36 4-7-303. Diversion -- Reconsignment -- Change of instructions.

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

5 (1) the holder of a negotiable bill;

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

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

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

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

17
 18 4-7-304. Tangible bills of lading in a set.

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

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

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

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

35 (e) The bailee shall deliver in accordance with Part 4 of this chapter
 36 (§ 4-7-401 et seq.) against the first presented part of a tangible bill of

1 lading lawfully issued in a set. Delivery in this manner discharges the
2 bailee's obligation on the whole bill.

3
4 4-7-305. Destination bills.

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

8 (b) Upon request of any person entitled as against a carrier to
9 control the goods while in transit and on surrender of possession or control
10 of any outstanding bill of lading or other receipt covering the goods, the
11 issuer, subject to § 4-7-105, may procure a substitute bill to be issued at
12 any place designated in the request.

13
14 4-7-306. Altered bills of lading.

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

17
18 4-7-307. Lien of carrier.

19 (a) A carrier has a lien on the goods covered by a bill of lading or
20 on the proceeds thereof in its possession for charges after the date of the
21 carrier's receipt of the goods for storage or transportation, including
22 demurrage and terminal charges, and for expenses necessary for preservation
23 of the goods incident to their transportation or reasonably incurred in their
24 sale pursuant to law. However, against a purchaser for value of a negotiable
25 bill of lading, a carrier's lien is limited to charges stated in the bill or
26 the applicable tariffs or, if no charges are stated, a reasonable charge.

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

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

1
2 4-7-308. Enforcement of carrier's lien.

3 (a) A carrier's lien on goods may be enforced by public or private
4 sale of the goods, in bulk or in packages, at any time or place and on any
5 terms that are commercially reasonable, after notifying all persons known to
6 claim an interest in the goods. The notification must include a statement of
7 the amount due, the nature of the proposed sale, and the time and place of
8 any public sale. The fact that a better price could have been obtained by a
9 sale at a different time or in a method different from that selected by the
10 carrier is not of itself sufficient to establish that the sale was not made
11 in a commercially reasonable manner. The carrier sells goods in a
12 commercially reasonable manner if the carrier sells the goods in the usual
13 manner in any recognized market therefor, sells at the price current in that
14 market at the time of the sale, or otherwise sells in conformity with
15 commercially reasonable practices among dealers in the type of goods sold. A
16 sale of more goods than apparently necessary to be offered to ensure
17 satisfaction of the obligation is not commercially reasonable, except in
18 cases covered by the preceding sentence.

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

24 (c) A carrier may buy at any public sale pursuant to this section.

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

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

32 (f) The rights provided by this section are in addition to all other
33 rights allowed by law to a creditor against a debtor.

34 (g) A carrier's lien may be enforced pursuant to either subsection (a)
35 or the procedure set forth in § 4-7-210(b).

36 (h) A carrier is liable for damages caused by failure to comply with

1 the requirements for sale under this section and, in case of willful
 2 violation, is liable for conversion.

3
 4 4-7-309. Duty of care -- Contractual limitation of carrier's
 5 liability.

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

12 (b) Damages may be limited by a term in the bill of lading or in a
 13 transportation agreement that the carrier's liability may not exceed a value
 14 stated in the bill or transportation agreement if the carrier's rates are
 15 dependent upon value and the consignor is afforded an opportunity to declare
 16 a higher value and the consignor is advised of the opportunity. However,
 17 such a limitation is not effective with respect to the carrier's liability
 18 for conversion to its own use.

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

22
 23 PART 4 – WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS
 24

25 4-7-401. Irregularities in issue of receipt or bill or conduct of
 26 issuer.

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

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

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

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

36 (4) the person issuing the document is not a warehouse but the

1 document purports to be a warehouse receipt.

3 4-7-402. Duplicate document of title -- Overissue.

4 A duplicate or any other document of title purporting to cover goods
5 already represented by an outstanding document of the same issuer does not
6 confer any right in the goods, except as provided in the case of tangible
7 bills of lading in a set of parts, overissue of documents for fungible goods,
8 substitutes for lost, stolen, or destroyed documents, or substitute documents
9 issued pursuant to § 4-7-105. The issuer is liable for damages caused by its
10 overissue or failure to identify a duplicate document by a conspicuous
11 notation.

13 4-7-403. Obligation of bailee to deliver -- Excuse.

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

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

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

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

23 (4) the exercise by a seller of its right to stop delivery
24 pursuant to § 4-2-705 or by a lessor of its right to stop delivery pursuant
25 to § 4-2A-526;

26 (5) a diversion, reconsignment, or other disposition pursuant to
27 § 4-7-303;

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

30 (7) any other lawful excuse.

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

34 (c) Unless a person claiming the goods is a person against which the
35 document of title does not confer a right under § 4-7-503(a):

36 (1) the person claiming under a document shall surrender

possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

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

4-7-404. No liability for good-faith delivery pursuant to document of title.

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

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

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

PART 5 – WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

4-7-501. Form of negotiation and requirements of due negotiation.

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

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

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

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

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

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not

1 in the regular course of business or financing or involves receiving the
2 document in settlement or payment of a monetary obligation.

3 (b) The following rules apply to a negotiable electronic document of
4 title:

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

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

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

18 (c) Indorsement of a nonnegotiable document of title neither makes it
19 negotiable nor adds to the transferee's rights.

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

24
25 4-7-502. Rights acquired by due negotiation.

26 (a) Subject to §§ 4-7-205 and 4-7-503, a holder to which a negotiable
27 document of title has been duly negotiated acquires thereby:

28 (1) title to the document;

29 (2) title to the goods;

30 (3) all rights accruing under the law of agency or estoppel,
31 including rights to goods delivered to the bailee after the document was
32 issued; and

33 (4) the direct obligation of the issuer to hold or deliver the
34 goods according to the terms of the document free of any defense or claim by
35 the issuer except those arising under the terms of the document or under this
36 chapter, but in the case of a delivery order, the bailee's obligation accrues

only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to § 4-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

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

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

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

4-7-503. Document of title to goods defeated in certain cases.

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

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

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

(B) power to obtain delivery under § 4-7-403; or

(C) power of disposition under § 4-2-403, § 4-2A-304(2), § 4-2A-305(2), § 4-9-320, or § 4-9-321(c) or other statute or rule of law; or

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

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under § 4-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by

1 the freight forwarder is duly negotiated. However, delivery by the carrier
2 in accordance with Part 4 pursuant to its own bill of lading discharges the
3 carrier's obligation to deliver.

4
5 4-7-504. Rights acquired in absence of due negotiation -- Effect of
6 diversion -- Stoppage of delivery.

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

11 (b) In the case of a transfer of a nonnegotiable document of title,
12 until but not after the bailee receives notice of the transfer, the rights of
13 the transferee may be defeated:

14 (1) by those creditors of the transferor which could treat the
15 transfer as void under § 4-2-402 or § 4-2A-308;

16 (2) by a buyer from the transferor in ordinary course of
17 business if the bailee has delivered the goods to the buyer or received
18 notification of the buyer's rights;

19 (3) by a lessee from the transferor in ordinary course of
20 business if the bailee has delivered the goods to the lessee or received
21 notification of the lessee's rights; or

22 (4) as against the bailee, by good-faith dealings of the bailee
23 with the transferor.

24 (c) A diversion or other change of shipping instructions by the
25 consignor in a nonnegotiable bill of lading which causes the bailee not to
26 deliver the goods to the consignee defeats the consignee's title to the goods
27 if the goods have been delivered to a buyer in ordinary course of business or
28 a lessee in ordinary course of business and, in any event, defeats the
29 consignee's rights against the bailee.

30 (d) Delivery of the goods pursuant to a nonnegotiable document of
31 title may be stopped by a seller under § 4-2-705 or a lessor under § 4-2A-
32 526, subject to the requirements of due notification in those sections. A
33 bailee that honors the seller's or lessor's instructions is entitled to be
34 indemnified by the seller or lessor against any resulting loss or expense.

35
36 4-7-505. Indorser not guarantor for other parties.

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

4-7-506. Delivery without indorsement – Right to compel indorsement.

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

4-7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under § 4-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

4-7-508. Warranties of collecting bank as to documents of title.

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

4-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by chapter 2 of this title (§ 4-2-101 et seq.), chapter 2A of this title (§ 4-2A-101 et seq.), or chapter 5 of this title (§ 4-5-101 et seq.).

1 PART 6 – WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

2
3 4-7-601. Lost, stolen, or destroyed documents of title.

4 (a) If a document of title is lost, stolen, or destroyed, a court may
5 order delivery of the goods or issuance of a substitute document and the
6 bailee may without liability to any person comply with the order. If the
7 document was negotiable, a court may not order delivery of the goods or
8 issuance of a substitute document without the claimant's posting security
9 unless it finds that any person that may suffer loss as a result of
10 nonsurrender of possession or control of the document is adequately protected
11 against the loss. If the document was nonnegotiable, the court may require
12 security. The court may also order payment of the bailee's reasonable costs
13 and attorney's fees in any action under this subsection.

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

21
22 4-7-602. Judicial process against goods covered by negotiable document
23 of title.

24 Unless a document of title was originally issued upon delivery of the
25 goods by a person that did not have power to dispose of them, a lien does not
26 attach by virtue of any judicial process to goods in the possession of a
27 bailee for which a negotiable document of title is outstanding unless
28 possession or control of the document is first surrendered to the bailee or
29 the document's negotiation is enjoined. The bailee may not be compelled to
30 deliver the goods pursuant to process until possession or control of the
31 document is surrendered to the bailee or to the court. A purchaser of the
32 document for value without notice of the process or injunction takes free of
33 the lien imposed by judicial process.

34
35 4-7-603. Conflicting claims -- Interpleader.

36 If more than one person claims title to or possession of the goods, the

bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

PART 7 – MISCELLANEOUS PROVISIONS

4-7-701. Effective Date. This chapter takes effect on January 1, 2008.

4-7-702. [Reserved.]

4-7-703. Applicability.

This chapter applies to a document of title that is issued or a bailment that arises on or after January 1, 2008. This chapter does not apply to a document of title that is issued or a bailment that arises before January 1, 2008, even if the document of title or bailment would be subject to this chapter if the document of title had been issued or bailment had arisen on or after January 1, 2008. This chapter does not apply to a right of action that has accrued before January 1, 2008.

4-7-704. Savings clause.

A document of title issued or a bailment that arises before January 1, 2008, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this chapter as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

SECTION 2. Arkansas Code § 4-1-201(b)(5), concerning the general definition of "bearer" in the Uniform Commercial Code, is amended to read as follows:

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

1
2 SECTION 3. Arkansas Code § 4-1-201(b)(6), concerning the general
3 definition of "bill of lading" in the Uniform Commercial Code, is amended to
4 read as follows:

5 (6) "Bill of lading" means a document of title evidencing the
6 receipt of goods for shipment issued by a person engaged in the business of
7 directly or indirectly transporting or forwarding goods. The term does not
8 include a warehouse receipt.

9
10 SECTION 4. Arkansas Code § 4-1-201(b)(15), concerning the general
11 definition of "delivery" in the Uniform Commercial Code, is amended to read
12 as follows:

13 (15) "Delivery", with respect to an electronic document of title
14 means voluntary transfer of control and with respect to an instrument, a
15 tangible document of title, or chattel paper, means voluntary transfer of
16 possession.

17
18 SECTION 5. Arkansas Code § 4-1-201(b)(16), concerning the general
19 definition of "document of title" in the Uniform Commercial Code, is amended
20 to read as follows:

21 (16) "Document of title" ~~includes bill of lading, dock~~
22 ~~warrant, dock receipt, warehouse receipt or order for the delivery of goods,~~
23 ~~and also any other document which~~ means a record (i) that in the regular
24 course of business or financing is treated as adequately evidencing that the
25 person in possession or control of the record ~~it~~ is entitled to receive,
26 control, hold, and dispose of the record ~~document~~ and the goods ~~it~~ the
27 record covers and (ii) that purports to be issued by or addressed to a bailee
28 and to cover goods in the bailee's possession which are either identified or
29 are fungible portions of an identified mass. The term includes a bill of
30 lading, transport document, dock warrant, dock receipt, warehouse receipt,
31 and order for delivery of goods. To be a document of title, a document must
32 purport to be issued by or addressed to a bailee and purport to cover goods
33 in the bailee's possession which are either identified or are fungible
34 portions of an identified mass. An electronic document of title means a
35 document of title evidenced by a record consisting of information stored in
36 an electronic medium. A tangible document of title means a document of title

1 evidenced by a record consisting of information that is inscribed on a
 2 tangible medium.

3
 4 SECTION 6. Arkansas Code § 4-1-201(b)(21), concerning the general
 5 definition of "holder" in the Uniform Commercial Code, is amended to read as
 6 follows:

7 (21) "Holder" means:

8 (A) the person in possession of a negotiable instrument
 9 that is payable either to bearer or to an identified person that is the
 10 person in possession; ~~or~~

11 (B) the person in possession of a negotiable tangible
 12 document of title if the goods are deliverable either to bearer or to the
 13 order of the person in possession; or

14 (C) the person in control of a negotiable electronic
 15 document of title.

16
 17 SECTION 7. Arkansas Code § 4-1-201(b)(42), concerning the general
 18 definition of "warehouse receipt" in the Uniform Commercial Code, is amended
 19 to read as follows:

20 (42) "Warehouse receipt" means a document of title ~~receipt~~
 21 issued by a person engaged in the business of storing goods for hire.

22
 23 SECTION 8. Arkansas Code § 4-2-103(3), concerning definitions
 24 applicable to the sales chapter of the Uniform Commercial Code, is amended to
 25 read as follows:

26 (3) ~~The~~ "Control" as provided in § 4-7-106 and the following
 27 definitions in other chapters apply to this chapter:

28 "Check". Section 4-3-104.

29 "Consignee". Section 4-7-102.

30 "Consignor". Section 4-7-102.

31 "Consumer goods". Section 4-9-102.

32 "Dishonor". Section 4-3-502.

33 "Draft". Section 4-3-104.

34
 35 SECTION 9. Arkansas Code § 4-2-104(2), concerning the definition of
 36 "financing agency" of the sales chapter of the Uniform Commercial Code, is

1 amended to read as follows:

2 (2) "Financing agency" means a bank, finance company or other
3 person who in the ordinary course of business makes advances against goods or
4 documents of title or who by arrangement with either the seller or the buyer
5 intervenes in ordinary course to make or collect payment due or claimed under
6 the contract for sale, as by purchasing or paying the seller's draft or
7 making advances against it or by merely taking it for collection whether or
8 not documents of title accompany or are associated with the draft.

9 "Financing agency" includes also a bank or other person who similarly
10 intervenes between persons who are in the position of seller and buyer in
11 respect to the goods (§ 4-2-707).

12
13 SECTION 10. Arkansas Code § 4-2-310 is amended to read as follows:

14 4-2-310. Open time for payment or running of credit – Authority to
15 ship under reservation.

16 Unless otherwise agreed:

17 (a) payment is due at the time and place at which the buyer is to
18 receive the goods even though the place of shipment is the place of
19 delivery; and

20 (b) if the seller is authorized to send the goods he may ship them
21 under reservation, and may tender the documents of title, but the buyer may
22 inspect the goods after their arrival before payment is due unless such
23 inspection is inconsistent with the terms of the contract (Section 4-2-513);
24 and

25 (c) if delivery is authorized and made by way of documents of title
26 otherwise than by subsection (b) then payment is due regardless of where the
27 goods are to be received (i) at the time and place at which the buyer is to
28 receive delivery of the tangible documents or (ii) at the time the buyer is
29 to receive delivery of the electronic documents and at the seller's place of
30 business or if none, the seller's residence ~~regardless of where the goods are~~
31 ~~to be received~~; and

32 (d) where the seller is required or authorized to ship the goods on
33 credit the credit period runs from the time of shipment but post-dating the
34 invoice or delaying its dispatch will correspondingly delay the starting of
35 the credit period.

SECTION 11. Arkansas Code § 4-2-323 is amended to read as follows:

4-2-323. Form of bill of lading required in overseas shipment – "Overseas".

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

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

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (§ 4-2-508(1)); and

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

SECTION 12. Arkansas Code § 4-2-401 is amended to read as follows:

4-2-401. Passing of title – Reservation for security – Limited application of section.

Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (§ 4-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on secured transactions

(chapter 9 of this title), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

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

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

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

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

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

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

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

SECTION 13. Arkansas Code § 4-2-503 is amended to read as follows:

4-2-503. Manner of seller's tender of delivery.

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

(a) tender must be at a reasonable hour, and if it is of goods

1 they must be kept available for the period reasonably necessary to enable the
2 buyer to take possession; but

3 (b) unless otherwise agreed the buyer must furnish facilities
4 reasonably suited to the receipt of the goods.

5 (2) Where the case is within § 4-2-504 respecting shipment tender
6 requires that the seller comply with its provisions.

7 (3) Where the seller is required to deliver at a particular
8 destination tender requires that he comply with subsection (1) and also in
9 any appropriate case tender documents as described in subsections (4) and (5)
10 of this section.

11 (4) Where goods are in the possession of a bailee and are to be
12 delivered without being moved

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

16 (b) tender to the buyer of a non-negotiable document of title or
17 of a ~~written direction to~~ record directing the bailee to deliver is
18 sufficient tender unless the buyer seasonably objects, and except as
19 otherwise provided in chapter 9 of this subtitle receipt by the bailee of
20 notification of the buyer's rights fixes those rights as against the bailee
21 and all third persons; but risk of loss of the goods and of any failure by
22 the bailee to honor the non-negotiable document of title or to obey the
23 direction remains on the seller until the buyer has had a reasonable time to
24 present the document or direction, and a refusal by the bailee to honor the
25 document or to obey the direction defeats the tender.

26 (5) Where the contract requires the seller to deliver documents

27 (a) he must tender all such documents in correct form, except as
28 provided in this chapter with respect to bills of lading in a set (§ 4-2-
29 323(2)); and

30 (b) tender through customary banking channels is sufficient and
31 dishonor of a draft accompanying or associated with the documents constitutes
32 non-acceptance or rejection.

33
34 SECTION 14. Arkansas Code § 4-2-505 is amended to read as follows:

35 4-2-505. Seller's shipment under reservation.

36 (1) Where the seller has identified goods to the contract by or before

shipment:

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

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (§ 4-2-507(2)) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

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

SECTION 15. Arkansas Code § 4-2-506 is amended to read as follows:
4-2-506. Rights of financing agency.

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

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

SECTION 16. Arkansas Code § 4-2-509(2), concerning the risk of loss allocation, is amended to read as follows:

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable

1 document of title covering the goods; or

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

4 (c) after his receipt of possession or control of a
5 nonnegotiable document of title or other ~~written~~ directions to deliver in a
6 record, as provided in § 4-2-503(4)(b).

7
8 SECTION 17. Arkansas Code § 4-2-605(2), concerning the waiver of
9 buyer's objections by failure to particularize, is amended to read as
10 follows:

11 (2) Payment against documents made without reservation of rights
12 precludes recovery of the payment for defects apparent ~~on the face of~~ in the
13 documents.

14
15 SECTION 18. Arkansas Code § 4-2-705 is amended to read as follows:
16 4-2-705. Seller's stoppage of delivery in transit or otherwise.

17 (1) The seller may stop delivery of goods in the possession of a
18 carrier or other bailee when he discovers the buyer to be insolvent (§ 4-2-
19 702) and may stop delivery of carload, truckload, planeload or larger
20 shipments of express or freight when the buyer repudiates or fails to make a
21 payment due before delivery or if for any other reason the seller has a right
22 to withhold or reclaim the goods.

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

24 (a) receipt of the goods by the buyer; or

25 (b) acknowledgment to the buyer by any bailee of the goods
26 except a carrier that the bailee holds the goods for the buyer; or

27 (c) such acknowledgment to the buyer by a carrier by reshipment
28 or as ~~warehouseman~~ a warehouse; or

29 (d) negotiation to the buyer of any negotiable document of title
30 covering the goods.

31 (3)(a) To stop delivery the seller must so notify as to enable
32 the bailee by reasonable diligence to prevent delivery of the goods.

33 (b) After such notification the bailee must hold and deliver the goods
34 according to the directions of the seller but the seller is liable to the
35 bailee for any ensuing charges or damages.

36 (c) If a negotiable document of title has been issued for goods the

1 bailee is not obliged to obey a notification to stop until surrender of
2 possession or control of the document.

3 (d) A carrier who has issued a non-negotiable bill of lading is not
4 obliged to obey a notification to stop received from a person other than the
5 consignor.

6
7 SECTION 19. Arkansas Code § 4-2A-103(1)(a), concerning the definition
8 of "buyer in ordinary course of business", is amended to read as follows:

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

18
19 SECTION 20. Arkansas Code § 4-2A-103(1)(o), concerning the definition
20 of "lessee in ordinary course of business", is amended to read as follows:

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

31
32 SECTION 21. Arkansas Code § 4-2A-514(2), concerning the waiver of
33 lessee's objections, is amended to read as follows:

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

SECTION 22. Arkansas Code § 4-2A-526(2), concerning a lessor's stoppage of delivery in transit or otherwise, is amended to read as follows:

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

- (a) receipt of the goods by the lessee;
- (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ a warehouse.

SECTION 23. Arkansas Code § 4-4-104(c), concerning definitions under the bank deposits and collections chapter of the Uniform Commercial Code, is amended to read as follows:

(c) ~~The~~ "Control" as provided in § 4-7-106 and the following definitions in other chapters of this subtitle apply to this chapter:

- "Acceptance". Section 4-3-409.
- "Alteration". Section 4-3-407.
- "Cashier's check". Section 4-3-104.
- "Certificate of deposit". Section 4-3-104.
- "Certified check". Section 4-3-409.
- "Check". Section 4-3-104.
- "Good faith". Section 4-3-103.
- "Holder in due course". Section 4-3-302.
- "Instrument". Section 4-3-104.
- "Notice of dishonor". Section 4-3-503.
- "Order". Section 4-3-103.
- "Ordinary care". Section 4-3-103.
- "Person entitled to enforce". Section 4-3-301.
- "Presentment". Section 4-3-501.
- "Promise". Section 4-3-103.
- "Prove". Section 4-3-103.
- "Record". Section 4-3-103.
- "Remotely created item". Section 4-3-103.
- "Teller's check". Section 4-3-104.
- "Unauthorized signature". Section 4-3-403.

SECTION 24. Arkansas Code § 4-4-210 is amended to read as follows:

4-4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

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

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

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

(b) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to chapter 9, but:

(1) no security agreement is necessary to make the security interest enforceable (§ 4-9-203(b)(3)(A));

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

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

SECTION 25. Arkansas Code § 4-8-103, concerning the rules for determining whether certain obligations and interests are securities or financial assets, is amended to add an additional subsection to read as follows:

(g) A document of title is not a financial asset unless § 4-8-102(a)(9)(iii) applies.

SECTION 26. Arkansas Code § 4-9-102(a)(30), concerning the definition of "document" under the secured transactions chapter of the Uniform Commercial Code, is amended to read as follows:

(30) "Document" means a document of title or a receipt of the type described in § ~~4-7-201(2)~~ 4-7-201(b).

SECTION 27. Arkansas Code § 4-9-102(b), concerning definitions applicable to the secured transactions chapter of the Uniform Commercial Code, is amended to read as follows:

(b) ~~The "Control" as provided in § 4-7-106 and the~~ following definitions in other chapters apply to this chapter:

"Applicant". § Section 4-5-102.

"Beneficiary". § Section 4-5-102.

"Broker". § Section 4-8-102.

"Certificated security". § Section 3-8-102.

"Check". § Section 4-3-104.

"Clearing corporation". § Section 4-8-102.

"Contract for sale". § Section 4-2-106.

"Customer". § Section 4-4-104.

"Entitlement holder". § Section 4-8-102.

"Financial asset". § Section 4-8-102.

"Holder in due course". § Section 4-3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right). § Section 4-5-102.

"Issuer" (with respect to a security). § Section 4-8-201.

"Issuer" (with respect to documents of title). Section 4-7-102.

"Lease". § Section 4-2A-103.

"Lease agreement". § Section 4-2A-103.

"Lease contract". § Section 4-2A-103.

"Leasehold interest". § Section 4-2A-103.

"Lessee". § Section 4-2A-103.

"Lessee in ordinary course of business". § Section 4-2A-103.

"Lessor". § Section 4-2A-103.

"Lessor's residual interest" . § Section 4-2A-103.

"Letter of credit". § Section 4-5-102.

1 "Merchant". § Section 4-2-104.
 2 "Negotiable instrument". § Section 4-3-104.
 3 "Nominated person". § Section 4-5-102.
 4 "Note". § Section 4-3-104.
 5 "Proceeds of a letter of credit". § Section 4-5-114.
 6 "Prove". § Section 4-3-103.
 7 "Sale". § Section 4-2-106.
 8 "Securities account". § Section 4-8-501.
 9 "Securities intermediary". § Section 4-8-102.
 10 "Security". § Section 4-8-102.
 11 "Security certificate". § Section 4-8-102.
 12 "Security entitlement". § Section 4-8-102.
 13 "Uncertificated security". § Section 4-8-102.
 14

15 SECTION 28. Arkansas Code § 4-9-203(b), concerning the attachment and
 16 enforceability of security interests, is amended to read as follows:

17 (b) Except as otherwise provided in subsections (c) through (i), a
 18 security interest is enforceable against the debtor and third parties with
 19 respect to the collateral only if:

- 20 (1) value has been given;
 21 (2) the debtor has rights in the collateral or the power to
 22 transfer rights in the collateral to a secured party; and
 23 (3) one (1) of the following conditions is met:
 24 (A) the debtor has authenticated a security agreement that
 25 provides a description of the collateral and, if the security interest covers
 26 timber to be cut, a description of the land concerned;
 27 (B) the collateral is not a certificated security and is
 28 in the possession of the secured party under Section 4-9-313 pursuant to the
 29 debtor's security agreement;
 30 (C) the collateral is a certificated security in
 31 registered form and the security certificate has been delivered to the
 32 secured party under § 4-8-301 pursuant to the debtor's security agreement; or
 33 (D) the collateral is deposit accounts, electronic chattel
 34 paper, investment property, ~~or~~ letter-of-credit rights, or electronic
 35 documents, and the secured party has control under § 4-7-106, § 4-9-104, § 4-
 36 9-105, § 4-9-106, or § 4-9-107 pursuant to the debtor's security agreement.

1
2 SECTION 29. Arkansas Code § 4-9-207(c), concerning the rights and
3 duties of a secured party having possession or control of collateral, is
4 amended to read as follows:

5 (c) Except as otherwise provided in subsection (d), a secured party
6 having possession of collateral or control of collateral under § 4-7-106, §
7 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107:

8 (1) may hold as additional security any proceeds, except money
9 or funds, received from the collateral;

10 (2) shall apply money or funds received from the collateral to
11 reduce the secured obligation, unless remitted to the debtor; and

12 (3) may create a security interest in the collateral.
13

14 SECTION 30. Arkansas Code § 4-9-208 is amended to read as follows:

15 4-9-208. Additional duties of secured party having control of
16 collateral.

17 (a) This section applies to cases in which there is no outstanding
18 secured obligation and the secured party is not committed to make advances,
19 incur obligations, or otherwise give value.

20 (b) Within ten (10) days after receiving an authenticated demand by
21 the debtor:

22 (1) a secured party having control of a deposit account under
23 Section 4-9-104(a)(2) shall send to the bank with which the deposit account
24 is maintained an authenticated statement that releases the bank from any
25 further obligation to comply with instructions originated by the secured
26 party;

27 (2) a secured party having control of a deposit account under §
28 4-9-104(a)(3) shall:

29 (A) pay the debtor the balance on deposit in the deposit
30 account; or

31 (B) transfer the balance on deposit into a deposit account
32 in the debtor's name;

33 (3) a secured party, other than a buyer, having control of
34 electronic chattel paper under § 4-9-105 shall:

35 (A) communicate the authoritative copy of the electronic
36 chattel paper to the debtor or its designated custodian;

1 (B) if the debtor designates a custodian that is the
 2 designated custodian with which the authoritative copy of the electronic
 3 chattel paper is maintained for the secured party, communicate to the
 4 custodian an authenticated record releasing the designated custodian from any
 5 further obligation to comply with instructions originated by the secured
 6 party and instructing the custodian to comply with instructions originated by
 7 the debtor; and

8 (C) take appropriate action to enable the debtor or its
 9 designated custodian to make copies of or revisions to the authoritative copy
 10 which add or change an identified assignee of the authoritative copy without
 11 the consent of the secured party;

12 (4) a secured party having control of investment property under
 13 § 4-8-106(d)(2) or § 4-9-106(b) shall send to the securities intermediary or
 14 commodity intermediary with which the security entitlement or commodity
 15 contract is maintained an authenticated record that releases the securities
 16 intermediary or commodity intermediary from any further obligation to comply
 17 with entitlement orders or directions originated by the secured party; ~~and~~

18 (5) a secured party having control of a letter-of-credit right
 19 under § 4-9-107 shall send to each person having an unfulfilled obligation to
 20 pay or deliver proceeds of the letter of credit to the secured party an
 21 authenticated release from any further obligation to pay or deliver proceeds
 22 of the letter of credit to the secured party; and

23 (6) a secured party having control of an electronic document
 24 shall:

25 (A) give control of the electronic document to the debtor
 26 or its designated custodian;

27 (B) if the debtor designates a custodian that is the
 28 designated custodian with which the authoritative copy of the electronic
 29 document is maintained for the secured party, communicate to the custodian an
 30 authenticated record releasing the designated custodian from any further
 31 obligation to comply with instructions originated by the secured party and
 32 instructing the custodian to comply with instructions originated by the
 33 debtor; and

34 (C) take appropriate action to enable the debtor or its
 35 designated custodian to make copies of or revisions to the authoritative copy
 36 which add or change an identified assignee of the authoritative copy without

1 the consent of the secured party.

2
3 SECTION 31. Arkansas Code § 4-9-301 is amended to read as follows:

4 4-9-301. Law governing perfection and priority of security interests.

5 Except as otherwise provided in §§ 4-9-303 -- 4-9-306, the following
6 rules determine the law governing perfection, the effect of perfection or
7 nonperfection, and the priority of a security interest in collateral:

8 (1) Except as otherwise provided in this section, while a debtor
9 is located in a jurisdiction, the local law of that jurisdiction governs
10 perfection, the effect of perfection or nonperfection, and the priority of a
11 security interest in collateral.

12 (2) While collateral is located in a jurisdiction, the local law
13 of that jurisdiction governs perfection, the effect of perfection or
14 nonperfection, and the priority of a possessory security interest in that
15 collateral.

16 (3) Except as otherwise provided in paragraph (4) of this
17 section, while tangible negotiable documents, goods, instruments, money, or
18 tangible chattel paper is located in a jurisdiction, the local law of that
19 jurisdiction governs:

20 (A) perfection of a security interest in the goods by
21 filing a fixture filing;

22 (B) perfection of a security interest in timber to be cut;
23 and

24 (C) the effect of perfection or nonperfection and the
25 priority of a nonpossessory security interest in the collateral.

26 (4) The local law of the jurisdiction in which the wellhead or
27 minehead is located governs perfection, the effect of perfection or
28 nonperfection, and the priority of a security interest in as-extracted
29 collateral.

30
31 SECTION 32. Arkansas Code § 4-9-310 is amended to read as follows:

32 4-9-310. When filing required to perfect security interest or
33 agricultural lien – Security interests and agricultural liens to which filing
34 provisions do not apply.

35 (a) Except as otherwise provided in subsection (b) and § 4-9-312(b), a
36 financing statement must be filed to perfect all security interests and

1 agricultural liens.

2 (b) The filing of a financing statement is not necessary to perfect a
3 security interest:

4 (1) that is perfected under § 4-9-308(d), (e), (f), or (g);

5 (2) that is perfected under § 4-9-309 when it attaches;

6 (3) in property subject to a statute, regulation, or treaty
7 described in § 4-9-311(a);

8 (4) in goods in possession of a bailee which is perfected under
9 § 4-9-312(d)(1) or (2);

10 (5) in certificated securities, documents, goods, or instruments
11 which is perfected without filing or possession under § 4-9-312(e), (f), or
12 (g);

13 (6) in collateral in the secured party's possession under § 4-9-
14 313;

15 (7) in a certificated security which is perfected by delivery of
16 the security certificate to the secured party under § 4-9-313;

17 (8) in deposit accounts, electronic chattel paper, electronic
18 documents, investment property, or letter-of-credit rights which is perfected
19 by control under § 4-9-314;

20 (9) in proceeds which is perfected under § 4-9-315; or

21 (10) that is perfected under § 4-9-316.

22 (c) If a secured party assigns a perfected security interest or
23 agricultural lien, a filing under this chapter is not required to continue
24 the perfected status of the security interest against creditors of and
25 transferees from the original debtor.

26
27 SECTION 33. Arkansas Code § 4-9-312(e), concerning the perfection of
28 certain security interests, is amended to read as follows:

29 (e) A security interest in certificated securities, negotiable
30 documents, or instruments is perfected without filing or the taking of
31 possession or control for a period of twenty (20) days from the time it
32 attaches to the extent that it arises for new value given under an
33 authenticated security agreement.

34
35 SECTION 34. Arkansas Code § 4-9-313(a), concerning the perfection of
36 certain security interests by possession or delivery without filing, is

1 amended to read as follows:

2 (a) Except as otherwise provided in subsection (b), a secured party
3 may perfect a security interest in tangible negotiable documents, goods,
4 instruments, money, or tangible chattel paper by taking possession of the
5 collateral. A secured party may perfect a security interest in certificated
6 securities by taking delivery of the certificated securities under § 4-8-301.

7
8 SECTION 35. Arkansas Code § 4-9-314 is amended to read as follows:

9 4-9-314. Perfection by control.

10 (a) A security interest in investment property, deposit accounts,
11 letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents
12 may be perfected by control of the collateral under § 4-7-106, § 4-9-104, §
13 4-9-105, § 4-9-106, or § 4-9-107.

14 (b) A security interest in deposit accounts, electronic chattel paper,
15 ~~or~~ letter-of-credit rights, or electronic documents is perfected by control
16 under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107 when the
17 secured party obtains control and remains perfected by control only while the
18 secured party retains control.

19 (c) A security interest in investment property is perfected by control
20 under § 4-9-106 from the time the secured party obtains control and remains
21 perfected by control until:

22 (1) the secured party does not have control; and

23 (2) one (1) of the following occurs:

24 (A) if the collateral is a certificated security, the
25 debtor has or acquires possession of the security certificate;

26 (B) if the collateral is an uncertificated security, the
27 issuer has registered or registers the debtor as the registered owner; or

28 (C) if the collateral is a security entitlement, the
29 debtor is or becomes the entitlement holder.

30
31 SECTION 36. Arkansas Code § 4-9-317 is amended to read as follows:

32 4-9-317. Interests that take priority over or take free of security
33 interest or agricultural lien.

34 (a) A security interest or agricultural lien is subordinate to the
35 rights of:

36 (1) a person entitled to priority under § 4-9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one (1) of the conditions specified in § 4-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in §§ 4-9-320 and 4-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SECTION 37. Arkansas Code § 4-9-338 is amended to read as follows:

4-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in § 4-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent

1 that the holder of the conflicting security interest gives value in
2 reasonable reliance upon the incorrect information; and

3 (2) a purchaser, other than a secured party, of the collateral
4 takes free of the security interest or agricultural lien to the extent that,
5 in reasonable reliance upon the incorrect information, the purchaser gives
6 value and, in the case of tangible chattel paper, tangible documents, goods,
7 instruments, or a security certificate, receives delivery of the collateral.
8

9 SECTION 38. Arkansas Code § 4-9-601(b), concerning the rights after
10 default of a secured party in possession of certain collateral, is amended to
11 read as follows:

12 (b) A secured party in possession of collateral or control of
13 collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107 has
14 the rights and duties provided in § 4-9-207.
15

16 SECTION 39. Arkansas Code § 4-10-104 is repealed.

17 ~~4-10-104. Laws not repealed.~~

18 ~~The chapter on documents of title (chapter 7 of this title) does not~~
19 ~~repeal or modify any laws prescribing the form or contents of documents of~~
20 ~~title or the services or facilities to be afforded by bailees, or otherwise~~
21 ~~regulating bailees' business in respects not specifically dealt with herein;~~
22 ~~but the fact that such laws are violated does not affect the status of a~~
23 ~~document of title which otherwise complies with the definition of a document~~
24 ~~of title (§ 4-1-201).~~
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