

No. 1979-86

AN ACT

SB 372

Amending Title 13 (Commercial Code) of the Pennsylvania Consolidated Statutes, by transferring the text of the Uniform Commercial Code to the Consolidated Statutes without change in substance and making conforming amendments to citations in other titles.

TABLE OF CONTENTS

TITLE 13
COMMERCIAL CODE

DIVISION 1. GENERAL PROVISIONS

Chapter 11. Short Title, Construction, Application and Subject Matter of Title

- § 1101. Short title of title.
- § 1102. Purposes; rules of construction; variation by agreement.
- § 1103. Supplementary general principles of law applicable.
- § 1104. Construction against implicit repeal.
- § 1105. Territorial application of title; power of parties to choose applicable law.
- § 1106. Remedies to be liberally administered.
- § 1107. Waiver or renunciation of claim or right after breach.
- § 1108. (Reserved).
- § 1109. Section and subsection captions.

Chapter 12. General Definitions and Principles of Interpretation

- § 1201. General definitions.
- § 1202. Prima facie evidence by third party documents.
- § 1203. Obligation of good faith.
- § 1204. Time; reasonable time; "seasonably."
- § 1205. Course of dealing and usage of trade.
- § 1206. Statute of frauds for kinds of personal property not otherwise covered.
- § 1207. Performance or acceptance under reservation of rights.
- § 1208. Option to accelerate at will.

DIVISION 2. SALES

Chapter 21. Short Title, General Construction and Subject Matter

- § 2101. Short title of division.
- § 2102. Scope; certain security and other transactions excluded from division.
- § 2103. Definitions and index of definitions.

- § 2104. Definitions: "merchant"; "between merchants"; "financing agency."
- § 2105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."
- § 2106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."
- § 2107. Goods to be severed from realty: recording.

Chapter 22. Form, Formation and Readjustment of Contract

- § 2201. Formal requirements; statute of frauds.
- § 2202. Final written expression: parol or extrinsic evidence.
- § 2203. Seals inoperative.
- § 2204. Formation in general.
- § 2205. Firm offers.
- § 2206. Offer and acceptance in formation of contract.
- § 2207. Additional terms in acceptance or confirmation.
- § 2208. Course of performance or practical construction.
- § 2209. Modification, rescission and waiver.
- § 2210. Delegation of performance; assignment of rights.

Chapter 23. General Obligation and Construction of Contract

- § 2301. General obligations of parties.
- § 2302. Unconscionable contract or clause.
- § 2303. Allocation or division of risks.
- § 2304. Price payable in money, goods, realty or otherwise.
- § 2305. Open price term.
- § 2306. Output, requirements and exclusive dealings.
- § 2307. Delivery in single lot or several lots.
- § 2308. Absence of specified place for delivery.
- § 2309. Absence of specific time provisions; notice of termination.
- § 2310. Open time for payment or running of credit; authority to ship under reservation.
- § 2311. Options and cooperation respecting performance.
- § 2312. Warranty of title and against infringement; obligation of buyer against infringement.
- § 2313. Express warranties by affirmation, promise, description or sample.
- § 2314. Implied warranty: merchantability; usage of trade.
- § 2315. Implied warranty: fitness for particular purpose.
- § 2316. Exclusion or modification of warranties.
- § 2317. Cumulation and conflict of warranties express or implied.
- § 2318. Third party beneficiaries of warranties express or implied.
- § 2319. F.O.B. and F.A.S. terms.
- § 2320. C.I.F. and C. & F. terms.

- § 2321. C.I.F. or C. & F.: “net landed weights”; “payment on arrival”; warranty of condition on arrival.
- § 2322. Delivery “ex-ship.”
- § 2323. Form of bill of lading required in overseas shipment; “overseas.”
- § 2324. “No arrival, no sale” term.
- § 2325. “Letter of credit” term; “confirmed credit.”
- § 2326. Sale on approval and sale or return; consignment sales and rights of creditors.
- § 2327. Special incidents of sale on approval and sale or return.
- § 2328. Sale by auction.

Chapter 24. Title, Creditors and Good Faith Purchasers

- § 2401. Passing of title; reservation for security; limited application of section.
- § 2402. Rights of creditors of seller against sold goods.
- § 2403. Power to transfer; good faith purchase of goods; “entrusting.”

Chapter 25. Performance

- § 2501. Insurable interest in goods; manner of identification of goods.
- § 2502. Right of buyer to goods on insolvency of seller.
- § 2503. Manner of tender of delivery by seller.
- § 2504. Shipment by seller.
- § 2505. Shipment by seller under reservation.
- § 2506. Rights of financing agency.
- § 2507. Effect of tender by seller; delivery on condition.
- § 2508. Cure by seller of improper tender or delivery; replacement.
- § 2509. Risk of loss in absence of breach.
- § 2510. Effect of breach on risk of loss.
- § 2511. Tender of payment by buyer; payment by check.
- § 2512. Payment by buyer before inspection.
- § 2513. Right of buyer to inspection of goods.
- § 2514. When documents deliverable on acceptance; when on payment.
- § 2515. Preserving evidence of goods in dispute.

Chapter 26. Breach, Repudiation and Excuse

- § 2601. Rights of buyer on improper delivery.
- § 2602. Manner and effect of rightful rejection.
- § 2603. Duties of merchant buyer as to rightfully rejected goods.
- § 2604. Options of buyer as to salvage of rightfully rejected goods.
- § 2605. Waiver of objections of buyer by failure to particularize.
- § 2606. What constitutes acceptance of goods.
- § 2607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.
- § 2608. Revocation of acceptance in whole or in part.
- § 2609. Right to adequate assurance of performance.

- § 2610. Anticipatory repudiation.
- § 2611. Retraction of anticipatory repudiation.
- § 2612. "Installment contract"; breach.
- § 2613. Casualty to identified goods.
- § 2614. Substituted performance.
- § 2615. Excuse by failure of presupposed conditions.
- § 2616. Procedure on notice claiming excuse.

Chapter 27. Remedies

- § 2701. Remedies for breach of collateral contracts not impaired.
- § 2702. Remedies of seller on discovery of insolvency of buyer.
- § 2703. Remedies of seller in general.
- § 2704. Right of seller to identify goods to contract notwithstanding breach or to salvage unfinished goods.
- § 2705. Stoppage by seller of delivery in transit or otherwise.
- § 2706. Resale by seller including contract for resale.
- § 2707. "Person in the position of a seller."
- § 2708. Damages of seller for nonacceptance or repudiation.
- § 2709. Action for the price.
- § 2710. Incidental damages of seller.
- § 2711. Remedies of buyer in general; security interest of buyer in rejected goods.
- § 2712. "Cover"; procurement by buyer of substitute goods.
- § 2713. Damages of buyer for nondelivery or repudiation.
- § 2714. Damages of buyer for breach in regard to accepted goods.
- § 2715. Incidental and consequential damages of buyer.
- § 2716. Right of buyer to specific performance or replevin.
- § 2717. Deduction of damages from price.
- § 2718. Liquidation or limitation of damages; deposits.
- § 2719. Contractual modification or limitation of remedy.
- § 2720. Effect of "cancellation" or "rescission" on claims for antecedent breach.
- § 2721. Remedies for fraud.
- § 2722. Who can sue third parties for injury to goods.
- § 2723. Proof of market price: time and place.
- § 2724. Admissibility of market quotations.
- § 2725. Statute of limitations in contracts for sale.

DIVISION 3. COMMERCIAL PAPER

Chapter 31. Short Title, Form and Interpretation

- § 3101. Short title of division.
- § 3102. Definitions and index of definitions.
- § 3103. Limitations on scope of division.
- § 3104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note."
- § 3105. When promise or order unconditional.

- § 3106. Sum certain.
- § 3107. Money.
- § 3108. Payable on demand.
- § 3109. Definite time.
- § 3110. Payable to order.
- § 3111. Payable to bearer.
- § 3112. Terms and omissions not affecting negotiability.
- § 3113. Seal.
- § 3114. Date, antedating, postdating.
- § 3115. Incomplete instruments.
- § 3116. Instruments payable to two or more persons.
- § 3117. Instruments payable with words of description.
- § 3118. Ambiguous terms and rules of construction.
- § 3119. Other writings affecting instrument.
- § 3120. Instruments "payable through" bank.
- § 3121. Instruments payable at bank.
- § 3122. Accrual of cause of action.

Chapter 32. Transfer and Negotiation

- § 3201. Transfer: right to indorsement.
- § 3202. Negotiation.
- § 3203. Wrong or misspelled name.
- § 3204. Special indorsement; blank indorsement.
- § 3205. Restrictive indorsements.
- § 3206. Effect of restrictive indorsement.
- § 3207. Negotiation effective although it may be rescinded.
- § 3208. Reacquisition.

Chapter 33. Rights of a Holder

- § 3301. Rights of a holder.
- § 3302. Holder in due course.
- § 3303. Taking for value.
- § 3304. Notice to purchaser.
- § 3305. Rights of holder in due course.
- § 3306. Rights of one not holder in due course.
- § 3307. Burden of establishing signatures, defenses and due course.

Chapter 34. Liability of Parties

- § 3401. Signature.
- § 3402. Signature in ambiguous capacity.
- § 3403. Signature by authorized representative.
- § 3404. Unauthorized signatures.
- § 3405. Impostors; signature in name of payee.
- § 3406. Negligence contributing to alteration or unauthorized signature.
- § 3407. Alteration.
- § 3408. Consideration.

- § 3409. Draft not an assignment.
- § 3410. Definition and operation of acceptance.
- § 3411. Certification of a check.
- § 3412. Acceptance varying draft.
- § 3413. Contract of maker, drawer and acceptor.
- § 3414. Contract of indorser; order of liability.
- § 3415. Contract of accommodation party.
- § 3416. Contract of guarantor.
- § 3417. Warranties on presentment and transfer.
- § 3418. Finality of payment or acceptance.
- § 3419. Conversion of instrument; innocent representative.

Chapter 35. Presentment, Notice of Dishonor and Protest

- § 3501. When presentment, notice of dishonor, and protest necessary or permissible.
- § 3502. Unexcused delay; discharge.
- § 3503. Time of presentment.
- § 3504. How presentment made.
- § 3505. Rights of party to whom presentment is made.
- § 3506. Time allowed for acceptance or payment.
- § 3507. Dishonor; right of recourse of holder; term allowing re-presentment.
- § 3508. Notice of dishonor.
- § 3509. Protest; noting for protest.
- § 3510. Evidence of dishonor and notice of dishonor.
- § 3511. Waived or excused presentment, protest or notice of dishonor or delay therein.

Chapter 36. Discharge

- § 3601. Discharge of parties.
- § 3602. Effect of discharge against holder in due course.
- § 3603. Payment or satisfaction.
- § 3604. Tender of payment.
- § 3605. Cancellation and renunciation.
- § 3606. Impairment of recourse or of collateral.

Chapter 37. Advice of International Sight Draft

- § 3701. Letter of advice of international sight draft.

Chapter 38. Miscellaneous

- § 3801. Drafts in a set.
- § 3802. Effect of instrument on obligation for which it is given.
- § 3803. Notice to third party.
- § 3804. Lost, destroyed or stolen instruments.
- § 3805. Instruments not payable to order or to bearer.

DIVISION 4. BANK DEPOSITS AND COLLECTIONS

Chapter 41. General Provisions and Definitions

- § 4101. Short title of division.
- § 4102. Applicability.
- § 4103. Variation by agreement; measure of damages; certain action constituting ordinary care.
- § 4104. Definitions and index of definitions.
- § 4105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank."
- § 4106. Separate office of a bank.
- § 4107. Time of receipt of items.
- § 4108. Delays.
- § 4109. Process of posting.

Chapter 42. Collection of Items: Depository and Collecting Banks

- § 4201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of division; item indorsed "pay any bank."
- § 4202. Responsibility for collection; when action seasonable.
- § 4203. Effect of instructions.
- § 4204. Methods of sending and presenting; sending direct to payor bank.
- § 4205. Supplying missing indorsement; no notice from prior indorsement.
- § 4206. Transfer between banks.
- § 4207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.
- § 4208. Security interest of collecting bank in items, accompanying documents and proceeds.
- § 4209. When bank gives value for purposes of holder in due course.
- § 4210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- § 4211. Media of remittance; provisional and final settlement in remittance cases.
- § 4212. Right of charge-back or refund.
- § 4213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- § 4214. Insolvency and preference.

Chapter 43. Collection of Items: Payor Banks

- § 4301. Deferred posting; recovery of payment by return of items; time of dishonor.
- § 4302. Responsibility of payor bank for late return of item.

- § 4303. When items subject to notice, stop-order, legal process or set-off; order in which items may be charged or certified.

Chapter 44. Relationship Between Payor Bank and Its Customer

- § 4401. When bank may charge account of customer.
§ 4402. Liability of bank to customer for wrongful dishonor.
§ 4403. Right of customer to stop payment; burden of proof of loss.
§ 4404. Bank not obligated to pay check more than six months old.
§ 4405. Death or incompetence of customer.
§ 4406. Duty of customer to discover and report unauthorized signature or alteration.
§ 4407. Right of payor bank to subrogation on improper payment.

Chapter 45. Collection of Documentary Drafts

- § 4501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
§ 4502. Presentment of "on arrival" drafts.
§ 4503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
§ 4504. Privilege of presenting bank to deal with goods; security interest for expenses.

DIVISION 5. LETTERS OF CREDIT

Chapter 51. Letters of Credit

- § 5101. Short title of division.
§ 5102. Scope of division.
§ 5103. Definitions and index of definitions.
§ 5104. Formal requirements; signing.
§ 5105. Consideration.
§ 5106. Time and effect of establishment of credit.
§ 5107. Advice of credit; confirmation; error in statement of terms.
§ 5108. "Notation credit"; exhaustion of credit.
§ 5109. Obligation of issuer to its customer.
§ 5110. Availability of credit in portions; reservation by presenter of lien or claim.
§ 5111. Warranties on transfer and presentment.
§ 5112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter."
§ 5113. Indemnities.
§ 5114. Duty and privilege of issuer to honor; right to reimbursement.
§ 5115. Remedy for improper dishonor or anticipatory repudiation.
§ 5116. Transfer and assignment.
§ 5117. Insolvency of bank holding funds for documentary credit.

DIVISION 6. BULK TRANSFERS

Chapter 61. Bulk Transfers

- § 6101. Short title of division.
- § 6102. "Bulk transfer"; transfers of equipment; enterprises and bulk transfers subject to division.
- § 6103. Transfers excepted from division.
- § 6104. Schedule of property; list of creditors.
- § 6105. Notice to creditors.
- § 6106. Application of proceeds.
- § 6107. The notice.
- § 6108. Auction sales; "auctioneer."
- § 6109. What creditors protected.
- § 6110. Subsequent transfers.
- § 6111. Limitation of actions and levies.

DIVISION 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Chapter 71. General

- § 7101. Short title of division.
- § 7102. Definitions and index of definitions.
- § 7103. Relation of division to treaty, statute, tariff, classification or regulation.
- § 7104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.
- § 7105. Construction against negative implication.

Chapter 72. Warehouse Receipts: Special Provisions

- § 7201. Who may issue warehouse receipt; storage under government bond.
- § 7202. Form of warehouse receipt; essential terms; optional terms.
- § 7203. Liability for nonreceipt or misdescription.
- § 7204. Duty of care; contractual limitation of liability of warehouseman.
- § 7205. Title under warehouse receipt defeated in certain cases.
- § 7206. Termination of storage at option of warehouseman.
- § 7207. Goods must be kept separate; fungible goods.
- § 7208. Altered warehouse receipts.
- § 7209. Lien of warehouseman.
- § 7210. Enforcement of lien of warehouseman.

Chapter 73. Bills of Lading: Special Provisions

- § 7301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load and count"; improper handling.
- § 7302. Through bills of lading and similar documents.
- § 7303. Diversion; reconsignment; change of instructions.
- § 7304. Bills of lading in a set.
- § 7305. Destination bills.
- § 7306. Altered bills of lading.

§ 7307. Lien of carrier.

§ 7308. Enforcement of lien of carrier.

§ 7309. Duty of care; contractual limitation of liability of carrier.

Chapter 74. Warehouse Receipts and Bills of Lading: General Obligations

§ 7401. Irregularities in issue of receipt or bill or conduct of issuer.

§ 7402. Duplicate receipt or bill; overissue.

§ 7403. Obligation of warehouseman or carrier to deliver; excuse.

§ 7404. No liability for good faith delivery pursuant to receipt or bill.

Chapter 75. Warehouse Receipts and Bills of Lading: Negotiation and Transfer

§ 7501. Form of negotiation and requirements of "due negotiation."

§ 7502. Rights acquired by due negotiation.

§ 7503. Document of title to goods defeated in certain cases.

§ 7504. Rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery.

§ 7505. Indorser not guarantor for other parties.

§ 7506. Delivery without indorsement: right to compel indorsement.

§ 7507. Warranties on negotiation or transfer of receipt or bill.

§ 7508. Warranties of collecting bank as to documents.

§ 7509. Receipt or bill: when adequate compliance with commercial contract.

Chapter 76. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

§ 7601. Lost and missing documents.

§ 7602. Attachment of goods covered by negotiable document.

§ 7603. Conflicting claims; interpleader.

DIVISION 8. INVESTMENT SECURITIES

Chapter 81. Short Title and General Matters

§ 8101. Short title of division.

§ 8102. Definitions and index of definitions.

§ 8103. Lien of issuer.

§ 8104. Effect of overissue; "overissue."

§ 8105. Securities negotiable; presumptions.

§ 8106. Applicability.

§ 8107. Securities deliverable; action for price.

Chapter 82. Issue - Issuer

§ 8201. "Issuer."

§ 8202. Responsibility and defenses of issuer; notice of defect or defense.

§ 8203. Staleness as notice of defects or defenses.

§ 8204. Effect of restrictions by issuer on transfer.

- § 8205. Effect of unauthorized signature on issue.
- § 8206. Completion or alteration of instrument.
- § 8207. Rights of issuer with respect to registered owners.
- § 8208. Effect of signature of authenticating trustee, registrar or transfer agent.

Chapter 83. Purchase

- § 8301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.
- § 8302. "Bona fide purchaser."
- § 8303. "Broker."
- § 8304. Notice to purchaser of adverse claims.
- § 8305. Staleness as notice of adverse claims.
- § 8306. Warranties on presentment and transfer.
- § 8307. Effect of delivery without indorsement; right to compel indorsement.
- § 8308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.
- § 8309. Effect of indorsement without delivery.
- § 8310. Indorsement of security in bearer form.
- § 8311. Effect of unauthorized indorsement.
- § 8312. Effect of guaranteeing signature or indorsement.
- § 8313. When delivery to purchaser occurs; broker of purchaser as holder.
- § 8314. Duty to deliver, when completed.
- § 8315. Action against purchaser based upon wrongful transfer.
- § 8316. Right of purchaser to requisites for registration of transfer on books.
- § 8317. Attachment or levy upon security.
- § 8318. No conversion by good faith delivery.
- § 8319. Statute of frauds.
- § 8320. Transfer or pledge within a central depository system.

Chapter 84. Registration

- § 8401. Duty of issuer to register transfer.
- § 8402. Assurance that indorsements are effective.
- § 8403. Limited duty of inquiry.
- § 8404. Liability and nonliability for registration.
- § 8405. Lost, destroyed and stolen securities.
- § 8406. Duty of authenticating trustee, transfer agent or registrar.

DIVISION 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Chapter 91. Short Title, Applicability and Definitions

- § 9101. Short title of division.
- § 9102. Policy and scope of division.

- § 9103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.
- § 9104. Transactions excluded from division.
- § 9105. Definitions and index of definitions.
- § 9106. Definitions: "account"; "contract right"; "general intangibles."
- § 9107. Definition: "purchase money security interest."
- § 9108. When after-acquired collateral not security for antecedent debt.
- § 9109. Classification of goods: "consumer goods"; "equipment"; "farm products"; "inventory."
- § 9110. Sufficiency of description.
- § 9111. Applicability of bulk transfer laws.
- § 9112. Where collateral is not owned by debtor.
- § 9113. Security interests arising under division on sales.

Chapter 92. Validity of Security Agreement and Rights of Parties Thereto

- § 9201. General validity of security agreement.
- § 9202. Title to collateral immaterial.
- § 9203. Enforceability of security interest; proceeds, formal requisites.
- § 9204. When security interest attaches; after-acquired property; future advances.
- § 9205. Use or disposition of collateral without accounting permissible.
- § 9206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.
- § 9207. Rights and duties when collateral in possession of secured party.
- § 9208. Request for statement of account or list of collateral.

Chapter 93. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

- § 9301. Persons who take priority over unperfected security interests; "lien creditor."
- § 9302. When filing is required to perfect security interest; security interests to which filing provisions of division do not apply.
- § 9303. When security interest is perfected; continuity of perfection.
- § 9304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- § 9305. When possession by secured party perfects security interest without filing.
- § 9306. "Proceeds"; rights of secured party on disposition of collateral.
- § 9307. Protection of buyers of goods.
- § 9308. Purchase of chattel paper and nonnegotiable instruments.
- § 9309. Protection of purchasers of instruments and documents.
- § 9310. Priority of certain liens arising by operation of law.
- § 9311. Alienability of rights of debtor; judicial process.

- § 9312. Priorities among conflicting security interests in same collateral.
- § 9313. Priority of security interests in fixtures.
- § 9314. Accessions.
- § 9315. Priority when goods are commingled or processed.
- § 9316. Priority subject to subordination.
- § 9317. Secured party not obligated on contract of debtor.
- § 9318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

Chapter 94. Filing

- § 9401. Place of filing; erroneous filing; removal of collateral.
- § 9402. Formal requisites of financing statement; amendments.
- § 9403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.
- § 9404. Termination statement.
- § 9405. Assignment of security interest; duties of filing officer.
- § 9406. Release of collateral; duties of filing officer.
- § 9407. Information from filing officer.
- § 9408. Retention of microfilm or other copies in lieu of originals; admissibility of copies in evidence; duties of filing officer.
- § 9409. (Reserved).
- § 9410. Duties of filing officer.

Chapter 95. Default

- § 9501. Default; procedure when security agreement covers both real and personal property.
 - § 9502. Collection rights of secured party.
 - § 9503. Right of secured party to take possession after default.
 - § 9504. Right of secured party to dispose of collateral after default; effect of disposition.
 - § 9505. Compulsory disposition of collateral; acceptance of collateral as discharge of obligation.
 - § 9506. Right of debtor to redeem collateral.
 - § 9507. Liability of secured party for failure to comply with chapter.
- Section 2. Conforming amendments to Title 15.
 - Section 3. Conforming amendment to Title 18.
 - Section 4. Conforming amendment to Title 20.
 - Section 5. Conforming amendments to Title 42.
 - Section 6. Conforming amendment to Title 75.
 - Section 7. Legislative intent.
 - Section 8. Repeal.
 - Section 9. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 13, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding divisions to read:

TITLE 13
COMMERCIAL CODE

Division

1. General Provisions
2. Sales
3. Commercial Paper
4. Bank Deposits and Collections
5. Letters of Credit
6. Bulk Transfers
7. Warehouse Receipts, Bills of Lading and Other Documents of Title
8. Investment Securities
9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

DIVISION 1
GENERAL PROVISIONS

Chapter

11. Short Title, Construction, Application and Subject Matter of Title
12. General Definitions and Principles of Interpretation

CHAPTER 11
SHORT TITLE, CONSTRUCTION, APPLICATION
AND SUBJECT MATTER OF TITLE

Sec.

1101. Short title of title.
1102. Purposes; rules of construction; variation by agreement.
1103. Supplementary general principles of law applicable.
1104. Construction against implicit repeal.
1105. Territorial application of title; power of parties to choose applicable law.
1106. Remedies to be liberally administered.
1107. Waiver or renunciation of claim or right after breach.
1108. (Reserved).
1109. Section and subsection captions.

§ 1101. Short title of title.

This title shall be known and may be cited as the "Uniform Commercial Code."

§ 1102. Purposes; rules of construction; variation by agreement.

(a) Title to be liberally construed.—This title shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Purposes and policies of title.—Underlying purposes and policies of this title are:

(1) To simplify, clarify and modernize the law governing commercial transactions.

(2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties.

(3) To make uniform the law among the various jurisdictions.

(c) Variation of title by agreement.—The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(d) Effect of “unless otherwise agreed”.—The presence in certain provisions of this title of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (c).

§ 1103. Supplementary general principles of law applicable.

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

§ 1104. Construction against implicit repeal.

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

§ 1105. Territorial application of title; power of parties to choose applicable law.

(a) General rule.—Except as otherwise provided in this section, when a transaction bears a reasonable relation to this Commonwealth and also to another state or nation the parties may agree that the law either of this Commonwealth or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this Commonwealth.

(b) Limitations on power of parties to choose applicable law.—Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Section 2402 (relating to rights of creditors of seller against sold goods).

Section 4102 (relating to applicability of division on bank deposits and collections).

Section 6102 (relating to bulk transfers subject to division on bulk transfers).

Section 8106 (relating to applicability of division on investment securities).

Sections 9102 and 9103 (relating to policy and scope of division on secured transactions).

§ 1106. Remedies to be liberally administered.

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

(b) Enforceability of rights and obligations by action.—Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 1107. Waiver or renunciation of claim or right after breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§ 1108. (Reserved).

§ 1109. Section and subsection captions.

Notwithstanding 1 Pa.C.S. § 1101(b) (relating to enumeration and use of unofficial provisions), section captions are parts of this title but subsection captions are not parts of this title.

CHAPTER 12 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec.

1201. General definitions.

1202. Prima facie evidence by third party documents.

1203. Obligation of good faith.

1204. Time; reasonable time; “seasonably.”

1205. Course of dealing and usage of trade.

1206. Statute of frauds for kinds of personal property not otherwise covered.

1207. Performance or acceptance under reservation of rights.

1208. Option to accelerate at will.

§ 1201. General definitions.

Subject to additional definitions contained in the subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Action.” In the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

“Aggrieved party.” A party entitled to resort to a remedy.

“Agreement.” The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 1205 and 2208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 1103 (relating to supplementary general principles of law applicable)). (Compare definition of “contract”).

“Airbill.” A document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

“Bank.” Any person engaged in the business of banking.

“Bearer.” The person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

“Bill of lading.” A document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

“Branch.” Includes a separately incorporated foreign branch of a bank.

“Burden of establishing a fact.” The burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

“Buyer in ordinary course of business.” A person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker.

“Buying.” Buying may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“Conspicuous.” A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

A printed heading in capitals (as: **NONNEGOTIABLE BILL OF LADING**) is conspicuous.

Language in the body of a form is conspicuous if it is in larger or other contrasting type or color. But in a telegram any stated term is conspicuous.

Whether a term or clause is conspicuous or not is for decision by the court.

“Contract.” The total legal obligation which results from the agreement of the parties as affected by this title and any other applicable rules of law. (Compare definition of “agreement”).

“Creditor.” Includes:

- a general creditor;
- a secured creditor;
- a lien creditor; and

any representative of creditors, including an assignee for the benefit of

creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

"Defendant." Includes a person in the position of defendant in a cross-action or counterclaim.

"Delivery." With respect to instruments, documents of title, chattel paper or securities, means voluntary transfer of possession.

"Discover." See definition of "notice."

"Document of title." Includes:

a bill of lading;

a dock warrant;

a dock receipt;

a warehouse receipt or order for the delivery of goods; and

any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the possession of the bailee which are either identified or are fungible portions of an identified mass.

"Fault." Wrongful act, omission or breach.

"Fungible." With respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purpose of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

"Genuine." Free of forgery or counterfeiting.

"Good faith." Honesty in fact in the conduct or transaction concerned.

"Holder." A person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

"Honor." To pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

"Insolvency proceedings." Includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

"Insolvent." A person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal bankruptcy law.

"Knows" or "knowledge." See definition of "notice."

"Learn." See definition of "notice."

"Money." A medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

"Notice." A person has "notice" of a fact when:

(1) he has actual knowledge of it;

(2) he has received a notice or notification of it; or

(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

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

(1) it comes to his attention; or

(2) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

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

"Organization." Includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Party." As distinct from "third party," means a person who has engaged in a transaction or made an agreement within this title.

"Person." Includes an individual or an organization. See section 1102 (relating to purposes; rules of construction; variation by agreement).

"Presumption" or "presumed." Either means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

"Purchase." Includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

"Purchaser." A person who takes by purchase.

"Remedy." Any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

"Representative." Includes an agent, an officer of a corporation or

association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

“Rights.” Includes remedies.

“Security interest.”

A security interest means an interest in personal property or fixtures which secures payment or performance of an obligation.

The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2401) is limited in effect to a reservation of a “security interest.”

The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Division 9 (relating to secured transactions).

The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2401 (relating to passing of title; reservation for security) is not a “security interest,” but a buyer may also acquire a “security interest” by complying with Division 9.

Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment is in any event subject to the provisions on consignment sales (section 2326).

Whether a lease is intended as security is to be determined by the facts of each case; however:

(1) the inclusion of an option to purchase does not of itself make the lease one intended for security; and

(2) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

“Send.” In connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

“Signed.” Includes any symbol executed or adopted by a party with present intention to authenticate a writing.

“Surety.” Includes guarantor.

“Telegram.” Includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

“Term.” That portion of an agreement which relates to a particular matter.

“Unauthorized signature or indorsement.” A signature or indorsement made without actual, implied or apparent authority and includes a forgery.

“Value.” Except as otherwise provided with respect to negotiable instruments (section 3303) and bank collections (sections 4208 and 4209) a person gives “value” for rights if he acquires them:

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

(2) as security for or in total or partial satisfaction of a pre-existing claim;

(3) by accepting delivery pursuant to a pre-existing contract for purchase; or

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

“Warehouse receipt.” A receipt issued by a person engaged in the business of storing goods for hire.

“Written” or “writing.” Includes printing, typewriting or any other intentional reduction to tangible form.

§ 1202. Prima facie evidence by third party documents.

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

§ 1203. Obligation of good faith.

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

§ 1204. Time; reasonable time; “seasonably.”

(a) Time fixed by agreement.—Whenever this title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) Reasonable time.—What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(c) Definition of “seasonably.”—An action is taken “seasonably” when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

§ 1205. Course of dealing and usage of trade.

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

(b) Usage of trade.—A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(c) Effect on agreements.—A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of

which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(d) Construction.—The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(e) Applicable usage of trade.—An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(f) Admissibility of evidence.—Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

§ 1206. Statute of frauds for kinds of personal property not otherwise covered.

(a) General rule.—Except in the cases described in subsection (b), a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(b) Exceptions.—Subsection (a) does not apply to contracts for the sale of goods (section 2201) nor of securities (section 8319) nor to security agreements (section 9203).

§ 1207. Performance or acceptance under reservation of rights.

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

§ 1208. Option to accelerate at will.

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

DIVISION 2
SALES

Chapter

21. Short Title, General Construction and Subject Matter
22. Form, Formation and Readjustment of Contract
23. General Obligation and Construction of Contract
24. Title, Creditors and Good Faith Purchasers
25. Performance
26. Breach, Repudiation and Excuse
27. Remedies

CHAPTER 21
SHORT TITLE, GENERAL CONSTRUCTION
AND SUBJECT MATTER

Sec.

2101. Short title of division.
2102. Scope; certain security and other transactions excluded from division.
2103. Definitions and index of definitions.
2104. Definitions: "merchant"; "between merchants"; "financing agency."
2105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."
2106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."
2107. Goods to be severed from realty: recording.

§ 2101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Sales."

§ 2102. Scope; certain security and other transactions excluded from division.

Unless the context otherwise requires, this division applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction, nor does this division impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

§ 2103. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Buyer." A person who buys or contracts to buy goods.

"Good faith." In the case of a merchant, good faith means honesty in

fact and the observance of reasonable commercial standards of fair dealing in the trade.

“Receipt.” Receipt of goods means taking physical possession of them.

“Seller.” A person who sells or contracts to sell goods.

(b) Index of other definitions in division.—Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

“Acceptance.” Section 2606.

“Banker’s credit.” Section 2325.

“Between merchants.” Section 2104.

“Cancellation.” Section 2106(d).

“Commercial unit.” Section 2105.

“Confirmed credit.” Section 2325.

“Conforming to contract.” Section 2106.

“Contract for sale.” Section 2106.

“Cover.” Section 2712.

“Entrusting.” Section 2403.

“Financing agency.” Section 2104.

“Future goods.” Section 2105.

“Goods.” Section 2105.

“Identification.” Section 2501.

“Installment contract.” Section 2612.

“Letter of credit.” Section 2325.

“Lot.” Section 2105.

“Merchant.” Section 2104.

“Overseas.” Section 2323.

“Person in position of seller.” Section 2707.

“Present sale.” Section 2106.

“Sale.” Section 2106.

“Sale on approval.” Section 2326.

“Sale or return.” Section 2326.

“Termination.” Section 2106.

(c) Index of definitions in other divisions.—The following definitions in other divisions apply to this division:

“Check.” Section 3104.

“Consignee.” Section 7102.

“Consignor.” Section 7102.

“Consumer goods.” Section 9109.

“Dishonor.” Section 3507.

“Draft.” Section 3104.

(d) Applicability of general definitions and principles.—In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 2104. Definitions: “merchant”; “between merchants”; “financing agency.”

The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Between merchants.” Between merchants means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

“Financing agency.” A bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the draft of the seller or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (see section 2707).

“Merchant.” A person who:

deals in goods of the kind; or

otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

§ 2105. Definitions: transferability; “goods”; “future” goods; “lot”; “commercial unit.”

(a) “Goods”.—“Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Division 8) and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in section 2107 (relating to goods to be severed from realty; recording).

(b) Transferability; “future” goods.—Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(c) Sale of part interest in goods.—There may be a sale of a part interest in existing identified goods.

(d) Fungible goods.—An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the interest of the seller in the bulk be sold to the buyer who then becomes an owner in common.

(e) "Lot".—"Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

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

§ 2106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."

(a) "Contract", "agreement", "sale".—In this division unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 2401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) "Conforming" to contract.—Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) "Termination".—"Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) "Cancellation".—"Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

§ 2107. Goods to be severed from realty: recording.

(a) Timber, minerals and structures.—A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this division if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(b) Other property severable without material harm.—A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (a) is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(c) Recording.—The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the rights of the buyer under the contract for sale.

CHAPTER 22
FORM, FORMATION AND READJUSTMENT
OF CONTRACT

Sec.

- 2201. Formal requirements; statute of frauds.
- 2202. Final written expression: parol or extrinsic evidence.
- 2203. Seals inoperative.
- 2204. Formation in general.
- 2205. Firm offers.
- 2206. Offer and acceptance in formation of contract.
- 2207. Additional terms in acceptance or confirmation.
- 2208. Course of performance or practical construction.
- 2209. Modification, rescission and waiver.
- 2210. Delegation of performance; assignment of rights.

§ 2201. Formal requirements; statute of frauds.

(a) General rule.—Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in such writing.

(b) Writing confirming contract between merchants.—Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (a) against such party unless written notice of objection to its contents is given within ten days after it is received.

(c) Enforceability of contracts not satisfying general requirements.—A contract which does not satisfy the requirements of subsection (a) but which is valid in other respects is enforceable:

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the business of the seller and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was

made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 2606).

§ 2202. Final written expression: parol or extrinsic evidence.

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

(1) by course of dealing or usage of trade (section 1205) or by course of performance (section 2208); and

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

§ 2203. Seals inoperative.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

§ 2204. Formation in general.

(a) General rule.—A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(b) Effect of undetermined time of making agreement.—An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(c) Effect of open terms.—Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

§ 2205. Firm offers.

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§ 2206. Offer and acceptance in formation of contract.

(a) General rule.—Unless otherwise unambiguously indicated by the language or circumstances:

(1) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances; and

(2) an order or other offer to buy goods for prompt or current

shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(b) Beginning requested performance without notice.—Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§ 2207. Additional terms in acceptance or confirmation.

(a) General rule.—A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(b) Effect on contract.—The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

- (1) the offer expressly limits acceptance to the terms of the offer;
- (2) they materially alter it; or
- (3) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(c) Conduct establishing contract.—Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this title.

§ 2208. Course of performance or practical construction.

(a) Relevancy of accepted performance.—Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(b) Construction of express terms and performance.—The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 1205).

(c) Waiver or modification of terms inconsistent with performance.—Subject to the provisions of section 2209 (relating to modification, rescission and waiver), such course of performance shall be

relevant to show a waiver or modification of any term inconsistent with such course of performance.

§ 2209. Modification, rescission and waiver.

(a) Consideration unnecessary for modification.—An agreement modifying a contract within this division needs no consideration to be binding.

(b) Writing excluding modification or rescission.—A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(c) Compliance of modified contract with statute of frauds.—The requirements of section 2201 (relating to formal requirements; statute of frauds) must be satisfied if the contract as modified is within its provisions.

(d) Ineffective modification or rescission as waiver.—Although an attempt at modification or rescission does not satisfy the requirements of subsection (b) or (c) it can operate as a waiver.

(e) Retraction of waiver.—A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§ 2210. Delegation of performance; assignment of rights.

(a) Delegation of performance.—A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(b) Assignment of rights.—Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of due performance by the assignor of his entire obligation can be assigned despite agreement otherwise.

(c) Assignment prohibition limited to performance.—Unless the circumstances indicate the contrary, a prohibition of assignment of “the contract” is to be construed as barring only the delegation to the assignee of the performance of the assignor.

(d) Effect and enforceability of general assignment.—An assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform

those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(e) Security for assignment delegating performance.—The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 2609).

CHAPTER 23 GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Sec.

- 2301. General obligations of parties.
- 2302. Unconscionable contract or clause.
- 2303. Allocation or division of risks.
- 2304. Price payable in money, goods, realty or otherwise.
- 2305. Open price term.
- 2306. Output, requirements and exclusive dealings.
- 2307. Delivery in single lot or several lots.
- 2308. Absence of specified place for delivery.
- 2309. Absence of specific time provisions; notice of termination.
- 2310. Open time for payment or running of credit; authority to ship under reservation.
- 2311. Options and cooperation respecting performance.
- 2312. Warranty of title and against infringement; obligation of buyer against infringement.
- 2313. Express warranties by affirmation, promise, description or sample.
- 2314. Implied warranty: merchantability; usage of trade.
- 2315. Implied warranty: fitness for particular purpose.
- 2316. Exclusion or modification of warranties.
- 2317. Cumulation and conflict of warranties express or implied.
- 2318. Third party beneficiaries of warranties express or implied.
- 2319. F.O.B. and F.A.S. terms.
- 2320. C.I.F. and C. & F. terms.
- 2321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.
- 2322. Delivery "ex-ship."
- 2323. Form of bill of lading required in overseas shipment; "overseas."
- 2324. "No arrival, no sale" term.
- 2325. "Letter of credit" term; "confirmed credit."
- 2326. Sale on approval and sale or return; consignment sales and rights of creditors.
- 2327. Special incidents of sale on approval and sale or return.
- 2328. Sale by auction.

§ 2301. General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§ 2302. Unconscionable contract or clause.

(a) Finding and authority of court.—If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may:

(1) refuse to enforce the contract;

(2) enforce the remainder of the contract without the unconscionable clause; or

(3) so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) Evidence by parties.—When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

§ 2303. Allocation or division of risks.

Where this division allocates a risk or a burden as between the parties “unless otherwise agreed,” the agreement may not only shift the allocation but may also divide the risk or burden.

§ 2304. Price payable in money, goods, realty or otherwise.

(a) General rule.—The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(b) Realty.—Even though all or part of the price is payable in an interest in realty the transfer of the goods and the obligations of the seller with reference to them are subject to this division, but not the transfer of the interest in realty or the obligations of the transferor in connection therewith.

§ 2305. Open price term.

(a) General rule.—The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(1) nothing is said as to price;

(2) the price is left to be agreed by the parties and they fail to agree; or

(3) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(b) Price to be fixed by party.—A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(c) Price not fixed through fault of party.—When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(d) Intent not to be bound without established price.—Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay

their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

§ 2306. Output, requirements and exclusive dealings.

(a) Quantity measured by output or requirements.—A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(b) Obligation of parties in exclusive dealings.—A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

§ 2307. Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

§ 2308. Absence of specified place for delivery.

Unless otherwise agreed:

(1) the place for delivery of goods is the place of business of the seller or if he has none his residence; but

(2) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) documents of title may be delivered through customary banking channels.

§ 2309. Absence of specific time provisions; notice of termination.

(a) Shipment, delivery or other action.—The time for shipment or delivery or any other action under a contract if not provided in this division or agreed upon shall be a reasonable time.

(b) Duration of provision for successive performances.—Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(c) Notice of termination.—Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

§ 2310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

(1) Payment is due at the time and place at which the buyer is to

receive the goods even though the place of shipment is the place of delivery.

(2) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2513).

(3) If delivery is authorized and made by way of documents of title otherwise than by paragraph (2) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received.

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

§ 2311. Options and cooperation respecting performance.

(a) Specifying particulars of performance.—An agreement for sale which is otherwise sufficiently definite (section 2204(c)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(b) Specifying assortment of goods and shipping arrangements.—Unless otherwise agreed specifications relating to assortment of the goods are at the option of the buyer and except as otherwise provided in section 2319(a)(3) and (c) (relating to F.O.B. and F.A.S. terms) specifications or arrangements relating to shipment are at the option of the seller.

(c) Remedies for failure to specify or cooperate.—Where such specification would materially affect the performance of the other party but is not seasonably made or where the cooperation of one party is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(1) is excused for any resulting delay in his own performance; and

(2) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

§ 2312. Warranty of title and against infringement; obligation of buyer against infringement.

(a) General rule.—Subject to subsection (b) there is in a contract for sale a warranty by the seller that:

(1) the title conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(b) Exclusion or modification of warranty.—A warranty under

subsection (a) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(c) Warranty of merchant regularly dealing in goods.—Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

§ 2313. Express warranties by affirmation, promise, description or sample.

(a) General rule.—Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) Formal words or specific intent unnecessary.—It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the opinion of the seller or commendation of the goods does not create a warranty.

§ 2314. Implied warranty: merchantability; usage of trade.

(a) Sale by merchant.—Unless excluded or modified (section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(b) Merchantability standards for goods.—Goods to be merchantable must be at least such as:

(1) pass without objection in the trade under the contract description;

(2) in the case of fungible goods, are of fair average quality within the description;

(3) are fit for the ordinary purposes for which such goods are used;

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

(c) Course of dealing or usage of trade.—Unless excluded or modified (section 2316) other implied warranties may arise from course of dealing or usage of trade.

§ 2315. Implied warranty: fitness for particular purpose.

Where the seller at the time of contracting has reason to know:

- (1) any particular purpose for which the goods are required; and
- (2) that the buyer is relying on the skill or judgment of the seller to select or furnish suitable goods;

there is unless excluded or modified under section 2316 (relating to exclusion or modification of warranties) an implied warranty that the goods shall be fit for such purpose.

§ 2316. Exclusion or modification of warranties.

(a) Construction of words or conduct limiting warranties.—Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this division on parol or extrinsic evidence (section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Implied warranties of merchantability and fitness.—Subject to subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof.”

(c) Implied warranties in general.—Notwithstanding subsection (b):

(1) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is,” “with all faults” or other language which in common understanding calls the attention of the buyer to the exclusion of warranties and makes plain that there is no implied warranty.

(2) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him.

(3) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) Limitation of remedies for breach of warranty.—Remedies for breach of warranty can be limited in accordance with the provisions of this division on liquidation or limitation of damages (section 2718) and on contractual modification of remedy (section 2719).

§ 2317. Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (1) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (2) A sample from an existing bulk displaces inconsistent general language of description.
- (3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§ 2318. Third party beneficiaries of warranties express or implied.

The warranty of a seller whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

§ 2319. F.O.B. and F.A.S. terms.

(a) Definition of F.O.B.—Unless otherwise agreed the term F.O.B. (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which:

- (1) When the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this division (section 2504 (relating to shipment by seller)) and bear the expense and risk of putting them into the possession of the carrier.
- (2) When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this division (section 2503 (relating to manner of tender of delivery by seller)).

(3) When under either paragraph (1) or (2) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this division on the form of bill of lading (section 2323).

(b) Definition of F.A.S.—Unless otherwise agreed the term F.A.S. vessel (which means “free alongside”) at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(1) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(2) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(c) Duty of buyer to give instructions.—Unless otherwise agreed in any

case falling within subsection (a)(1) or (3) or subsection (b) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this division (section 2311 (relating to options and cooperation respecting performance)). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(d) Tender of documents and payment.—Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. § 2320. C.I.F. and C. & F. terms.

(a) Definitions.—The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(b) Effect of C.I.F. destination term.—Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to do the following:

(1) Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination.

(2) Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for.

(3) Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance.

(4) Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract.

(5) Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the rights of the buyer.

(c) Effect of C. & F. term.—Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(d) Tender of documents and payment.—Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

§ 2321. C.I.F. or C. & F.: “net landed weights”; “payment on arrival”; warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.:

(1) Where the price is based on or is to be adjusted according to “net landed weights,” “delivered weights,” “out turn” quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in paragraph (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

§ 2322. Delivery “ex-ship.”

(a) Definition.—Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(b) Effect.—Under such a term unless otherwise agreed:

(1) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(2) the risk of loss does not pass to the buyer until the goods leave the tackle of the ship or are otherwise properly unloaded.

§ 2323. Form of bill of lading required in overseas shipment; “overseas.”

(a) General rule.—Where the contract contemplates overseas shipment and contains a term C.I.F., 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.

(b) Bill in set of parts.—Where in a case within subsection (a) a 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:

(1) due tender of a single part is acceptable within the provisions of this division on cure of improper delivery (section 2508(a)); and

(2) 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.

(c) Definition of "overseas".—A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

§ 2324. "No arrival, no sale" term.

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(1) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(2) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 2613).

§ 2325. "Letter of credit" term; "confirmed credit."

(a) Failure to furnish letter.—Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(b) Effect of delivering letter.—The delivery to seller of a proper letter of credit suspends the obligation of the buyer to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(c) Definitions.—Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the financial market of the seller.

§ 2326. Sale on approval and sale or return; consignment sales and rights of creditors.

(a) Definitions.—Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(1) a "sale on approval" if the goods are delivered primarily for use; and

(2) a "sale or return" if the goods are delivered primarily for resale.

(b) Rights of creditors of buyer generally.—Except as provided in subsection (c), goods held on approval are not subject to the claims of the creditors of the buyer until acceptance; goods held on sale or return are subject to such claims while in the possession of the buyer.

(c) Consignment sales.—Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of

this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery:

- (1) complies with an applicable law providing for the interest of a consignor or the like to be evidenced by a sign;
 - (2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or
 - (3) complies with the filing provisions of Division 9 (relating to secured transactions).
- (d) Treatment of "or return" term.—Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this division (section 2201) and as contradicting the sale aspect of the contract within the provisions of this division on parol or extrinsic evidence (section 2202).

§ 2327. Special incidents of sale on approval and sale or return.

(a) Sale on approval.—Under a sale on approval unless otherwise agreed:

- (1) Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance.
- (2) Use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole.
- (3) After due notification of election to return, the return is at the risk and expense of the seller but a merchant buyer must follow any reasonable instructions.

(b) Sale or return.—Under a sale or return unless otherwise agreed:

- (1) The option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably.
- (2) The return is at the risk and expense of the buyer.

§ 2328. Sale by auction.

(a) Sale in lots.—In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) When sale complete.—A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) With or without reserve.—Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be

withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the announcement by the auctioneer of completion of the sale, but the retraction by a bidder does not revive any previous bid.

(d) Bidding by or for seller.—If the auctioneer knowingly receives a bid on the behalf of the seller or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

CHAPTER 24

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

Sec.

2401. Passing of title; reservation for security; limited application of section.

2402. Rights of creditors of seller against sold goods.

2403. Power to transfer; good faith purchase of goods; “entrusting.”

§ 2401. Passing of title; reservation for security; limited application of section.

Each provision of this division 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 division and matters concerning title become material the following rules apply:

(1) Identification of goods and reservation of title.—Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. 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 Division 9 (relating to secured transactions), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Place of delivery of goods.—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:

(i) 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

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

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

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

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

(4) Revesting of title upon rejection of goods or revocation of acceptance.—A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a “sale.”

§ 2402. Rights of creditors of seller against sold goods.

(a) Priority of buyer over unsecured creditors.—Except as provided in subsections (b) and (c), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the rights of the buyer to recover the goods under this division (section 2502 (relating to right of buyer to goods on insolvency of seller) and section 2716 (relating to right of buyer to specific performance or replevin)).

(b) Right to void sale upon fraudulent retention of goods.—A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(c) Other rights of creditors unimpaired.—Nothing in this division shall be deemed to impair the rights of creditors of the seller:

(1) under the provisions of Division 9 (relating to secured transactions); or

(2) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this division constitute the transaction a fraudulent transfer or voidable preference.

§ 2403. Power to transfer; good faith purchase of goods; “entrusting.”

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

(1) the transferor was deceived as to the identity of the purchaser;

(2) the delivery was in exchange for a check which is later dishonored;

(3) it was agreed that the transaction was to be a "cash sale"; or

(4) the delivery was procured through fraud punishable as larcenous under the criminal law.

(b) Transfer by merchant entrusted with possession of goods.—Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(c) Definition of "entrusting".—"Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the disposition of the goods by the possessor has been such as to be larcenous under the criminal law.

(d) Rights of other purchasers and lien creditors.—The rights of other purchasers of goods and of lien creditors are governed by Division 6 (relating to bulk transfers), Division 7 (relating to documents of title) and Division 9 (relating to secured transactions).

CHAPTER 25 PERFORMANCE

Sec.

- 2501. Insurable interest in goods; manner of identification of goods.
- 2502. Right of buyer to goods on insolvency of seller.
- 2503. Manner of tender of delivery by seller.
- 2504. Shipment by seller.
- 2505. Shipment by seller under reservation.
- 2506. Rights of financing agency.
- 2507. Effect of tender by seller; delivery on condition.
- 2508. Cure by seller of improper tender or delivery; replacement.
- 2509. Risk of loss in absence of breach.
- 2510. Effect of breach on risk of loss.
- 2511. Tender of payment by buyer; payment by check.
- 2512. Payment by buyer before inspection.
- 2513. Right of buyer to inspection of goods.
- 2514. When documents deliverable on acceptance; when on payment.
- 2515. Preserving evidence of goods in dispute.

§ 2501. Insurable interest in goods; manner of identification of goods.

(a) General rule.—The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs as follows:

(1) When the contract is made if it is for the sale of goods already existing and identified.

(2) If the contract is for the sale of future goods other than those described in paragraph (3), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers.

(3) When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(b) Duration of insurable interest and substitution of goods.—The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(c) Other insurable interests unimpaired.—Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

§ 2502. Right of buyer to goods on insolvency of seller.

(a) General rule.—Subject to subsection (b) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of section 2501 (relating to insurable interest in goods; manner of identification of goods) may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(b) Identification made by buyer.—If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

§ 2503. Manner of tender of delivery by seller.

(a) General rule.—Tender of delivery requires that the seller put and hold conforming goods at the disposition of the buyer 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 division, and in particular:

(1) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

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

(b) Delivery at particular destination not required.—Where the case is within section 2504 (relating to shipment by seller) tender requires that the seller comply with its provisions.

(c) Delivery at particular destination required.—Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (a) and also in any appropriate case tender documents as described in subsections (d) and (e).

(d) Goods in possession of bailee and deliverable without being moved.—Where goods are in the possession of a bailee and are to be delivered without being moved:

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

(2) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the rights of the buyer fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(e) Form and manner of delivering documents.—Where the contract requires the seller to deliver documents:

(1) he must tender all such documents in correct form, except as provided in this division with respect to bills of lading in a set (section 2323(b)); and

(2) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

§ 2504. Shipment by seller.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination then unless otherwise agreed he must:

(1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case;

(2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (3) or to make a proper contract under paragraph (1) is a ground for rejection only if material delay or loss ensues.

§ 2505. Shipment by seller under reservation.

(a) General rule.—Where the seller has identified goods to the contract by or before shipment:

(1) 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 expectation of the seller of transferring that interest to the person named.

(2) A nonnegotiable bill of lading to himself or his nominee reserves

possession of the goods as security, but except in a case of conditional delivery (section 2507(b)) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(b) Shipment in violation of contract.—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 section 2504 (relating to shipment by seller) but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the powers of the seller as a holder of a negotiable document.

§ 2506. Rights of financing agency.

(a) General rule.—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 right of the shipper to have the draft honored by the buyer.

(b) Right to reimbursement unimpaired by latent defect.—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.

§ 2507. Effect of tender by seller; delivery on condition.

(a) Effect of tender by seller.—Tender of delivery is a condition to the duty of the buyer to accept the goods, and unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(b) Delivery on condition.—Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

§ 2508. Cure by seller of improper tender or delivery; replacement.

(a) General rule.—Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(b) Rejection of tender which seller believed acceptable.—Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

§ 2509. Risk of loss in absence of breach.

(a) Seller to ship by carrier.—Where the contract requires or authorizes the seller to ship the goods by carrier:

(1) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly

delivered to the carrier even though the shipment is under reservation (section 2505); but

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

(b) Goods held by bailee.—Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(1) on his receipt of a negotiable document of title covering the goods;

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

(3) after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in section 2503(d)(2) (relating to manner of tender of delivery by seller).

(c) All other cases.—In any case not within subsection (a) or (b), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise on tender of delivery.

(d) Limitations on operation of section.—The provisions of this section are subject to contrary agreement of the parties and to the provisions of this division on sale on approval (section 2327) and on effect of breach on risk of loss (section 2510).

§ 2510. Effect of breach on risk of loss.

(a) Tender of nonconforming goods.—Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(b) Revocation of acceptance by buyer.—Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(c) Repudiation or breach by buyer.—Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§ 2511. Tender of payment by buyer; payment by check.

(a) Tender of payment condition to delivery.—Unless otherwise agreed tender of payment is a condition to the duty of the seller to tender and complete any delivery.

(b) Manner of tender of payment.—Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(c) Payment by check.—Subject to the provisions of this title on the effect of an instrument on an obligation (section 3802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§ 2512. Payment by buyer before inspection.

(a) General rule.—Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

- (1) the nonconformity appears without inspection; or
- (2) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this title (section 5114 (relating to duty and privilege of issuer to honor; right to reimbursement)).

(b) Effect of payment on rights of buyer.—Payment pursuant to subsection (a) does not constitute an acceptance of goods or impair the right of the buyer to inspect or any of his remedies.

§ 2513. Right of buyer to inspection of goods.

(a) General rule.—Unless otherwise agreed and subject to subsection (c), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(b) Expenses of inspection.—Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(c) Limitation on right of inspection prior to payment.—Unless otherwise agreed and subject to the provisions of this division on C.I.F. contracts (section 2321(3)), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

- (1) for delivery “C.O.D.” or on other like terms; or
- (2) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(d) Agreement as to place and method of inspection.—A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§ 2514. When documents deliverable on acceptance; when on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise only on payment.

§ 2515. Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute:

- (1) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to

inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(2) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

CHAPTER 26 BREACH, REPUDIATION AND EXCUSE

Sec.

- 2601. Rights of buyer on improper delivery.
- 2602. Manner and effect of rightful rejection.
- 2603. Duties of merchant buyer as to rightfully rejected goods.
- 2604. Options of buyer as to salvage of rightfully rejected goods.
- 2605. Waiver of objections of buyer by failure to particularize.
- 2606. What constitutes acceptance of goods.
- 2607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.
- 2608. Revocation of acceptance in whole or in part.
- 2609. Right to adequate assurance of performance.
- 2610. Anticipatory repudiation.
- 2611. Retraction of anticipatory repudiation.
- 2612. "Installment contract"; breach.
- 2613. Casualty to identified goods.
- 2614. Substituted performance.
- 2615. Excuse by failure of presupposed conditions.
- 2616. Procedure on notice claiming excuse.

§ 2601. Rights of buyer on improper delivery.

Subject to the provisions of this division on breach in installment contracts (section 2612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 2718 and 2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

- (1) reject the whole;
- (2) accept the whole; or
- (3) accept any commercial unit or units and reject the rest.

§ 2602. Manner and effect of rightful rejection.

(a) Time and notice of rejection.—Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(b) Duties of buyer after rightful rejection.—Subject to the provisions of sections 2603 (relating to duties of merchant buyer as to rightfully rejected goods) and 2604 (relating to options of buyer as to salvage of rightfully rejected goods):

(1) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(2) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this division (section 2711(c) (relating to security interest of buyer in rejected goods)), he is under a duty after rejection to hold them with reasonable care at the disposition of the seller for a time sufficient to permit the seller to remove them; but

(3) the buyer has no further obligations with regard to goods rightfully rejected.

(c) Rights of seller after wrongful rejection.—The rights of the seller with respect to goods wrongfully rejected are governed by the provisions of this division on remedies of seller in general (section 2703).

§ 2603. Duties of merchant buyer as to rightfully rejected goods.

(a) General rule.—Subject to any security interest in the buyer (section 2711(c)), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the account of the seller if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) Reimbursement for expenses and commission.—When the buyer sells goods under subsection (a), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(c) Good faith conduct.—In complying with this section the buyer is held only to good faith and good faith conduct under this section is neither acceptance nor conversion nor the basis of an action for damages.

§ 2604. Options of buyer as to salvage of rightfully rejected goods.

Subject to the provisions on perishables in section 2603 (relating to duties of merchant buyer as to rightfully rejected goods) if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the account of the seller or reship them to him or resell them for the account of the seller with reimbursement as provided in section 2603. Such action is not acceptance or conversion.

§ 2605. Waiver of objections of buyer by failure to particularize.

(a) General rule.—The failure of the buyer to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

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

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

(b) Payment against defective documents.—Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

§ 2606. What constitutes acceptance of goods.

(a) General rule.—Acceptance of goods occurs when the buyer:

(1) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity;

(2) fails to make an effective rejection (section 2602(a)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(3) does any act inconsistent with the ownership of the seller; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(b) Part of commercial unit.—Acceptance of a part of any commercial unit is acceptance of that entire unit.

§ 2607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

(a) Payment for accepted goods.—The buyer must pay at the contract rate for any goods accepted.

(b) Effect of acceptance on remedies for breach.—Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this division for nonconformity.

(c) Notice of breach.—Where a tender has been accepted:

(1) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(2) if the claim is one for infringement or the like (section 2312(c)) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(d) Burden of establishing breach.—The burden is on the buyer to establish any breach with respect to the goods accepted.

(e) Notice of litigation to person answerable over.—Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

(1) He may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(2) If the claim is one for infringement or the like (section 2312(c)), the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(f) Obligation of buyer to hold seller harmless.—The provisions of subsections (c), (d) and (e) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (section 2312(c) (relating to warranty of merchant regularly dealing in goods)).

§ 2608. Revocation of acceptance in whole or in part.

(a) Grounds for revocation.—The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:

(1) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(2) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the assurances of the seller.

(b) Time and notice of revocation.—Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(c) Rights and duties of revoking buyer.—A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

§ 2609. Right to adequate assurance of performance.

(a) General rule.—A contract for sale imposes an obligation on each party that the expectation of the other of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(b) Reasonableness and adequacy between merchants.—Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(c) Effect of acceptance of improper delivery or payment.—Acceptance of any improper delivery or payment does not prejudice the right of the aggrieved party to demand adequate assurance of future performance.

(d) Effect of failure to provide assurance.—After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

§ 2610. Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

- (1) for a commercially reasonable time await performance by the repudiating party; or
- (2) resort to any remedy for breach (section 2703 or 2711), even though he has notified the repudiating party that he would await performance by the latter and has urged retraction; and
- (3) in either case suspend his own performance or proceed in accordance with the provisions of this division on the right of the seller to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 2704).

§ 2611. Retraction of anticipatory repudiation.

(a) When allowable.—Until the next performance is due by the repudiating party he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(b) Method.—Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this division (section 2609).

(c) Effect on contract rights.—Retraction reinstates the rights of the repudiating party under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§ 2612. “Installment contract”; breach.

(a) Definition of “installment contract”.—An “installment contract” is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause “each delivery is a separate contract” or its equivalent.

(b) Right to reject nonconforming installment.—The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (c) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(c) Breach.—Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

§ 2613. Casualty to identified goods.

Where the contract requires for its performance goods identified when the contract is made and the goods suffer casualty without fault of either

party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 2324) then:

(1) if the loss is total the contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided, or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

§ 2614. Substituted performance.

(a) Manner of delivery.—Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(b) Manner of payment.—If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the obligation of the buyer unless the regulation is discriminatory, oppressive or predatory.

§ 2615. Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to section 2614 (relating to substituted performance):

(1) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in paragraph (1) affect only a part of the capacity of the seller to perform, he must allocate production and deliveries among his customers, but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(3) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (2), of the estimated quota thus made available for the buyer.

§ 2616. Procedure on notice claiming excuse.

(a) Right of buyer to terminate or modify contract.—Where the buyer receives notification of a material or indefinite delay or an allocation

justified under section 2615 (relating to excuse by failure of presupposed conditions) he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this division relating to breach of installment contracts (section 2612), then also as to the whole:

- (1) terminate and thereby discharge any unexecuted portion of the contract; or
 - (2) modify the contract by agreeing to take his available quota in substitution.
- (b) Time limitation on modification.—If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.
- (c) Effect of agreement on section.—The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under section 2615.

CHAPTER 27 REMEDIES

Sec.

2701. Remedies for breach of collateral contracts not impaired.
2702. Remedies of seller on discovery of insolvency of buyer.
2703. Remedies of seller in general.
2704. Right of seller to identify goods to contract notwithstanding breach or to salvage unfinished goods.
2705. Stoppage by seller of delivery in transit or otherwise.
2706. Resale by seller including contract for resale.
2707. "Person in the position of a seller."
2708. Damages of seller for nonacceptance or repudiation.
2709. Action for the price.
2710. Incidental damages of seller.
2711. Remedies of buyer in general; security interest of buyer in rejected goods.
2712. "Cover"; procurement by buyer of substitute goods.
2713. Damages of buyer for nondelivery or repudiation.
2714. Damages of buyer for breach in regard to accepted goods.
2715. Incidental and consequential damages of buyer.
2716. Right of buyer to specific performance or replevin.
2717. Deduction of damages from price.
2718. Liquidation or limitation of damages; deposits.
2719. Contractual modification or limitation of remedy.
2720. Effect of "cancellation" or "rescission" on claims for antecedent breach.
2721. Remedies for fraud.
2722. Who can sue third parties for injury to goods.
2723. Proof of market price: time and place.

2724. Admissibility of market quotations.

2725. Statute of limitations in contracts for sale.

§ 2701. Remedies for breach of collateral contracts not impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this division.

§ 2702. Remedies of seller on discovery of insolvency of buyer.

(a) Right to refuse or stop delivery.—Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract and stop delivery under this division (section 2705).

(b) Reclamation of goods on credit.—Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(c) Limitations on right of reclamation.—The right of the seller to reclaim under subsection (b) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this division (section 2403). Successful reclamation of goods excludes all other remedies with respect to them.

§ 2703. Remedies of seller in general.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or on the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 2612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(1) Withhold delivery of such goods.

(2) Stop delivery by any bailee as provided in section 2705 (relating to stoppage by seller of delivery in transit or otherwise).

(3) Proceed under section 2704 (relating to right of seller to identify goods to contract notwithstanding breach or to salvage unfinished goods).

(4) Resell and recover damages as hereafter provided (section 2706 (relating to resale by seller including contract for resale)).

(5) Recover damages for nonacceptance (section 2708) or in a proper case the price (section 2709).

(6) Cancel.

§ 2704. Right of seller to identify goods to contract notwithstanding breach or to salvage unfinished goods.

(a) Identification and resale of goods.—An aggrieved seller under section 2703 (relating to remedies of seller in general) may:

(1) Identify to the contract conforming goods not already identified

if at the time he learned of the breach they are in his possession or control.

(2) Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(b) Unfinished goods.—Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

§ 2705. Stoppage by seller of delivery in transit or otherwise.

(a) General rule.—The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 2702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery, or if for any other reason the seller has a right to withhold or reclaim the goods.

(b) When seller loses right.—As against such buyer the seller may stop delivery until:

- (1) receipt of the goods by the buyer;
- (2) acknowledgment to the buyer by any bailee of the goods, except a carrier, that the bailee holds the goods for the buyer;
- (3) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
- (4) negotiation to the buyer of any negotiable document of title covering the goods.

(c) Notice and compliance.—

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

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

(3) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

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

§ 2706. Resale by seller including contract for resale.

(a) General rule.—Under the conditions stated in section 2703 (relating to remedies of seller in general), the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this division (section 2710), but less expenses saved in consequence of the breach by the buyer.

(b) Manner of resale.—Except as otherwise provided in subsection (c) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(c) Notice of private sale.—Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(d) Public sale.—Where the resale is at public sale:

(1) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind.

(2) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale.

(3) If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders.

(4) The seller may buy.

(e) Rights of good faith purchaser.—A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(f) Accountability for profit.—The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 2707), or buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as defined in section 2711(c) (relating to remedies of buyer in general; security interest of buyer in rejected goods).

§ 2707. “Person in the position of a seller.”

(a) Definition.—A “person in the position of a seller” includes:

(1) as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal; or

(2) anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(b) Rights.—A person in the position of a seller may as provided in this division:

(1) withhold or stop delivery (section 2705);

(2) resell (section 2706); and

(3) recover incidental damages (section 2710).

§ 2708. Damages of seller for nonacceptance or repudiation.

(a) General rule.—Subject to subsection (b) and to the provisions of

this division with respect to proof of market price (section 2723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this division (section 2710) but less expenses saved in consequence of the breach by the buyer.

(b) Exception.—If the measure of damages provided in subsection (a) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this division (section 2710), due allowance for costs reasonably incurred, and due credit for payments or proceeds of resale.

§ 2709. Action for the price.

(a) When allowable.—When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under section 2710 (relating to incidental damages of seller), the price of:

(1) goods accepted or conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(2) goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(b) Duties of seller.—Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(c) Remedy if price not allowable.—After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 2610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under section 2708 (relating to damages of seller for nonacceptance or repudiation).

§ 2710. Incidental damages of seller.

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the breach by the buyer, in connection with return or resale of the goods or otherwise resulting from the breach.

§ 2711. Remedies of buyer in general; security interest of buyer in rejected goods.

(a) Cancellation and additional remedies.—Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with

respect to the whole if the breach goes to the whole contract (section 2612 (relating to “installment contract”; breach)), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(1) “cover” and have damages under section 2712 (relating to “cover”; procurement by buyer of substitute goods) as to all the goods affected whether or not they have been identified to the contract; or

(2) recover damages for nondelivery as provided in this division (section 2713 (relating to damages of buyer for nondelivery or repudiation)).

(b) Additional remedies for nondelivery or repudiation.—Where the seller fails to deliver or repudiates the buyer may also:

(1) if the goods have been identified recover them as provided in this division (section 2502 (relating to right of buyer to goods upon insolvency of seller)); or

(2) in a proper case obtain specific performance or replevy the goods as provided in this division (section 2716).

(c) Security interest of buyer in rejected goods.—On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 2706).

§ 2712. “Cover”; procurement by buyer of substitute goods.

(a) Right and manner of cover.—After a breach within section 2711 (relating to remedies of buyer in general; security interest of buyer in rejected goods) the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(b) Damages recoverable.—The buyer may recover from the seller as damages the difference between the cost of cover and the contract price, together with any incidental or consequential damages as defined in section 2715 (relating to incidental and consequential damages of buyer) but less expenses saved in consequence of the breach by the seller.

(c) Other remedies unaffected by failure to cover.—Failure of the buyer to effect cover within this section does not bar him from any other remedy.

§ 2713. Damages of buyer for nondelivery or repudiation.

(a) Damages recoverable.—Subject to the provisions of this division with respect to proof of market price (section 2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price, together with any incidental and consequential damages provided in this division (section 2715), but less expenses saved in consequence of the breach by the seller.

(b) Determination of market price.—Market price is to be determined

as of the place for tender, or in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

§ 2714. Damages of buyer for breach in regard to accepted goods.

(a) Damages for nonconformity of tender.—Where the buyer has accepted goods and given notification (section 2607(c)) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the breach of the seller as determined in any manner which is reasonable.

(b) Measure of damages for breach of warranty.—The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(c) Incidental and consequential damages.—In a proper case any incidental and consequential damages under section 2715 (relating to incidental and consequential damages of buyer) may also be recovered.

§ 2715. Incidental and consequential damages of buyer.

(a) Incidental damages.—Incidental damages resulting from the breach of the seller include:

- (1) expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected;
- (2) any commercially reasonable charges, expenses or commissions in connection with effecting cover; and
- (3) any other reasonable expense incident to the delay or other breach.

(b) Consequential damages.—Consequential damages resulting from the breach of the seller include:

- (1) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- (2) injury to person or property proximately resulting from any breach of warranty.

§ 2716. Right of buyer to specific performance or replevin.

(a) Specific performance.—Specific performance may be decreed where the goods are unique or in other proper circumstances.

(b) Terms and conditions of decree.—The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(c) Replevin.—The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing, or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

§ 2717. Deduction of damages from price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

§ 2718. Liquidation or limitation of damages; deposits.

(a) Liquidated damages in agreement.—Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(b) Right of buyer to restitution.—Where the seller justifiably withholds delivery of goods because of the breach of the buyer, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(1) the amount to which the seller is entitled by virtue of terms liquidating the damages of the seller in accordance with subsection (a); or

(2) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(c) Offset.—The right of the buyer to restitution under subsection (b) is subject to offset to the extent that the seller establishes:

(1) a right to recover damages under the provisions of this division other than subsection (a); and

(2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(d) Payment in goods.—Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (b); but if the seller has notice of the breach of the buyer before reselling goods received in part performance, his resale is subject to the conditions laid down in this division on resale by an aggrieved seller (section 2706).

§ 2719. Contractual modification or limitation of remedy.

(a) General rule.—Subject to the provisions of subsections (b) and (c) and of section 2718 (relating to liquidation or limitation of damages; deposits):

(1) The agreement may provide for remedies in addition to or in substitution for those provided in this division and may limit or alter the measure of damages recoverable under this division, as by limiting the remedies of the buyer to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts.

(2) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Exclusive remedy failing in purpose.—Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.

(c) Limitation of consequential damages.—Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the

person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

§ 2720. Effect of “cancellation” or “rescission” on claims for antecedent breach.

Unless the contrary intention clearly appears, expressions of “cancellation” or “rescission” of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

§ 2721. Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this division for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

§ 2722. Who can sue third parties for injury to goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(1) A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract.

(3) Either party may with the consent of the other sue for the benefit of whom it may concern.

§ 2723. Proof of market price: time and place.

(a) Determination of market price generally.—If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 2708 or 2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(b) Other evidence available.—If evidence of a price prevailing at the times or places described in this division is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described, may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(c) Admissibility of other relevant evidence.—Evidence of a relevant price prevailing at a time or place other than the one described in this

division offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§ 2724. Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

§ 2725. Statute of limitations in contracts for sale.

(a) General rule.—An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(b) Accrual of cause of action.—A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(c) New action after termination of another.—Where an action commenced within the time limited by subsection (a) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) Laws and actions unaffected by section.—This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this title becomes effective.

DIVISION 3 COMMERCIAL PAPER

Chapter

31. Short Title, Form and Interpretation
32. Transfer and Negotiation
33. Rights of a Holder
34. Liability of Parties
35. Presentment, Notice of Dishonor and Protest
36. Discharge
37. Advice of International Sight Draft
38. Miscellaneous

CHAPTER 31
SHORT TITLE, FORM AND INTERPRETATION

Sec.

- 3101. Short title of division.
- 3102. Definitions and index of definitions.
- 3103. Limitations on scope of division.
- 3104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note."
- 3105. When promise or order unconditional.
- 3106. Sum certain.
- 3107. Money.
- 3108. Payable on demand.
- 3109. Definite time.
- 3110. Payable to order.
- 3111. Payable to bearer.
- 3112. Terms and omissions not affecting negotiability.
- 3113. Seal.
- 3114. Date, antedating, postdating.
- 3115. Incomplete instruments.
- 3116. Instruments payable to two or more persons.
- 3117. Instruments payable with words of description.
- 3118. Ambiguous terms and rules of construction.
- 3119. Other writings affecting instrument.
- 3120. Instruments "payable through" bank.
- 3121. Instruments payable at bank.
- 3122. Accrual of cause of action.

§ 3101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Commercial Paper."

§ 3102. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Instrument." A negotiable instrument.

"Issue." The first delivery of an instrument to a holder or a remitter.

"Order." A direction to pay. It must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

"Promise." An undertaking to pay. It must be more than an acknowledgment of an obligation.

"Secondary party." A drawer or indorser.

(b) Index of other definitions in division.—Other definitions applying to this division and the sections in which they appear are:

"Acceptance." Section 3410.

“Accommodation party.” Section 3415.

“Alteration.” Section 3407.

“Certificate of deposit.” Section 3104.

“Certification.” Section 3411.

“Check.” Section 3104.

“Definite time.” Section 3109.

“Dishonor.” Section 3507.

“Draft.” Section 3104.

“Holder in due course.” Section 3302.

“Negotiation.” Section 3202.

“Note.” Section 3104.

“Notice of dishonor.” Section 3508.

“On demand.” Section 3108.

“Presentment.” Section 3504.

“Protest.” Section 3509.

“Restrictive indorsement.” Section 3205.

“Signature.” Section 3401.

(c) Index of definitions in other divisions.—The following definitions in other divisions of this title apply to this division:

“Account.” Section 4104.

“Banking day.” Section 4104.

“Clearing house.” Section 4104.

“Collecting bank.” Section 4105.

“Customer.” Section 4104.

“Depositary bank.” Section 4105.

“Documentary draft.” Section 4104.

“Intermediary bank.” Section 4105.

“Item.” Section 4104.

“Midnight deadline.” Section 4104.

“Payor bank.” Section 4105.

(d) Applicability of general definitions and principles.—In addition Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 3103. Limitations on scope of division.

(a) Inapplicability of provisions.—This division does not apply to money, documents of title or investment securities.

(b) Applicability of provisions.—The provisions of this division are subject to the provisions of Division 4 (relating to bank deposits and collections) and Division 9 (relating to secured transactions).

§ 3104. Form of negotiable instruments; “draft”; “check”; “certificate of deposit”; “note.”

(a) Requisites to negotiability.—Any writing to be a negotiable instrument within this division must:

- (1) be signed by the maker or drawer;
- (2) contain an unconditional promise or order to pay a sum certain

in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this division;

(3) be payable on demand or at a definite time; and

(4) be payable to order or to bearer.

(b) Types of negotiable instruments.—A writing which complies with the requirements of this section is:

(1) A “draft” (“bill of exchange”) if it is an order.

(2) A “check” if it is a draft drawn on a bank and payable on demand.

(3) A “certificate of deposit” if it is an acknowledgment by a bank of receipt of money with an engagement to repay it.

(4) A “note” if it is a promise other than a certificate of deposit.

(c) Applicability of terms to nonnegotiable instruments.—As used in other divisions of this title, and as the context may require, the terms “draft,” “check,” “certificate of deposit” and “note” may refer to instruments which are not negotiable within this division as well as to instruments which are so negotiable.

§ 3105. When promise or order unconditional.

(a) Unconditional promise or order.—A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(1) is subject to implied or constructive conditions;

(2) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or “as per” such transaction;

(3) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration;

(4) states that it is drawn under a letter of credit;

(5) states that it is secured, whether by mortgage, reservation of title or otherwise;

(6) indicates a particular account to be debited or any other fund or source from which reimbursement is expected;

(7) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(8) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(b) Conditional promise or order.—A promise or order is not unconditional if the instrument:

(1) states that it is subject to or governed by any other agreement; or

(2) states that it is to be paid only out of a particular fund or source except as provided in this section.

§ 3106. Sum certain.

(a) General rule.—The sum payable is a sum certain even though it is to be paid:

- (1) with stated interest or by stated installments;
- (2) with stated different rates of interest before and after default or a specified date;
- (3) with a stated discount or addition if paid before or after the date fixed for payment;
- (4) with exchange or less exchange, whether at a fixed rate or at the current rate; or
- (5) with costs of collection or an attorney's fee or both upon default.

(b) Illegal terms not validated by section.—Nothing in this section shall validate any term which is otherwise illegal.

§ 3107. Money.

(a) General rule.—An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in “currency” or “current funds” is payable in money.

(b) Sum stated in foreign currency.—A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

§ 3108. Payable on demand.

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

§ 3109. Definite time.

(a) General rule.—An instrument is payable at a definite time if by its terms it is payable:

- (1) on or before a stated date or at a fixed period after a stated date;
- (2) at a fixed period after sight;
- (3) at a definite time subject to any acceleration; or
- (4) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(b) Indefinite time.—An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

§ 3110. Payable to order.

(a) General rule.—An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as “exchange” or the like and names a payee. It may be payable to the order of:

- (1) the maker or drawer;
- (2) the drawee;

- (3) a payee who is not maker, drawer or drawee;
- (4) two or more payees together or in the alternative;
- (5) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors;
- (6) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or
- (7) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(b) Instrument payable upon return.—An instrument not payable to order is not made so payable by such words as “payable upon return of this instrument properly indorsed.”

(c) Instrument payable both to order and bearer.—An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

§ 3111. Payable to bearer.

An instrument is payable to bearer when by its terms it is payable to:

- (1) bearer or the order of bearer;
- (2) a specified person or bearer; or
- (3) “cash” or the order of “cash,” or any other indication which does not purport to designate a specific payee.

§ 3112. Terms and omissions not affecting negotiability.

(a) General rule.—The negotiability of an instrument is not affected by:

- (1) the omission of a statement of any consideration or of the place where the instrument is drawn or payable;
- (2) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on those obligations the holder may realize on or dispose of the collateral;
- (3) a promise or power to maintain or protect collateral or to give additional collateral;
- (4) a term authorizing a confession of judgment on the instrument if it is not paid when due;
- (5) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor;
- (6) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or
- (7) a statement in a draft drawn in a set of parts (section 3801) to the effect that the order is effective only if no other part has been honored.

(b) Illegal terms not validated by section.—Nothing in this section shall validate any term which is otherwise illegal.

§ 3113. Seal.

An instrument otherwise negotiable is within this division even though it is under a seal.

§ 3114. Date, antedating, postdating.

(a) Effect on negotiability.—The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(b) Time when antedated or postdated instrument payable.—Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(c) Presumption of correctness of date.—Where the instrument or any signature thereon is dated, the date is presumed to be correct.

§ 3115. Incomplete instruments.

(a) General rule.—When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(b) Unauthorized completion.—If the completion is unauthorized the rules as to material alteration apply (section 3407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

§ 3116. Instruments payable to two or more persons.

An instrument payable to the order of two or more persons:

(1) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it; or

(2) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

§ 3117. Instruments payable with words of description.

An instrument made payable to a named person with the addition of words describing him:

(1) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(2) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him; or

(3) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

§ 3118. Ambiguous terms and rules of construction.

The following rules apply to every instrument:

(1) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(2) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(3) Words control figures except that if the words are ambiguous figures control.

(4) Unless otherwise specified a provision for interest means interest

at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(5) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(6) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 3604 (relating to tender of payment) tenders full payment when the instrument is due.

§ 3119. Other writings affecting instrument.

(a) General rule.—As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(b) Negotiability unaffected by separate agreement.—A separate agreement does not affect the negotiability of an instrument.

§ 3120. Instruments "payable through" bank.

An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

§ 3121. Instruments payable at bank.

A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment.

§ 3122. Accrual of cause of action.

(a) Against maker or acceptor.—A cause of action against a maker or an acceptor accrues:

- (1) in the case of a time instrument on the day after maturity; and
- (2) in the case of a demand instrument upon its date, or if no date is stated, on the date of issue.

(b) Against obligor of certificate of deposit.—A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(c) Against drawer or indorser.—A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(d) When interest begins to run.—Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

- (1) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand; and
- (2) in all other cases from the date of accrual of the cause of action.

CHAPTER 32 TRANSFER AND NEGOTIATION

Sec.

- 3201. Transfer: right to indorsement.
- 3202. Negotiation.
- 3203. Wrong or misspelled name.
- 3204. Special indorsement; blank indorsement.
- 3205. Restrictive indorsements.
- 3206. Effect of restrictive indorsement.
- 3207. Negotiation effective although it may be rescinded.
- 3208. Reacquisition.

§ 3201. Transfer: right to indorsement.

(a) Rights obtained upon transfer of instrument.—Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(b) Transfer of security interest in instrument.—A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(c) Right of transferee to demand indorsement.—Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

§ 3202. Negotiation.

(a) Effect and manner of negotiation.—Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(b) Requisites to valid indorsement.—An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(c) Scope of indorsement.—An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(d) Effect on indorsement of additional words.—Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

§ 3203. Wrong or misspelled name.

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

§ 3204. Special indorsement; blank indorsement.

(a) Special indorsement.—A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(b) Blank indorsement.—An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(c) Conversion of blank endorsement into special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

§ 3205. Restrictive indorsements.

An indorsement is restrictive which either:

- (1) is conditional;
- (2) purports to prohibit further transfer of the instrument;
- (3) includes the words “for collection,” “for deposit,” “pay any bank,” or like terms signifying a purpose of deposit or collection; or
- (4) otherwise states that it is for the benefit or use of the indorser or of another person.

§ 3206. Effect of restrictive indorsement.

(a) Further transfer or negotiation unaffected.—No restrictive indorsement prevents further transfer or negotiation of the instrument.

(b) Effect on banks.—An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the immediate transferor of the bank or the person presenting for payment.

(c) Conditional or specified purpose indorsement.—Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words “for collection,” “for deposit,” “pay any bank,” or like terms (section 3205(1) and (3) (relating to restrictive indorsements)) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of section 3302 (relating to holder in due course).

(d) Indorsement for benefit of indorser or another person.—The first taker under an indorsement for the benefit of the indorser or another person (section 3205(4)) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the

extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of section 3302. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (section 3304(b) (relating to notice to purchaser)).

§ 3207. Negotiation effective although it may be rescinded.

(a) General rule.—Negotiation is effective to transfer the instrument although the negotiation is:

- (1) made by an infant, a corporation exceeding its powers, or any other person without capacity;
- (2) obtained by fraud, duress or mistake of any kind;
- (3) part of an illegal transaction; or
- (4) made in breach of duty.

(b) Remedies.—Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

§ 3208. Reacquisition.

Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

CHAPTER 33 RIGHTS OF A HOLDER

Sec.

3301. Rights of a holder.

3302. Holder in due course.

3303. Taking for value.

3304. Notice to purchaser.

3305. Rights of holder in due course.

3306. Rights of one not holder in due course.

3307. Burden of establishing signatures, defenses and due course.

§ 3301. Rights of a holder.

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in section 3603 (relating to payment or satisfaction), discharge it or enforce payment in his own name.

§ 3302. Holder in due course.

(a) General rule.—A holder in due course is a holder who takes the instrument:

- (1) for value;
- (2) in good faith; and

(3) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(b) Payee as holder in due course.—A payee may be a holder in due course.

(c) Transactions not conferring holder in due course status.—A holder does not become a holder in due course of an instrument:

(1) by purchase of it at judicial sale or by taking it under legal process;

(2) by acquiring it in taking over an estate; or

(3) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(d) Purchaser of limited interest as holder in due course.—A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

§ 3303. Taking for value.

A holder takes the instrument for value:

(1) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process;

(2) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(3) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

§ 3304. Notice to purchaser.

(a) Notice of claim or defense.—The purchaser has notice of a claim or defense if:

(1) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(2) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(b) Knowledge of breach of duty by fiduciary.—The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(c) Notice that instrument is overdue.—The purchaser has notice that an instrument is overdue if he has reason to know:

(1) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series;

(2) that acceleration of the instrument has been made; or

(3) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and

territories of the United States and the District of Columbia is presumed to be 30 days.

(d) Facts which do not constitute notice.—Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

- (1) That the instrument is antedated or postdated.
- (2) That the instrument was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof.
- (3) That any party has signed for accommodation.
- (4) That an incomplete instrument has been completed, unless the purchaser has notice of any improper completion.
- (5) That any person negotiating the instrument is or was a fiduciary.
- (6) That there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(e) Filing or recording as notice.—The filing or recording of a document does not of itself constitute notice within the provisions of this division to a person who would otherwise be a holder in due course.

(f) Timeliness of notice.—To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

§ 3305. Rights of holder in due course.

To the extent that a holder is a holder in due course he takes the instrument free from:

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except:
 - (i) infancy, to the extent that it is a defense to a simple contract;
 - (ii) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity;
 - (iii) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms;
 - (iv) discharge in insolvency proceedings; and
 - (v) any other discharge of which the holder has notice when he takes the instrument.

§ 3306. Rights of one not holder in due course.

Unless he has the rights of a holder in due course any person takes the instrument subject to:

- (1) all valid claims to it on the part of any person;
- (2) all defenses of any party which would be available in an action on a simple contract;
- (3) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 3408 (relating to consideration)); and

(4) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

§ 3307. Burden of establishing signatures, defenses and due course.

(a) Proof of effectiveness of signature.—Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(1) the burden of establishing it is on the party claiming under the signature; but

(2) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(b) Recovery when signature established.—When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(c) Proof of holder in due course status when defense raised.—After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

CHAPTER 34 LIABILITY OF PARTIES

Sec.

3401. Signature.

3402. Signature in ambiguous capacity.

3403. Signature by authorized representative.

3404. Unauthorized signatures.

3405. Impostors; signature in name of payee.

3406. Negligence contributing to alteration or unauthorized signature.

3407. Alteration.

3408. Consideration.

3409. Draft not an assignment.

3410. Definition and operation of acceptance.

3411. Certification of a check.

3412. Acceptance varying draft.

3413. Contract of maker, drawer and acceptor.

3414. Contract of indorser; order of liability.

3415. Contract of accommodation party.

3416. Contract of guarantor.

3417. Warranties on presentment and transfer.

3418. Finality of payment or acceptance.

3419. Conversion of instrument; innocent representative.

§ 3401. Signature.

(a) Nonliability in absence of signature.—No person is liable on an instrument unless his signature appears thereon.

(b) Form of signature.—A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

§ 3402. Signature in ambiguous capacity.

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

§ 3403. Signature by authorized representative.

(a) General rule.—A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(b) When authorized representative personally obligated.—An authorized representative who signs his own name to an instrument:

(1) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity; and

(2) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(c) Signature in representative capacity.—Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

§ 3404. Unauthorized signatures.

(a) General rule.—Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(b) Ratification of unauthorized signature.—Any unauthorized signature may be ratified for all purposes of this division. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

§ 3405. Impostors; signature in name of payee.

(a) General rule.—An indorsement by any person in the name of a named payee is effective if:

(1) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee;

(2) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(3) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(b) Criminal or civil liability of indorser unaffected.—Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

§ 3406. Negligence contributing to alteration or unauthorized signature.

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the business of the drawee or payor.

§ 3407. Alteration.

(a) Material alteration.—Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(1) the number or relations of the parties;

(2) an incomplete instrument, by completing it otherwise than as authorized; or

(3) the writing as signed, by adding to it or by removing any part of it.

(b) Effect of alteration.—As against any person other than a subsequent holder in due course:

(1) Alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense.

(2) No other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(c) Enforcement of instrument by subsequent holder in due course.—A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

§ 3408. Consideration.

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 3305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

§ 3409. Draft not an assignment.

(a) General rule.—A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(b) Other liability unaffected.—Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

§ 3410. Definition and operation of acceptance.

(a) General rule.—Acceptance is the signed engagement of the drawee to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(b) Acceptance of incomplete, overdue or dishonored draft.—A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(c) Failure to date acceptance of sight draft.—Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

§ 3411. Certification of a check.

(a) Certification as acceptance.—Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(b) Obligation of bank to certify check.—Unless otherwise agreed a bank has no obligation to certify a check.

(c) Certification before return of check for lack of indorsement.—A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

§ 3412. Acceptance varying draft.

(a) Right of holder to refuse acceptance.—Where the proffered acceptance of the drawee in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(b) Effect of acceptance designating place of payment.—The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(c) Assent of holder to acceptance.—Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

§ 3413. Contract of maker, drawer and acceptor.

(a) Contract of maker or acceptor.—The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 3115 on incomplete instruments.

(b) Contract of drawer.—The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(c) Admissions by maker, drawer or acceptor.—By making, drawing

or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

§ 3414. Contract of indorser; order of liability.

(a) Contract of indorser.—Unless the indorsement otherwise specifies (as by such words as “without recourse”) every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(b) Order of liability of indorsers.—Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

§ 3415. Contract of accommodation party.

(a) Definition of “accommodation party”.—An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(b) Liability of accommodation party.—When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(c) Oral proof of accommodation.—As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(d) Indorsement as notice of accommodation.—An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(e) Rights between accommodation and accommodated parties.—An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

§ 3416. Contract of guarantor.

(a) Definition of “payment guaranteed”.—“Payment guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(b) Definition of “collection guaranteed”.—“Collection guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(c) Effect of words of guaranty.—Words of guaranty which do not otherwise specify guarantee payment.

(d) Addition of words of guaranty to signature of maker or acceptor.—No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(e) Rights waived by guarantor.—When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(f) Enforcement of guaranty written on instrument.—Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

§ 3417. Warranties on presentment and transfer.

(a) Warranties to payor or acceptor.—Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

(1) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title;

(2) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

(i) to a maker with respect to the maker's own signature;

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the signature of the drawer was unauthorized; and

(3) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(i) to the maker of a note;

(ii) to the drawer of a draft whether or not the drawer is also the drawee;

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(b) Warranties to transferee and subsequent holder.—Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that:

(1) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful;

- (2) all signatures are genuine or authorized;
- (3) the instrument has not been materially altered;
- (4) no defense of any party is good against him; and
- (5) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(c) Effect of transfer “without recourse”.—By transferring “without recourse” the transferor limits the obligation stated in subsection (b)(4) to a warranty that he has no knowledge of such a defense.

(d) Warranties of agent or broker.—A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

§ 3418. Finality of payment or acceptance.

Except for recovery of bank payments as provided in Division 4 (relating to bank deposits and collections) and except for liability for breach of warranty on presentment under section 3417 (relating to warranties on presentment and transfer), payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

§ 3419. Conversion of instrument; innocent representative.

(a) Acts constituting conversion.—An instrument is converted when:

- (1) a drawee to whom it is delivered for acceptance refuses to return it on demand;
- (2) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or
- (3) it is paid on a forged indorsement.

(b) Measure of liability.—In an action against a drawee under subsection (a), the measure of the liability of the drawee is the face amount of the instrument. In any other action under subsection (a), the measure of liability is presumed to be the face amount of the instrument.

(c) Limitation on liability of representative.—Subject to the provisions of this title concerning restrictive indorsements a representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(d) Limitation on liability of intermediary or payor bank.—An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 3205 and 3206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

CHAPTER 35
PRESENTMENT, NOTICE OF DISHONOR
AND PROTEST

Sec.

- 3501. When presentment, notice of dishonor, and protest necessary or permissible.
- 3502. Unexcused delay; discharge.
- 3503. Time of presentment.
- 3504. How presentment made.
- 3505. Rights of party to whom presentment is made.
- 3506. Time allowed for acceptance or payment.
- 3507. Dishonor; right of recourse of holder; term allowing re-presentment.
- 3508. Notice of dishonor.
- 3509. Protest; noting for protest.
- 3510. Evidence of dishonor and notice of dishonor.
- 3511. Waived or excused presentment, protest or notice of dishonor or delay therein.

§ 3501. When presentment, notice of dishonor, and protest necessary or permissible.

(a) Presentment.—Unless excused (section 3511 (relating to waived or excused presentment, protest or notice of dishonor or delay therein)) presentment is necessary to charge secondary parties as follows:

(1) Presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date.

(2) Presentment for payment is necessary to charge any indorser.

(3) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 3502(a)(2) (relating to unexcused delay; discharge).

(b) Notice of dishonor.—Unless excused (section 3511):

(1) Notice of any dishonor is necessary to charge any indorser.

(2) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 3502(a)(2).

(c) Protest of dishonor.—Unless excused (section 3511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument

and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(d) Indorsement of instrument after maturity.—Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

§ 3502. Unexcused delay; discharge.

(a) Delayed presentment or notice of dishonor.—Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(1) any indorser is discharged; and

(2) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(b) Delayed protest of dishonor.—Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

§ 3503. Time of presentment.

(a) General rule.—Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(1) Where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable.

(2) Where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later.

(3) Where an instrument shows the date on which it is payable presentment for payment is due on that date.

(4) Where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration.

(5) With respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(b) Determination of reasonable time for presentment.—A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(1) With respect to the liability of the drawer, 30 days after date or issue whichever is later.

(2) With respect to the liability of an indorser, seven days after his indorsement.

(c) Presentment due on day other than full business day.—Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(d) Sufficiency of presentment.—Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

§ 3504. How presentment made.

(a) Definition of “presentment”.—Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(b) Manner of making presentment.—Presentment may be made:

(1) by mail, in which event the time of presentment is determined by the time of receipt of the mail;

(2) through a clearing house; or

(3) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(c) Persons to whom presentment may be made.—Presentment may be made:

(1) to any one of two or more makers, acceptors, drawees or other payors; or

(2) to any person who has authority to make or refuse the acceptance or payment.

(d) Draft accepted or note made payable at bank.—A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(e) Presentment by written notice.—In the cases described in section 4210 (relating to presentment by notice of item not payable by, through or at a bank) presentment may be made in the manner and with the result stated in that section.

§ 3505. Rights of party to whom presentment is made.

(a) General rule.—The party to whom presentment is made may without dishonor require:

(1) exhibition of the instrument;

(2) reasonable identification of the person making presentment and evidence of his authority to make it if made for another;

(3) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(4) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(b) Failure to comply with required acts.—Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

§ 3506. Time allowed for acceptance or payment.

(a) Time allowed for acceptance.—Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(b) Time allowed for payment.—Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

§ 3507. Dishonor; right of recourse of holder; term allowing re-presentment.

(a) Definition of “dishonor”.—An instrument is dishonored when:

(1) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (section 4301 (relating to deferred posting; recovery of payment by return of items; time of dishonor)); or

(2) presentment is excused and the instrument is not duly accepted or paid.

(b) Right of recourse of holder upon dishonor.—Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(c) Return of improperly indorsed instrument not dishonor.—Return of an instrument for lack of proper indorsement is not dishonor.

(d) Term allowing time for re-presentment.—A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

§ 3508. Notice of dishonor.

(a) Persons to whom notice may be given.—Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his

principal or customer or to another agent or bank from which the instrument was received.

(b) Time for giving notice.—Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(c) Manner of giving notice.—Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(d) Written notice is given when sent.—Written notice is given when sent although it is not received.

(e) Notice to partner.—Notice to one partner is notice to each although the firm has been dissolved.

(f) Notice when party in insolvency proceedings.—When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(g) Notice when party dead or incompetent.—When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(h) Persons benefiting from notice.—Notice operates for the benefit of all parties who have rights on the instrument against the party notified.
§ 3509. Protest; noting for protest.

(a) Definition of “protest”.—A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(b) Required contents of protest.—The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(c) Optional contents of protest.—The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(d) Time protest is due.—Subject to subsection (e) any necessary protest is due by the time that notice of dishonor is due.

(e) Protest of instrument noted for protest.—If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.
§ 3510. Evidence of dishonor and notice of dishonor.

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(1) A document regular in form as provided in section 3509 (relating to protest; noting for protest) which purports to be a protest.

(2) The purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor.

(3) Any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

§ 3511. Waived or excused presentment, protest or notice of dishonor or delay therein.

(a) Excused delay in presentment, protest or notice of dishonor.—Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(b) Excused presentment, protest or notice of dishonor.—Presentment or notice or protest as the case may be is entirely excused when:

(1) the party to be charged has waived it expressly or by implication either before or after it is due;

(2) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(3) by reasonable diligence the presentment or protest cannot be made or the notice given.

(c) Excused presentment.—Presentment is also entirely excused when:

(1) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(2) acceptance or payment is refused but not for want of proper presentment.

(d) Excuse where draft dishonored by nonacceptance.—Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(e) Waiver of protest waives presentment and notice of dishonor.—A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(f) Effect of location of waiver on instrument.—Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

CHAPTER 36 DISCHARGE

Sec.

3601. Discharge of parties.

3602. Effect of discharge against holder in due course.

3603. Payment or satisfaction.

3604. Tender of payment.

3605. Cancellation and renunciation.

3606. Impairment of recourse or of collateral.

§ 3601. Discharge of parties.

(a) Applicability of other provisions.—The extent of the discharge of any party from liability on an instrument is governed by the following sections:

Section 3208 (relating to reacquisition).

Section 3407 (relating to alteration).

Section 3411 (relating to certification of a check).

Section 3412 (relating to acceptance varying draft).

Section 3502 (relating to unexcused delay; discharge).

Section 3603 (relating to payment or satisfaction).

Section 3604 (relating to tender of payment).

Section 3605 (relating to cancellation and renunciation).

Section 3606 (relating to impairment of recourse or of collateral).

(b) Discharge by other action or agreement.—Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(c) Reacquisition by prior party.—The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(1) reacquires the instrument in his own right; or

(2) is discharged under any provision of this division, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 3606).

§ 3602. Effect of discharge against holder in due course.

No discharge of any party provided by this division is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

§ 3603. Payment or satisfaction.

(a) General rule.—The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(1) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(2) of a party (other than an intermediary bank or a payor bank which is not a depositary bank), who pays or satisfies the holder of an

instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(b) Persons making payment or satisfaction with consent of holder.—Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (section 3201 (relating to transfer: right to indorsement)).

§ 3604. Tender of payment.

(a) General rule.—Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(b) Effect of refusal of tender.—The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(c) Actions equivalent to tender.—Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

§ 3605. Cancellation and renunciation.

(a) General rule.—The holder of an instrument may even without consideration discharge any party:

(1) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the signature of the party by destruction or mutilation, or by striking out the signature of the party; or

(2) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(b) Title unaffected of instrument not surrendered.—Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

§ 3606. Impairment of recourse or of collateral.

(a) General rule.—The holder discharges any party to the instrument to the extent that without the consent of such party the holder:

(1) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(2) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(b) Express reservation of rights by holder.—By express reservation of rights against a party with a right of recourse the holder preserves:

- (1) all his rights against such party as of the time when the instrument was originally due;
- (2) the right of the party to pay the instrument as of that time; and
- (3) all rights of such party to recourse against others.

CHAPTER 37 ADVICE OF INTERNATIONAL SIGHT DRAFT

Sec.

3701. Letter of advice of international sight draft.

§ 3701. Letter of advice of international sight draft.

(a) Definition of "letter of advice".—A "letter of advice" is a communication by a drawer to the drawee that a described draft has been drawn.

(b) Authority of drawee bank receiving letter of advice.—Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the account of the drawer and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(c) Payment of unadvised draft.—Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the account of the drawer.

CHAPTER 38 MISCELLANEOUS

Sec.

3801. Drafts in a set.

3802. Effect of instrument on obligation for which it is given.

3803. Notice to third party.

3804. Lost, destroyed or stolen instruments.

3805. Instruments not payable to order or to bearer.

§ 3801. Drafts in a set.

(a) Whole of parts constitutes one draft.—Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(b) Liability of person negotiating, indorsing or accepting single part.—Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(c) Effect of payment of parts.—As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (b). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 4407 (relating to right of payor bank to subrogation on improper payment)).

(d) Effect of discharge of parts.—Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

§ 3802. Effect of instrument on obligation for which it is given.

(a) General rule.—Unless otherwise agreed where an instrument is taken for an underlying obligation:

(1) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(2) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(b) Effect of taking check which is not postdated.—The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

§ 3803. Notice to third party.

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this division he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this division. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound.

§ 3804. Lost, destroyed or stolen instruments.

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

§ 3805. Instruments not payable to order or to bearer.

This division applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this division but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

DIVISION 4
BANK DEPOSITS AND COLLECTIONS

Chapter

41. General Provisions and Definitions
42. Collection of Items: Depository and Collecting Banks
43. Collection of Items: Payor Banks
44. Relationship Between Payor Bank and Its Customer
45. Collection of Documentary Drafts

CHAPTER 41
GENERAL PROVISIONS AND DEFINITIONS

Sec.

4101. Short title of division.
4102. Applicability.
4103. Variation by agreement; measure of damages; certain action constituting ordinary care.
4104. Definitions and index of definitions.
4105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank."
4106. Separate office of a bank.
4107. Time of receipt of items.
4108. Delays.
4109. Process of posting.

§ 4101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Bank Deposits and Collections."

§ 4102. Applicability.

(a) Commercial paper and investment securities.—To the extent that items within this division are also within the scope of Division 3 (relating to commercial paper) and Division 8 (relating to investment securities), they are subject to the provisions of those divisions. In the event of conflict the provisions of this division govern those of Division 3 but the provisions of Division 8 govern those of this division.

(b) Liability of bank with respect to items handled.—The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

§ 4103. Variation by agreement; measure of damages; certain action constituting ordinary care.

(a) Variation by agreement.—The effect of the provisions of this division may be varied by agreement except that no agreement can disclaim the responsibility of a bank for its own lack of good faith or failure to

exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(b) Rules and regulations having effect of agreements.—Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Certain action constituting ordinary care.—Action or nonaction approved by this division or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing house rules and the like or with a general banking usage not disapproved by this division, prima facie constitutes the exercise of ordinary care.

(d) Effect of approval of certain procedures.—The specification or approval of certain procedures by this division does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(e) Measure of damages for failure to exercise ordinary care.—The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any suffered by the party as a proximate consequence.

§ 4104. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“Account.” Any account with a bank and includes a checking, time, interest or savings account.

“Afternoon.” The period of a day between noon and midnight.

“Banking day.” That part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.

“Clearing house.” Any association of banks or other payors regularly clearing items.

“Customer.” Any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank.

“Documentary draft.” Any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft.

“Item.” Any instrument for the payment of money even though it is not negotiable but does not include money.

“Midnight deadline.” With respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant

item or notice or from which the time for taking action commences to run, whichever is later.

“Properly payable.” Includes the availability of funds for payment at the time of decision to pay or dishonor.

“Settle.” To pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final.

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

(b) Index of other definitions in division.—Other definitions applying to this division and the sections in which they appear are:

“Collecting bank.” Section 4105.

“Depository bank.” Section 4105.

“Intermediary bank.” Section 4105.

“Payor bank.” Section 4105.

“Presenting bank.” Section 4105.

“Remitting bank.” Section 4105.

(c) Index of definitions in other divisions.—The following definitions in other divisions apply to this division:

“Acceptance.” Section 3410.

“Certificate of deposit.” Section 3104.

“Certification.” Section 3411.

“Check.” Section 3104.

“Draft.” Section 3104.

“Holder in due course.” Section 3302.

“Notice of dishonor.” Section 3508.

“Presentment.” Section 3504.

“Protest.” Section 3509.

“Secondary party.” Section 3102.

(d) Applicability of general definitions and principles.—In addition Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 4105. “Depository bank”; “intermediary bank”; “collecting bank”; “payor bank”; “presenting bank”; “remitting bank.”

The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Collecting bank.” Any bank handling the item for collection except the payor bank.

“Depository bank.” The first bank to which an item is transferred for collection even though it is also the payor bank.

“Intermediary bank.” Any bank to which an item is transferred in course of collection except the depository or payor bank.

“Payor bank.” A bank by which an item is payable as drawn or accepted.

“Presenting bank.” Any bank presenting an item except a payor bank.

“Remitting bank.” Any payor or intermediary bank remitting for an item.

§ 4106. Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this division and under Division 3 (relating to commercial paper).

§ 4107. Time of receipt of items.

(a) Cut-off hour for handling and book entries.—For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) Items or deposits received after cut-off hour.—Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

§ 4108. Delays.

(a) Delay permitted in effort to secure payment.—Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(b) Delay excused by conditions beyond control of bank.—Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this title, or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

§ 4109. Process of posting.

The “process of posting” means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment, including one or more of the following or other steps as determined by the bank:

- (1) Verification of any signature.
- (2) Ascertaining that sufficient funds are available.
- (3) Affixing a “paid” or other stamp.
- (4) Entering a charge or entry to the account of a customer.
- (5) Correcting or reversing an entry or erroneous action with respect to the item.

CHAPTER 42
COLLECTION OF ITEMS: DEPOSITARY
AND COLLECTING BANKS

Sec.

- 4201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of division; item indorsed "pay any bank."
- 4202. Responsibility for collection; when action seasonable.
- 4203. Effect of instructions.
- 4204. Methods of sending and presenting; sending direct to payor bank.
- 4205. Supplying missing indorsement; no notice from prior indorsement.
- 4206. Transfer between banks.
- 4207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.
- 4208. Security interest of collecting bank in items, accompanying documents and proceeds.
- 4209. When bank gives value for purposes of holder in due course.
- 4210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- 4211. Media of remittance; provisional and final settlement in remittance cases.
- 4212. Right of charge-back or refund.
- 4213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- 4214. Insolvency and preference.

§ 4201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of division; item indorsed "pay any bank."

(a) Agency status of bank and provisional status of settlement.—Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (sections 4211(c), 4212 and 4213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this division apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) Effect of “pay any bank” indorsement.—After an item has been indorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder:

(1) until the item has been returned to the customer initiating collection; or

(2) until the item has been specially indorsed by a bank to a person who is not a bank.

§ 4202. Responsibility for collection; when action seasonable.

(a) When collecting bank must use ordinary care.—A collecting bank must use ordinary care in:

(1) presenting an item or sending it for presentment;

(2) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the transferor of the bank or directly to the depository bank under section 4212(b) (relating to right of charge-back or refund) after learning that the item has not been paid or accepted, as the case may be;

(3) settling for an item when the bank receives final settlement;

(4) making or providing for any necessary protest; and

(5) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) Seasonable action by bank.—A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(c) Nonliability of bank for action of others.—Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

§ 4203. Effect of instructions.

Subject to the provisions of Division 3 (relating to commercial paper) concerning conversion of instruments (section 3419) and the provisions of both Division 3 and this division concerning restrictive indorsements, only a collecting bank’s transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

§ 4204. Methods of sending and presenting; sending direct to payor bank.

(a) Collecting bank to send items by reasonably prompt method.—A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(b) Persons to whom bank may send items.—A collecting bank may send:

(1) any item direct to the payor bank;

(2) any item to any nonbank payor if authorized by its transferor; and

(3) any item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(c) Presentment where payor bank has requested.—Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

§ 4205. Supplying missing indorsement; no notice from prior indorsement.

(a) Supplying missing indorsement.—A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words “payee’s indorsement required” or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the indorsement of the customer.

(b) Effect of restrictive indorsement on intermediary and payor bank.—An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the immediate transferor of the bank.

§ 4206. Transfer between banks.

Any agreed method which identifies the transferor bank is sufficient for the further transfer of the item to another bank.

§ 4207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.

(a) Warranties to payor or acceptor.—Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(1) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title;

(2) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to a maker with respect to the signature of the maker;

(ii) to a drawer with respect to the signature of the drawer, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the signature of the drawer was unauthorized; and

(3) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to the maker of a note;

(ii) to the drawer of a draft whether or not the drawer is also the drawee;

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(b) Warranties to transferee and subsequent collecting bank.—Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(1) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful;

(2) all signatures are genuine or authorized;

(3) the item has not been materially altered;

(4) no defense of any party is good against him; and

(5) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(c) Effect of absence of express guaranty or warranty.—The warranties and the engagement to honor set forth in subsections (a) and (b) arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(d) Effect of delay in making claim for breach of warranty.—Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.
§ 4208. Security interest of collecting bank in items, accompanying documents and proceeds.

(a) General rule.—A 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 and whether or not there is a right of charge-back;

or

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

(b) Partial withdrawal of credit given for several items.—When credit which has been given for several items received at one 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) Satisfaction and continuation of security interest.—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. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Division 9 (relating to secured transactions) except that:

(1) no security agreement is necessary to make the security interest enforceable (section 9203(a)(2) (relating to enforceability of security interest; proceeds, formal requisites));

(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.

§ 4209. When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of section 3302 (relating to holder in due course).

§ 4210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.

(a) Presentment by notice.—Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 3505 (relating to rights of party to whom presentment is made) by the close of the next banking day of the bank after it knows of the requirement.

(b) Dishonor and notice to secondary party.—Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 3505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

§ 4211. Media of remittance; provisional and final settlement in remittance cases.

(a) Media of remittance acceptable by collecting bank.—A collecting

bank may take in settlement of an item:

(1) a check of the remitting bank or of another bank on any bank except the remitting bank;

(2) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank;

(3) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(4) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(b) Liability of bank on dishonor of remittance.—If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (a) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(c) Time of final settlement of item.—A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(1) if the remittance instrument or authorization to charge is of a kind approved by subsection (a) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(2) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (a)(2), at the time of the receipt of such remittance check or obligation; or

(3) if in a case not covered by paragraph (1) or (2) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, at such midnight deadline.

§ 4212. Right of charge-back or refund.

(a) Right of collecting bank to charge-back or refund.—If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to the account of its customer or obtain refund from its customer whether or not it is able to return the item if by its

midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (sections 4211(c) and 4213(b) and (c)).

(b) Return of unpaid item to depository bank.—Within the time and manner prescribed by this section and section 4301 (relating to recovery of payment by return of items), an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks and shall become and remain final.

(c) Right of depository-payor bank to charge-back or refund.—A depository bank which is also the payor may charge-back the amount of an item to the account of its customer or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 4301).

(d) Right of charge-back unaffected in certain cases.—The right to charge-back is not affected by:

(1) prior use of the credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(e) Effect of failure to charge-back or claim refund.—A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) Credit in dollars for item payable in foreign currency.—If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

§ 4213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

(a) When item is finally paid by payor bank.—An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(1) Paid the item in cash.

(2) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement.

(3) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith.

(4) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under paragraph (2), (3) or (4), the payor bank shall be accountable for the amount of the item.

(b) When provisional debits and credits become final.—If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(c) Accountability of collecting bank to customer upon final settlement.—If a collecting bank receives a settlement for an item which is or becomes final (sections 4211(c) and 4213(b)) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(d) When credit becomes available for withdrawal.—Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(1) in any case where the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final; and

(2) in any case where the bank is both a depository bank and a payor bank and the item is finally paid, at the opening of the second banking day of the bank following receipt of the item.

(e) When deposit of money becomes available for withdrawal.—A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the next banking day of the bank following receipt of the deposit.

§ 4214. Insolvency and preference.

(a) Return of unpaid item by agent of closed bank.—Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the customer of the closed bank.

(b) Preferred claim against payor bank by owner of unsettled item.—If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has preferred claim against the payor bank.

(c) Finality of provisional settlement by payor or collecting bank unaffected.—If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the

suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (sections 4211(c) and 4213(a)(4), (b) and (c)).

(d) Preferred claim against collecting bank by owner of unsettled item.—If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

CHAPTER 43 COLLECTION OF ITEMS: PAYOR BANKS

Sec.

4301. Deferred posting; recovery of payment by return of items; time of dishonor.

4302. Responsibility of payor bank for late return of item.

4303. When items subject to notice, stop-order, legal process or set-off; order in which items may be charged or certified.

§ 4301. Deferred posting; recovery of payment by return of items; time of dishonor.

(a) Return by payor bank of item provisionally settled.—Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (section 4213(a)) and before its midnight deadline it:

(1) returns the item; or

(2) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(b) Time for return of provisionally settled item.—If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Time when item is dishonored.—Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) Acts constituting return of item.—An item is returned:

(1) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

§ 4302. Responsibility of payor bank for late return of item.

In the absence of a valid defense such as breach of a presentment warranty (section 4207(a)), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(1) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

§ 4303. When items subject to notice, stop-order, legal process or set-off; order in which items may be charged or certified.

(a) When items subject to knowledge, notice, stop-order, legal process or set-off.—Any knowledge, notice or stop-order received by, legal process served upon or set-off exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the right or duty of the bank to pay an item or to charge the account of its customer for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the set-off is exercised after the bank has done any of the following:

(1) Accepted or certified the item.

(2) Paid the item in cash.

(3) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement.

(4) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item.

(5) Become accountable for the amount of the item under section 4213(a)(4) (relating to final payment of item by payor bank) and section 4302 (relating to responsibility of payor bank for late return of item).

(b) Order in which items may be accepted, paid, certified or charged.—Subject to the provisions of subsection (a) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

CHAPTER 44
RELATIONSHIP BETWEEN PAYOR BANK
AND ITS CUSTOMER

Sec.

- 4401. When bank may charge account of customer.
- 4402. Liability of bank to customer for wrongful dishonor.
- 4403. Right of customer to stop payment; burden of proof of loss.
- 4404. Bank not obligated to pay check more than six months old.
- 4405. Death or incompetence of customer.
- 4406. Duty of customer to discover and report unauthorized signature or alteration.
- 4407. Right of payor bank to subrogation on improper payment.

§ 4401. When bank may charge account of customer.

(a) General rule.—As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(b) Payment to holder on altered or completed item.—A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to:

- (1) the original tenor of his altered item; or
- (2) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§ 4402. Liability of bank to customer for wrongful dishonor.

A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

§ 4403. Right of customer to stop payment; burden of proof of loss.

(a) Right of customer to stop payment.—A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 4303 (relating to when items subject to notice, stop-order, legal process or set-off).

(b) Duration of stop payment orders.—An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(c) Burden of proof of loss.—The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

§ 4404. Bank not obligated to pay check more than six months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge the account of its customer for a payment made thereafter in good faith.

§ 4405. Death or incompetence of customer.

(a) Authority of bank unaffected in absence of knowledge.—The authority of a payor or collecting bank to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Limited authority of bank following knowledge.—Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

§ 4406. Duty of customer to discover and report unauthorized signature or alteration.

(a) General rule.—When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(b) Effect of failure to report unauthorized signature or alteration.—If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (a) the customer is precluded from asserting against the bank:

(1) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(2) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(c) Nonliability of bank affected by lack of ordinary care.—The preclusion under subsection (b) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item.

(d) Statutes of limitations applicable to customer.—Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made

available to the customer (subsection (a)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(e) Effect of waiver of valid defense of payor bank.—If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the claim of the customer.

§ 4407. Right of payor bank to subrogation on improper payment.

If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

- (1) of any holder in due course on the item against the drawer or maker;
- (2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

CHAPTER 45 COLLECTION OF DOCUMENTARY DRAFTS

Sec.

4501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
4502. Presentment of "on arrival" drafts.
4503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
4504. Privilege of presenting bank to deal with goods; security interest for expenses.

§ 4501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

§ 4502. Presentment of “on arrival” drafts.

When a draft or the relevant instructions require presentment “on arrival”, “when goods arrive” or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

§ 4503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

Unless otherwise instructed and except as provided in Division 5 (relating to letters of credit) a bank presenting a documentary draft:

(1) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

§ 4504. Privilege of presenting bank to deal with goods; security interest for expenses.

(a) Dealing with goods following dishonor of documentary draft.—A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) Security interest for expenses.—For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid lien of a seller.

DIVISION 5
LETTERS OF CREDIT

Chapter

51. Letters of Credit

CHAPTER 51
LETTERS OF CREDIT

Sec.

- 5101. Short title of division.
- 5102. Scope of division.
- 5103. Definitions and index of definitions.
- 5104. Formal requirements; signing.
- 5105. Consideration.
- 5106. Time and effect of establishment of credit.
- 5107. Advice of credit; confirmation; error in statement of terms.
- 5108. "Notation credit"; exhaustion of credit.
- 5109. Obligation of issuer to its customer.
- 5110. Availability of credit in portions; reservation by presenter of lien or claim.
- 5111. Warranties on transfer and presentment.
- 5112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter."
- 5113. Indemnities.
- 5114. Duty and privilege of issuer to honor; right to reimbursement.
- 5115. Remedy for improper dishonor or anticipatory repudiation.
- 5116. Transfer and assignment.
- 5117. Insolvency of bank holding funds for documentary credit.

§ 5101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Letters of Credit."

§ 5102. Scope of division.

(a) Applicability of division.—This division applies:

(1) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment;

(2) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(3) to a credit issued by a bank or other person if the credit is not within paragraphs (1) and (2) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(b) Inapplicability of division.—Unless the engagement meets the requirements of subsection (a), this division does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(c) Rules and concepts of letters of credit.—This division deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this title or may hereafter develop. The fact that this division states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this division.

§ 5103. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“Advising bank.” A bank which gives notification of the issuance of a credit by another bank.

“Beneficiary.” Beneficiary of a credit is a person who is entitled under its terms to draw or demand payment.

“Confirming bank.” A bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

“Credit” or “letter of credit.” An engagement by a bank or other person made at the request of a customer and of a kind within the scope of this division (section 5102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

“Customer.” A buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of a customer of that bank.

“Documentary draft” or a “documentary demand for payment.” One honor of which is conditioned upon the presentation of a document or documents. “Document” means any paper including document of title, security, invoice, certificate, notice of default and the like.

“Issuer.” A bank or other person issuing a credit.

(b) Index of other definitions in division.—Other definitions applying to this division and the sections in which they appear are:

“Notation credit.” Section 5108.

“Presenter.” Section 5112(c).

(c) Index of definitions in other divisions.—Definitions in other divisions applying to this division and the sections in which they appear are:

“Accept” or “acceptance.” Section 3410.

“Contract for sale.” Section 2106.

“Draft.” Section 3104.

“Holder in due course.” Section 3302.

“Midnight deadline.” Section 4104.

“Security.” Section 8102.

(d) Applicability of general definitions and principles.—In addition, Division I (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 5104. Formal requirements; signing.

(a) General rule.—Except as otherwise required in section 5102(a)(3) on scope, no particular form of phrasing is required for a credit. A credit

must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(b) Telegram as signed writing.—A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

§ 5105. Consideration.

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

§ 5106. Time and effect of establishment of credit.

(a) Time of establishment of credit.—Unless otherwise agreed a credit is established:

(1) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(2) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(b) Modification or revocation of irrevocable credit.—Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(c) Modification or revocation of revocable credit.—Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(d) Rights following modification or revocation of revocable credit.—Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

§ 5107. Advice of credit; confirmation; error in statement of terms.

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

(b) Obligation of bank confirming a credit.—A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(c) Effect when bank incorrectly advises terms of credit.—Even though an advising bank incorrectly advises the terms of a credit it has been

authorized to advise the credit is established as against the issuer to the extent of its original terms.

(d) Risks borne by customer as against issuer.—Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

§ 5108. “Notation credit”; exhaustion of credit.

(a) Definition of “notation credit”.—A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a “notation credit.”

(b) Rights of parties under notation credit.—Under a notation credit:

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

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

(c) Rights of parties under other credit.—If the credit is not a notation credit:

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

(2) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

§ 5109. Obligation of issuer to its customer.

(a) General rule.—The obligation of an issuer to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(1) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary;

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

(3) based on knowledge or lack of knowledge of any usage of any particular trade.

(b) Duty to examine documents.—An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or

responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(c) Effect of bank usage on nonbank issuer.—A nonbank issuer is not bound by any banking usage of which it has no knowledge.

§ 5110. Availability of credit in portions; reservation by presenter of lien or claim.

(a) Availability of credit in portions.—Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(b) Relinquishment and reservation of claim.—Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

§ 5111. Warranties on transfer and presentment.

(a) Warranties of beneficiary.—Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Divisions 3 (relating to commercial paper), 4 (relating to bank deposits and collections), 7 (relating to warehouse receipts, bills of lading and other documents of title) and 8 (relating to investment securities).

(b) Warranties of banks.—Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Division 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Divisions 7 and 8.

§ 5112. Time allowed for honor or rejection; withholding honor or rejection by consent; “presenter.”

(a) Time allowed for honor or rejection.—A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(1) defer honor until the close of the third banking day following receipt of the documents; and

(2) further defer honor if the presenter has expressly or impliedly consented thereto.

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

(b) Fulfillment of duty to return draft or demand upon dishonor.—Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(c) Definition of “presenter”.—“Presenter” means any person presenting a draft or demand for payment for honor under a credit even

though that person is a confirming bank or other correspondent which is acting under the authorization of an issuer.

§ 5113. Indemnities.

(a) General rule.—A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(b) Application and duration of indemnity agreement.—An indemnity agreement inducing honor, negotiation or reimbursement:

(1) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

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

§ 5114. Duty and privilege of issuer to honor; right to reimbursement.

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

(b) Nonconforming document or fraud.—Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 7507) or of a security (section 8306) or is forged or fraudulent or there is fraud in the transaction:

(1) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 7502) or a bona fide purchaser of a security (section 8302); and

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

(c) Right of issuer to reimbursement.—Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be

put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

§ 5115. Remedy for improper dishonor or anticipatory repudiation.

(a) Improper dishonor.—When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 2707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 2710 (relating to incidental damages of seller) and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(b) Anticipatory repudiation.—When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 2610 (relating to anticipatory repudiation) if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

§ 5116. Transfer and assignment.

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

(b) Right to proceeds.—Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Division 9 (relating to secured transactions) and is governed by that division except that:

(1) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Division 9;

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

(3) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(c) Other rights unaffected.—Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

§ 5117. Insolvency of bank holding funds for documentary credit.

(a) General rule.—Where an issuer or an advising or confirming bank, or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this division is made applicable by section 5102(a)(1) or (2) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(1) To the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank.

(2) On expiration of the credit or surrender of the rights of the beneficiary under it unused any person who has given such funds or collateral is similarly entitled to return thereof.

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

(b) Disposition of documents after honor or reimbursement.—After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

DIVISION 6 BULK TRANSFERS

Chapter

61. Bulk Transfers

CHAPTER 61 BULK TRANSFERS

Sec.

- 6101. Short title of division.
- 6102. "Bulk transfer"; transfers of equipment; enterprises and bulk transfers subject to division.
- 6103. Transfers excepted from division.
- 6104. Schedule of property; list of creditors.
- 6105. Notice to creditors.
- 6106. Application of proceeds.
- 6107. The notice.
- 6108. Auction sales; "auctioneer."
- 6109. What creditors protected.
- 6110. Subsequent transfers.
- 6111. Limitation of actions and levies.

§ 6101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Bulk Transfers."

§ 6102. "Bulk transfer"; transfers of equipment; enterprises and bulk transfers subject to division.

(a) Definition of "bulk transfer".—A "bulk transfer" is any transfer in bulk and not in the ordinary course of the business of the transferor, of a major part of the materials, supplies, merchandise or other inventory (section 9109) of an enterprise subject to this division.

(b) Transfer of equipment as bulk transfer.—A transfer of a substantial part of the equipment (section 9109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(c) Enterprises subject to division.—The enterprises subject to this division are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(d) Bulk transfers subject to division.—Except as limited by section 6103 (relating to transfers excepted from division) all bulk transfers of goods located within this Commonwealth are subject to this division.

§ 6103. Transfers excepted from division.

The following transfers are not subject to this division:

(1) Those made to give security for the performance of an obligation.

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(3) Transfers in settlement or realization of a lien or other security interest.

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process.

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency.

(6) Transfers to a person maintaining a known place of business in this Commonwealth who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound.

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors.

(8) Transfers of property which is exempt from execution.

Public notice under paragraph (6) or (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this

Commonwealth an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

§ 6104. Schedule of property; list of creditors.

(a) Requisites for effective bulk transfer.—Except as provided in section 6108 (relating to auction sales), a bulk transfer subject to this division is ineffective against any creditor of the transferor unless:

(1) the transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section;

(2) the parties prepare a schedule of the property transferred sufficient to identify it; and

(3) the transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the prothonotary in the county in which the property was located at the time of transfer.

(b) Execution and content of list of creditors.—The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(c) Completeness and accuracy of list of creditors.—Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

§ 6105. Notice to creditors.

In addition to the requirements of section 6104 (relating to schedule of property; list of creditors), any bulk transfer subject to this division except one made by auction sale (section 6108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 6107).

§ 6106. Application of proceeds.

In addition to the requirements of section 6104 (relating to schedule of property; list of creditors) and section 6105 (relating to notice to creditors):

(1) Upon every bulk transfer subject to this division for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (section 6104) or filed in writing in the place stated in the notice (section 6107) within 30 days after

the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the debts in full distribution shall be made according to the following order of preferences:

(i) State, county, municipal, township and school district tax claims and State Unemployment Compensation Fund claims on a pro rata basis.

(ii) All other creditors on a pro rata basis.

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the court of common pleas in the county where the transferor had its principal place of business in this Commonwealth and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

§ 6107. The notice.

(a) Contents of notice to creditors.—The notice to creditors (section 6105) shall state:

(1) That a bulk transfer is about to be made.

(2) The names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee.

(3) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(b) Additional contents when debts of transferor not paid.—If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(1) The location and general description of the property to be transferred and the estimated total of the debts of the transferor.

(2) The address where the schedule of property and list of creditors (section 6104) may be inspected.

(3) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing.

(4) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(5) If for new consideration the time and place where creditors of the transferor are to file their claims.

(c) Delivery of notice.—The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on

the list of creditors furnished by the transferor (section 6104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

§ 6108. Auction sales; "auctioneer."

(a) Bulk transfer by auction subject to division.—A bulk transfer is subject to this division even though it is by sale at auction, but only in the manner and with the results stated in this section.

(b) Duties of transferor.—The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 6104).

(c) Definition and duties of "auctioneer".—The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall:

(1) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this division (section 6104);

(2) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(3) assure that the net proceeds of the auction are applied as provided in this division (section 6106).

(d) Effect of failure of auctioneer to perform duties.—Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

§ 6109. What creditors protected.

The creditors of the transferor mentioned in this division are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 6105 and 6107) are not entitled to notice.

§ 6110. Subsequent transfers.

When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this division, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect; but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

§ 6111. Limitation of actions and levies.

No action under this division shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

DIVISION 7
WAREHOUSE RECEIPTS, BILLS OF LADING
AND OTHER DOCUMENTS OF TITLE

Chapter

- 71. General
- 72. Warehouse Receipts: Special Provisions
- 73. Bills of Lading: Special Provisions
- 74. Warehouse Receipts and Bills of Lading: General Obligations
- 75. Warehouse Receipts and Bills of Lading: Negotiation and Transfer
- 76. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

CHAPTER 71
GENERAL

Sec.

- 7101. Short title of division.
- 7102. Definitions and index of definitions.
- 7103. Relation of division to treaty, statute, tariff, classification or regulation.
- 7104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.
- 7105. Construction against negative implication.

§ 7101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Documents of Title."

§ 7102. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Bailee." The person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

"Consignee." The person named in a bill to whom or to whose order the bill promises delivery.

"Consignor." The person named in a bill as the person from whom the goods have been received for shipment.

"Delivery order." A written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

"Document." Document of title as defined in section 1201 (relating to general definitions).

"Goods." All things which are treated as movable for the purposes of a contract of storage or transportation.

"Issuer." A bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of

goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

“Warehouseman.” A person engaged in the business of storing goods for hire.

(b) Index of other definitions in division.—Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

“Duly negotiate.” Section 7501.

“Person entitled under the document.” Section 7403(d).

(c) Index of definitions in other divisions.—Definitions in other divisions applying to this division and the sections in which they appear are:

“Contract for sale.” Section 2106.

“Overseas.” Section 2323.

“Receipt” of goods. Section 2103.

(d) Applicability of general definitions and principles.—In addition Division I (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 7103. Relation of division to treaty, statute, tariff, classification or regulation.

To the extent that any treaty or statute of the United States, regulatory statute of this Commonwealth or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this division are subject thereto.

§ 7104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.

(a) Negotiable document of title.—A warehouse receipt, bill of lading or other document of title is negotiable:

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

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

(b) Nonnegotiable document of title.—Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned 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.

§ 7105. Construction against negative implication.

The omission from either Chapter 72 (relating to warehouse receipts: special provisions) or Chapter 73 (relating to bills of lading: special provisions) of a provision corresponding to a provision made in the other chapter does not imply that a corresponding rule of law is not applicable.

CHAPTER 72
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec.

- 7201. Who may issue warehouse receipt; storage under government bond.
- 7202. Form of warehouse receipt; essential terms; optional terms.
- 7203. Liability for nonreceipt or misdescription.
- 7204. Duty of care; contractual limitation of liability of warehouseman.
- 7205. Title under warehouse receipt defeated in certain cases.
- 7206. Termination of storage at option of warehouseman.
- 7207. Goods must be kept separate; fungible goods.
- 7208. Altered warehouse receipts.
- 7209. Lien of warehouseman.
- 7210. Enforcement of lien of warehouseman.

§ 7201. Who may issue warehouse receipt; storage under government bond.

(a) Who may issue warehouse receipt.—A warehouse receipt may be issued by any warehouseman.

(b) Storage under government bond.—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.

§ 7202. Form of warehouse receipt; essential terms; optional terms.

(a) Form of warehouse receipt.—A warehouse receipt need not be in any particular form.

(b) Essential terms.—Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(1) The location of the warehouse where the goods are stored.

(2) The date of issue of the receipt.

(3) The consecutive number of the receipt.

(4) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(5) The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt.

(6) A description of the goods or of the packages containing them.

(7) The signature of the warehouseman, which may be made by his authorized agent.

(8) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership.

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 7209 (relating to lien of warehouseman)). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(c) Optional terms.—A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this title and do not impair his obligation of delivery (section 7403) or his duty of care (section 7204). Any contrary provisions shall be ineffective.

§ 7203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods, may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown," "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

§ 7204. Duty of care; contractual limitation of liability of warehouseman.

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

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

(c) Provisions for presenting claims and instituting actions.—Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

§ 7205. Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

§ 7206. Termination of storage at option of warehouseman.

(a) General rule.—A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of section 7210 (relating to enforcement of lien of warehouseman).

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

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

(d) Delivery of goods upon demand.—The warehouseman must deliver the goods to any person entitled to them under this division upon due demand made at any time prior to sale or other disposition under this section.

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

§ 7207. Goods must be kept separate; fungible goods.

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

(b) Commingled fungible goods.—Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is

severally liable to each owner for the share of that owner. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

§ 7208. Altered warehouse receipts.

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

§ 7209. Lien of warehouseman.

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

(b) Reservation of security interest for other charges.—The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. Such a security interest is governed by Division 9 (relating to secured transactions).

(c) Other persons against whom lien or security interest effective.—The lien of a warehouseman for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 7503 (relating to document of title to goods defeated in certain cases).

(d) Loss of lien.—A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 7210. Enforcement of lien of warehouseman.

(a) Sale of goods to enforce lien.—Except as provided in subsection

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

(b) Procedure for enforcement of lien.—The lien of a warehouseman on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

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

(2) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

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

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

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

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

(c) Satisfaction of lien prior to sale.—Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this

section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this division.

(d) Warehouseman may purchase at public sale.—The warehouseman may buy at any public sale pursuant to this section.

(e) Rights acquired by good faith purchaser.—A purchaser in good faith of goods sold to enforce the lien of a warehouseman takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(f) Disposition of proceeds of sale.—The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(g) Rights under section not exclusive.—The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(h) Lien on goods stored by merchant in course of business.—Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (a) or (b).

(i) Liability of warehouseman for noncompliance.—The warehouseman 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.

CHAPTER 73 BILLS OF LADING: SPECIAL PROVISIONS

Sec.

7301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.

7302. Through bills of lading and similar documents.

7303. Diversion; reconsignment; change of instructions.

7304. Bills of lading in a set.

7305. Destination bills.

7306. Altered bills of lading.

7307. Lien of carrier.

7308. Enforcement of lien of carrier.

7309. Duty of care; contractual limitation of liability of carrier.

§ 7301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.

(a) Liability of issuer for nonreceipt or misdescription.—A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, 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

document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where 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 the like, if such indication be true.

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

(c) Duty of carrier issuer when freight loaded by shipper.—When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

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

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

§ 7302. Through bills of lading and similar documents.

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

(b) Other person subjected to obligation of issuer.—Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the

issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(c) Recovery by issuer against other persons.—The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover 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.

§ 7303. Diversion; reconsignment; change of instructions.

(a) General rule.—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:

- (1) the holder of a negotiable bill;
- (2) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee;
- (3) the consignee on a nonnegotiable 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
- (4) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(b) Liability of bailee when instructions not on document.—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.

§ 7304. Bills of lading in a set.

(a) General rule.—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.

(b) Set of parts constitutes one bill.—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 constitute one bill.

(c) Negotiation of parts of set to different persons.—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 obligation of the carrier by surrender of his part.

(d) Liability for negotiation of single part of set.—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 whole set.

(e) Duty of bailee upon presentation of part of set.—The bailee is obliged to deliver in accordance with Chapter 74 (relating to warehouse receipts and bills of lading: general obligations) against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the obligation of the bailee on the whole bill.

§ 7305. Destination bills.

(a) Destination bill procured by carrier.—Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(b) Substitute bill procured by issuer.—Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

§ 7306. Altered bills of lading.

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

§ 7307. Lien of carrier.

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

(b) Persons against whom lien effective.—A lien for charges and expenses under subsection (a) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(c) Loss of lien.—A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 7308. Enforcement of lien of carrier.

(a) Sale of goods to enforce lien.—The lien of a carrier may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was

not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) Satisfaction of lien prior to sale.—Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this division.

(c) Carrier may purchase at public sale.—The carrier may buy at any public sale pursuant to this section.

(d) Rights acquired by good faith purchaser.—A purchaser in good faith of goods sold to enforce the lien of a carrier takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

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

(f) Rights under section not exclusive.—The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(g) Alternative methods of enforcing lien.—The lien of a carrier may be enforced in accordance with either subsection (a) or the procedure set forth in section 7210(b) (relating to enforcement of lien of warehouseman).

(h) Liability of carrier for noncompliance.—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.
§ 7309. Duty of care; contractual limitation of liability of carrier.

(a) Duty of care.—A carrier who issues a bill of lading whether negotiable or nonnegotiable 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.

(b) Contractual limitation of liability.—Damages may be limited by a provision that the liability of the carrier shall not exceed a value stated in the document if the rates of the carrier are dependent upon value and the consignor by the tariff of the carrier 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 liability of the carrier for conversion to its own use.

(c) Provisions for presenting claims and instituting actions.—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.

CHAPTER 74
WAREHOUSE RECEIPTS AND BILLS OF LADING:
GENERAL OBLIGATIONS

Sec.

7401. Irregularities in issue of receipt or bill or conduct of issuer.

7402. Duplicate receipt or bill; overissue.

7403. Obligation of warehouseman or carrier to deliver; excuse.

7404. No liability for good faith delivery pursuant to receipt or bill.

§ 7401. Irregularities in issue of receipt or bill or conduct of issuer.

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

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

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

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

(4) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

§ 7402. Duplicate receipt or bill; overissue.

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

§ 7403. Obligation of warehouseman or carrier to deliver; excuse.

(a) General rule.—The bailee must deliver the goods to a person entitled under the document who complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant.

(2) Damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in such cases is on the person entitled under the document.

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on lawful termination of storage by a warehouseman.

(4) The exercise by a seller of his right to stop delivery pursuant to the provisions of Division 2 (section 2705).

(5) A diversion, reconsignment or other disposition pursuant to the provisions of this division (section 7303) or tariff regulating such right.

(6) Release, satisfaction or any other fact affording a personal defense against the claimant.

(7) Any other lawful excuse.

(b) Satisfaction of lien.—A person claiming goods covered by a document of title must satisfy the lien of the bailee where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Surrender of negotiable document.—Unless the person claiming is one against whom the document confers no right under section 7503(a) (relating to document of title to goods defeated in certain cases), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering 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.

(d) Definition of “person entitled under the document”.—“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 nonnegotiable document.

§ 7404. 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 division 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.

CHAPTER 75 WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

Sec.

7501. Form of negotiation and requirements of “due negotiation.”

7502. Rights acquired by due negotiation.

7503. Document of title to goods defeated in certain cases.

7504. Rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery.

7505. Indorser not guarantor for other parties.

7506. Delivery without indorsement: right to compel indorsement.

7507. Warranties on negotiation or transfer of receipt or bill.

7508. Warranties of collecting bank as to documents.

7509. Receipt or bill: when adequate compliance with commercial contract.

§ 7501. Form of negotiation and requirements of “due negotiation.”

(a) Negotiation by indorsement and delivery.—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.

(b) Negotiation by delivery.—

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

(2) 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.

(c) Negotiation by special indorsee.—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.

(d) Definition of “duly negotiated”.—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 receiving the document in settlement or payment of a money obligation.

(e) Indorsement of nonnegotiable document.—Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the rights of the transferee.

(f) Naming person to be notified of arrival of goods.—The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

§ 7502. Rights acquired by due negotiation.

(a) General rule.—Subject to section 7205 (relating to title under warehouse receipt defeated in certain cases) on fungible goods and section 7503 (relating to document of title to goods defeated in certain cases), a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (1) title to the document;
- (2) title to the goods;
- (3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this division. In the case of a delivery order the obligation of the bailee accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Rights acquired unaffected by certain matters.—Subject to section 7503, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

§ 7503. Document of title to goods defeated in certain cases.

(a) Prior legal or perfected security interest.—A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(1) 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 division (section 7403 (relating to obligation of warehouseman or carrier to deliver; excuse)) or with power of disposition under this title (section 2403 (relating to power to transfer; good faith purchase of goods; “entrusting”) and section 9307 (relating to protection of buyers of goods)) or other statute or rule of law; nor

(2) acquired in the procedure by the bailor or his nominee of any document of title.

(b) Subordination of title based upon unaccepted delivery order.—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 governing the goods has been duly negotiated. Such a title may be defeated under section 7504 (relating to rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery) to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Subordination of title based upon bill to freight forwarder.—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 covering such goods has been duly negotiated; but delivery by the carrier in accordance with Chapter 74 (relating to warehouse receipts and bills of lading; general obligations) pursuant to its own bill of lading discharges the obligation of the carrier to deliver.

§ 7504. Rights acquired in absence of due negotiation; effect of diversion; stoppage by seller of delivery.

(a) Rights of transferee when document delivered but not negotiated.—A transferee of a document, whether negotiable or nonnegotiable, 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.

(b) Defeat of rights of transferee of nonnegotiable document.—In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor who could treat the sale as void under section 2402 (relating to rights of creditors of seller against sold goods);

(2) 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

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

(c) Change of shipping instructions under nonnegotiable document.—A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the title of the consignee to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the rights of the consignee against the bailee.

(d) Stoppage by seller of delivery under nonnegotiable document.—Delivery pursuant to a nonnegotiable document may be stopped by a seller under section 2705 (relating to stoppage by seller of delivery in transit or otherwise) and subject to the requirement of due notification there provided. A bailee honoring the instructions of the seller is entitled to be indemnified by the seller against any resulting loss or expense.

§ 7505. Indorser not guarantor for other parties.

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

§ 7506. Delivery without indorsement: right to compel indorsement.

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

§ 7507. Warranties on negotiation or transfer of receipt or bill.

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under section 7508 (relating to warranties of collecting bank as to documents), then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(1) that the document is genuine;

(2) that he has no knowledge of any fact which would impair its validity or worth; and

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

§ 7508. Warranties of collecting bank as to documents.

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

against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

§ 7509. 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 Division 2 (relating to sales) and Division 5 (relating to letters of credit).

CHAPTER 76 WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

Sec.

7601. Lost and missing documents.

7602. Attachment of goods covered by negotiable document.

7603. Conflicting claims; interpleader.

§ 7601. Lost and missing documents.

(a) Delivery of substitute document under court order.—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 nonsurrender 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 reasonable costs and counsel fees of the bailee.

(b) Liability for delivery without court order.—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 year after the delivery.

§ 7602. Attachment of goods covered by 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.

§ 7603. Conflicting claims; interpleader.

If more than one person claims title or possession of the goods, the bailee is excused from delivering 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 nondelivery of the goods, or by original action, whichever is appropriate.

DIVISION 8 INVESTMENT SECURITIES

Chapter

- 81. Short Title and General Matters
- 82. Issue - Issuer
- 83. Purchase
- 84. Registration

CHAPTER 81 SHORT TITLE AND GENERAL MATTERS

Sec.

- 8101. Short title of division.
- 8102. Definitions and index of definitions.
- 8103. Lien of issuer.
- 8104. Effect of overissue; "overissue."
- 8105. Securities negotiable; presumptions.
- 8106. Applicability.
- 8107. Securities deliverable; action for price.

§ 8101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Investment Securities."

§ 8102. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Clearing corporation." A corporation:

(1) at least 90% of the capital stock of which is held by or for one or more persons (other than individuals) each of whom:

(i) is subject to supervision or regulation pursuant to the provisions of Federal or State banking laws or State insurance laws;

(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940; or

(iii) is a national securities exchange or association registered

under a statute of the United States such as the Securities Exchange Act of 1934;

and none of whom, other than a national securities exchange or association, holds in excess of 20% of the capital stock of such corporation; and

(2) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

“Custodian bank.” Any bank or trust company which is supervised and examined by State or Federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

“Security.”

(1) A “security” is an instrument which:

- (i) is issued in bearer or registered form;
- (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;
- (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
- (iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(2) A writing which is a security is governed by this division and not by Division 3 (relating to commercial paper) even though it also meets the requirements of that division. This division does not apply to money.

(3) A security is in “registered form” when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(4) A security is in “bearer form” when it runs to bearer according to its terms and not by reason of any indorsement.

“Subsequent purchaser.” A person who takes other than by original issue.

(b) Index of other definitions.—Other definitions applying to this division or to specified chapters thereof and the sections in which they appear are:

“Adverse claim.” Section 8301.

“Bona fide purchaser.” Section 8302.

“Broker.” Section 8303.

“Guarantee of the signature.” Section 8402.

“Intermediary bank.” Section 4105.

“Issuer.” Section 8201.

“Overissue.” Section 8104.

(c) Applicability of general definitions and principles.—In addition

Division I (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 8103. Lien of issuer.

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

§ 8104. Effect of overissue; "overissue."

(a) General rule.—The provisions of this division which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but:

(1) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(2) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(b) Definition of "overissue".—"Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

§ 8105. Securities negotiable; presumptions.

(a) Securities negotiable.—Securities governed by this division are negotiable instruments.

(b) Presumptions and burden of proof.—In any action on a security:

(1) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(2) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(3) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(4) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 8202 (relating to responsibility and defenses of issuer; notice of defect or defense)).

§ 8106. Applicability.

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

§ 8107. Securities deliverable; action for price.

(a) Securities deliverable.—Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to

deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(b) Action for price of securities.—When the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price:

- (1) of securities accepted by the buyer; and
- (2) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

CHAPTER 82 ISSUE - ISSUER

Sec.

8201. "Issuer."

8202. Responsibility and defenses of issuer; notice of defect or defense.

8203. Staleness as notice of defects or defenses.

8204. Effect of restrictions by issuer on transfer.

8205. Effect of unauthorized signature on issue.

8206. Completion or alteration of instrument.

8207. Rights of issuer with respect to registered owners.

8208. Effect of signature of authenticating trustee, registrar or transfer agent.

§ 8201. "Issuer."

(a) General rule.—With respect to obligations on or defenses to a security "issuer" includes a person who:

- (1) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security;
- (2) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or
- (3) becomes responsible for or in place of any other person described as an issuer in this section.

(b) Guarantor.—With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(c) Person for whom transfer books maintained.—With respect to registration of a transfer (Chapter 84) "issuer" means a person on whose behalf transfer books are maintained.

§ 8202. Responsibility and defenses of issuer; notice of defect or defense.

(a) Terms included in security.—Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance,

rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(b) Defect affecting validity of security.—

(1) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(2) The rule of paragraph (1) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Lack of genuineness as complete defense.—Except as otherwise provided in the case of certain unauthorized signatures on issue (section 8205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(d) Defenses ineffective against purchaser for value without notice.—All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(e) Right to cancel certain contracts unaffected.—Nothing in this section shall be construed to affect the right of a party to a “when, as and if issued” or a “when distributed” contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

§ 8203. Staleness as notice of defects or defenses.

(a) General rule.—After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(1) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(2) if the act or event is not covered by paragraph (1) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(b) Exception.—A call which has been revoked is not within subsection (a).

§ 8204. Effect of restrictions by issuer on transfer.

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

§ 8205. Effect of unauthorized signature on issue.

An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

- (1) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or
- (2) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

§ 8206. Completion or alteration of instrument.

(a) Completion of security containing necessary signatures.—Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

- (1) any person may complete it by filling in the blanks as authorized; and
- (2) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(b) Enforceability of improperly altered security.—A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

§ 8207. Rights of issuer with respect to registered owners.

(a) General rule.—Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(b) Liability of registered owner for calls, etc., unaffected.—Nothing in this division shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

§ 8208. Effect of signature of authenticating trustee, registrar or transfer agent.

(a) General rule.—A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

- (1) the security is genuine;
- (2) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

- (3) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.
- (b) Limitation.—Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

CHAPTER 83 PURCHASE

Sec.

8301. Rights acquired by purchaser; “adverse claim”; title acquired by bona fide purchaser.
8302. “Bona fide purchaser.”
8303. “Broker.”
8304. Notice to purchaser of adverse claims.
8305. Staleness as notice of adverse claims.
8306. Warranties on presentment and transfer.
8307. Effect of delivery without indorsement; right to compel indorsement.
8308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.
8309. Effect of indorsement without delivery.
8310. Indorsement of security in bearer form.
8311. Effect of unauthorized indorsement.
8312. Effect of guaranteeing signature or indorsement.
8313. When delivery to purchaser occurs; broker of purchaser as holder.
8314. Duty to deliver, when completed.
8315. Action against purchaser based upon wrongful transfer.
8316. Right of purchaser to requisites for registration of transfer on books.
8317. Attachment or levy upon security.
8318. No conversion by good faith delivery.
8319. Statute of frauds.
8320. Transfer or pledge within a central depository system.
- § 8301. Rights acquired by purchaser; “adverse claim”; title acquired by bona fide purchaser.
- (a) Rights acquired by purchaser.—Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. “Adverse claim” includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.
- (b) Rights acquired by bona fide purchaser.—A bona fide purchaser in

addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(c) Rights acquired by purchaser of limited interest.—A purchaser of a limited interest acquires rights only to the extent of the interest purchased. § 8302. “Bona fide purchaser.”

A “bona fide purchaser” is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

§ 8303. “Broker.”

“Broker” means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this division determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

§ 8304. Notice to purchaser of adverse claims.

(a) General rule.—A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if:

(1) the security whether in bearer or registered form has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or

(2) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than a transferor. The mere writing of a name on a security is not such a statement.

(b) Duty of inquiry in fiduciary transactions.—The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

§ 8305. Staleness as notice of adverse claims.

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase:

(1) after one year from any date set for such presentment or surrender for redemption or exchange; or

(2) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

§ 8306. Warranties on presentment and transfer.

(a) Warranties of presenter to issuer.—A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 8311) in a necessary indorsement.

(b) Warranties of person transferring security to purchaser for value.—A person by transferring a security to a purchaser for value warrants only that:

- (1) his transfer is effective and rightful;
- (2) the security is genuine and has not been materially altered; and
- (3) he knows no fact which might impair the validity of the security.

(c) Warranties of intermediary delivering security.—Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(d) Warranties of pledgee or other holder for security.—A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (c).

(e) Warranties, rights and privileges of broker.—A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

§ 8307. Effect of delivery without indorsement; right to compel indorsement.

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

§ 8308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.

(a) Manner of indorsement.—An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(b) Blank and special indorsements.—An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A

special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(c) Definition of "appropriate person".—An "appropriate person" in subsection (a) means:

(1) the person specified by the security or by special indorsement to be entitled to the security;

(2) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor;

(3) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(4) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary;

(5) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors;

(6) a person having power to sign under applicable law or controlling instrument; or

(7) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(d) Indorser not a guarantor.—Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(e) Effect of partial indorsement.—An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(f) Status of appropriate person.—Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this division by virtue of any subsequent change of circumstances.

(g) Effect of noncompliance by fiduciary on his indorsement.—Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this division.

§ 8309. Effect of indorsement without delivery.

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

§ 8310. Indorsement of security in bearer form.

An indorsement of a security in bearer form may give notice of adverse

claims (section 8304) but does not otherwise affect any right to registration the holder may possess.

§ 8311. Effect of unauthorized indorsement.

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness:

(1) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

(2) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 8404).

§ 8312. Effect of guaranteeing signature or indorsement.

(a) Warranties of signature guarantor.—Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to indorse (section 8308); and

(3) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(b) Warranties of indorsement guarantor.—Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection (a)) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(c) Persons protected by warranties.—The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

§ 8313. When delivery to purchaser occurs; broker of purchaser as holder.

(a) When delivery to purchaser occurs.—Delivery to a purchaser occurs when:

(1) he or a person designated by him acquires possession of a security;

(2) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser;

(3) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the possession of the broker as belonging to the purchaser;

(4) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(5) appropriate entries on the books of a clearing corporation are

made under section 8320 (relating to transfer or pledge within a central depository system).

(b) Rights of purchaser in security held by broker.—The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subsection (a)(2), (3) and (5). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(c) Notice of adverse claim to security held by broker.—Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

§ 8314. Duty to deliver, when completed.

(a) Sale through broker.—Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(1) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(2) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(b) Other sales.—Except as otherwise provided in this section and unless otherwise agreed, the duty of a transferor to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the request of the purchaser causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (a).

§ 8315. Action against purchaser based upon wrongful transfer.

(a) General rule.—Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(b) Unauthorized endorsement.—If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this division on unauthorized indorsements (section 8311).

(c) Remedies available.—The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

§ 8316. Right of purchaser to requisites for registration of transfer on books.

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

§ 8317. Attachment or levy upon security.

(a) Seizure required.—No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(b) Remedies available.—A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

§ 8318. No conversion by good faith delivery.

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

§ 8319. Statute of frauds.

A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) delivery of the security has been accepted or payment has been made but the contract is enforceable under this paragraph only to the extent of such delivery or payment;

(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

§ 8320. Transfer or pledge within a central depository system.

(a) Manner of effecting transfer or pledge.—If a security:

(1) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation;

(2) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(3) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(b) Requisites for book entries.—Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(c) Effect of transfer or pledge.—A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 8301 (relating to rights acquired by purchaser; “adverse claim”; title acquired by bona fide purchaser)) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents) and section 9305 (relating to when possession by secured party perfects security interest without filing)). A transferee or pledgee under this section is a holder.

(d) Transfer or pledge not a registration.—A transfer or pledge under this section does not constitute a registration of transfer under Chapter 84 (relating to registration).

(e) Effect of inappropriate entries.—That entries made on the books of the clearing corporation as provided in subsection (a) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

CHAPTER 84
REGISTRATION

Sec.

- 8401. Duty of issuer to register transfer.
- 8402. Assurance that indorsements are effective.
- 8403. Limited duty of inquiry.
- 8404. Liability and nonliability for registration.
- 8405. Lost, destroyed and stolen securities.
- 8406. Duty of authenticating trustee, transfer agent or registrar.

§ 8401. Duty of issuer to register transfer.

(a) General rule.—Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if:

- (1) the security is indorsed by the appropriate person or persons (section 8308);
- (2) reasonable assurance is given that those indorsements are genuine and effective (section 8402);
- (3) the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 8403);
- (4) any applicable law relating to the collection of taxes has been complied with; and
- (5) the transfer is in fact rightful or is to a bona fide purchaser.

(b) Liability for failure or delay in registering transfer.—Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

§ 8402. Assurance that indorsements are effective.

(a) Assurances that issuer may require.—The issuer may require the following assurance that each necessary indorsement (section 8308) is genuine and effective:

- (1) In all cases, a guarantee of the signature (section 8312(a)) of the person indorsing.
- (2) Where the indorsement is by an agent, appropriate assurance of authority to sign.
- (3) Where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency.
- (4) Where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so.
- (5) Where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(b) Guarantee of the signature.—A “guarantee of the signature” in subsection (a) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt

standards with respect to responsibility provided such standards are not manifestly unreasonable.

(c) Appropriate evidence of appointment or incumbency.—“Appropriate evidence of appointment or incumbency” in subsection (a) means:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (2) except to the extent that the contents relate directly to the appointment or incumbency.

(d) Additional assurances that issuer may require.—The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (c)(2) both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

§ 8403. Limited duty of inquiry.

(a) General rule.—An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:

(1) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(2) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under section 8402(d) (relating to additional assurances that issuer may require).

(b) Method of inquiry.—The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(1) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(2) an indemnity bond sufficient in the judgment of the issuer to

protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(c) When inquiry unnecessary.—Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under section 8402(d) or receives notification of an adverse claim under subsection (a), where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(1) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(2) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

§ 8404. Liability and nonliability for registration.

(a) General rule.—Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

(1) there were on or with the security the necessary indorsements (section 8308); and

(2) the issuer had no duty to inquire into adverse claims or has discharged any such duty (section 8403).

(b) Transfer to person not entitled.—Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:

(1) the registration was pursuant to subsection (a);

(2) the owner is precluded from asserting any claim for registering the transfer under section 8405(a) (relating to lost, destroyed and stolen securities); or

(3) such delivery would result in overissue, in which case the liability of the issuer is governed by section 8104 (relating to effect of overissue).

§ 8405. Lost, destroyed and stolen securities.

(a) Failure of owner to notify issuer.—Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the

issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 8404 (relating to liability and nonliability for registration) or any claim to a new security under this section.

(b) When owner entitled to new security.—Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner:

- (1) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (2) files with the issuer a sufficient indemnity bond; and
- (3) satisfies any other reasonable requirements imposed by the issuer.

(c) Rights and duties of issuer when original security presented for transfer.—If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer, unless registration would result in overissue, in which event the liability of the issuer is governed by section 8104 (relating to effect of overissue). In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

§ 8406. Duty of authenticating trustee, transfer agent or registrar.

(a) General rule.—Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:

- (1) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
- (2) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(b) Notice to agent is notice to issuer.—Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

DIVISION 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Chapter

91. Short Title, Applicability and Definitions
92. Validity of Security Agreement and Rights of Parties Thereto
93. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

- 94. Filing
- 95. Default

CHAPTER 91 SHORT TITLE, APPLICABILITY AND DEFINITIONS

Sec.

- 9101. Short title of division.
- 9102. Policy and scope of division.
- 9103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.
- 9104. Transactions excluded from division.
- 9105. Definitions and index of definitions.
- 9106. Definitions: "account"; "contract right"; "general intangibles."
- 9107. Definition: "purchase money security interest."
- 9108. When after-acquired collateral not security for antecedent debt.
- 9109. Classification of goods: "consumer goods"; "equipment"; "farm products"; "inventory."
- 9110. Sufficiency of description.
- 9111. Applicability of bulk transfer laws.
- 9112. Where collateral is not owned by debtor.
- 9113. Security interests arising under division on sales.

§ 9101. Short title of division.

This division shall be known and may be cited as the "Uniform Commercial Code—Secured Transactions."

§ 9102. Policy and scope of division.

(a) General rule.—Except as otherwise provided in section 9103 on multiple state transactions and in section 9104 on excluded transactions, this division applies so far as concerns any personal property and fixtures within the jurisdiction of this Commonwealth:

(1) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(2) to any sale of accounts, contract rights or chattel paper.

(b) Contracts and statutory liens.—This division applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This division does not apply to statutory liens except as provided in section 9310 (relating to priority of certain liens arising by operation of law).

(c) Applicability to certain security interests unaffected.—The application of this division to a security interest in a secured obligation is

not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

§ 9103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.

(a) Accounts and contract rights.—If the office where the assignor of accounts or contract rights keeps his records concerning them is in this Commonwealth, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this division; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(b) General intangibles and mobile equipment.—

If the chief place of business of a debtor is in this Commonwealth, this division governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern.

If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this Commonwealth.

For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(c) Incoming property already subject to security interest.—If personal property other than that governed by subsections (a) and (b) is already subject to a security interest when it is brought into this Commonwealth, the validity of the security interest in this Commonwealth is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this Commonwealth and it was brought into this Commonwealth within 30 days after the security interest attached for purposes other than transportation through this Commonwealth, then the validity of the security interest in this Commonwealth is to be determined by the law of this Commonwealth. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest

attached and before being brought into this Commonwealth, the security interest continues perfected in this Commonwealth for four months and also thereafter if within the four-month period it is perfected in this Commonwealth. The security interest may also be perfected in this Commonwealth after the expiration of the four-month period; in such case perfection dates from the time of perfection in this Commonwealth. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this Commonwealth, it may be perfected in this Commonwealth; in such case perfection dates from the time of perfection in this Commonwealth.

(d) Certificate of title to indicate security interest.—Notwithstanding subsections (b) and (c), if personal property is covered by a certificate of title issued under a statute of this Commonwealth or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(e) Records of accounts and contract rights outside United States.—Notwithstanding subsection (a) and section 9302 (relating to when filing is required to perfect security interest), if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this Commonwealth or the transaction which creates the security interest otherwise bears an appropriate relation to this Commonwealth, this division governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.

§ 9104. Transactions excluded from division.

This division does not apply:

- (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property;
- (2) to the lien of a landlord;
- (3) to a lien given by statute or other rule of law for services or materials except as provided in section 9310 on priority of such liens;
- (4) to a transfer of a claim for wages, salary or other compensation of an employee;
- (5) to an equipment trust covering railway rolling stock;
- (6) to a sale of accounts, contract rights or chattel paper as a part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract;

- (7) to a transfer of an interest or claim in or under any policy of insurance;
- (8) to a right represented by a judgment;
- (9) to any right of set-off;
- (10) except to the extent that provision is made for fixtures in section 9313 (relating to priority of security interests in fixtures), to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (11) to a transfer in whole or in part of any of the following:
 - (i) any claim arising out of tort; or
 - (ii) any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

§ 9105. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“Account debtor.” The person who is obligated on an account, chattel paper, contract right or general intangible.

“Chattel paper.” A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

“Collateral.” The property subject to a security interest, including accounts, contract rights and chattel paper which have been sold.

“Debtor.” The person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, including the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the division dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

“Document.” Document of title as defined in the general definitions of Division I (section 1201).

“Goods.” All things which are movable at the time the security interest attaches or which are fixtures (section 9313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. “Goods” also includes the unborn young of animals and growing crops.

“Instrument.” A negotiable instrument (defined in section 3104), or a security (defined in section 8102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment.

“Security agreement.” An agreement which creates or provides for a security interest.

“Secured party.” A lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(b) Index of other definitions in division.—Other definitions applying to this division and the sections in which they appear are:

“Account.” Section 9106.

“Consumer goods.” Section 9109(1).

“Contract right.” Section 9106.

“Equipment.” Section 9109(2).

“Farm products.” Section 9109(3).

“General intangibles.” Section 9106.

“Inventory.” Section 9109(4).

“Lien creditor.” Section 9301(c).

“Proceeds.” Section 9306(a).

“Purchase money security interests.” Section 9107.

(c) Index of definitions in other divisions.—The following definitions in other divisions of this title apply to this division:

“Check.” Section 3104.

“Contract for sale.” Section 2106.

“Holder in due course.” Section 3302.

“Note.” Section 3104.

“Sale.” Section 2106.

(d) Applicability of general definitions and principles.—In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 9106. Definitions: “account”; “contract right”; “general intangibles.”

The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Account.” Any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

“Contract right.” Any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper.

“General intangibles.” Any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

§ 9107. Definition: “purchase money security interest.”

A security interest is a “purchase money security interest” to the extent that it is:

- (1) taken or retained by the seller of the collateral to secure all or part of its price; or

(2) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

§ 9108. When after-acquired collateral not security for antecedent debt.

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

§ 9109. Classification of goods: "consumer goods"; "equipment"; "farm products"; "inventory."

Goods are:

(1) "Consumer goods" if they are used or bought for use primarily for personal, family or household purposes.

(2) "Equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods.

(3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory.

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

§ 9110. Sufficiency of description.

For the purposes of this division any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

§ 9111. Applicability of bulk transfer laws.

The creation of a security interest is not a bulk transfer under Division 6 (relating to bulk transfers) (see section 6103).

§ 9112. Where collateral is not owned by debtor.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 9502(b) (relating to collection rights of secured party) or under section 9504(a)

(relating to right of secured party to dispose of collateral after default), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(1) to receive statements under section 9208 (relating to request for statement of account or list of collateral);

(2) to receive notice of and to object to a proposal by a secured party to retain the collateral in satisfaction of the indebtedness under section 9505 (relating to compulsory disposition of collateral);

(3) to redeem the collateral under section 9506 (relating to right of debtor to redeem collateral);

(4) to obtain injunctive or other relief under section 9507(a) (relating to liability of secured party for failure to comply with default procedures); and

(5) to recover losses caused to him under section 9208(b).

§ 9113. Security interests arising under division on sales.

A security interest arising solely under Division 2 (relating to sales) is subject to the provisions of this division except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(1) no security agreement is necessary to make the security interest enforceable;

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

(3) the rights of the secured party on default by the debtor are governed by Division 2.

CHAPTER 92 VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

Sec.

9201. General validity of security agreement.

9202. Title to collateral immaterial.

9203. Enforceability of security interest; proceeds, formal requisites.

9204. When security interest attaches; after-acquired property; future advances.

9205. Use or disposition of collateral without accounting permissible.

9206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

9207. Rights and duties when collateral in possession of secured party.

9208. Request for statement of account or list of collateral.

§ 9201. General validity of security agreement.

Except as otherwise provided by this title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this division validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends

the application of any such statute or regulation to any transaction not otherwise subject thereto.

§ 9202. Title to collateral immaterial.

Each provision of this division with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

§ 9203. Enforceability of security interest; proceeds, formal requisites.

(a) General rule.—Subject to the provisions of section 4208 on the security interest of a collecting bank and section 9113 on a security interest arising under the division on sales, a security interest is not enforceable against the debtor or third parties unless:

- (1) the collateral is in the possession of the secured party; or
- (2) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word “proceeds” is sufficient without further description to cover proceeds of any character.

(b) Applicability of other statutes.—A transaction, although subject to this division, is also subject to the act of April 8, 1937 (P.L.262, No.66), known as the “Consumer Discount Company Act,” and the act of June 28, 1947 (P.L.1110, No.476), known as the “Motor Vehicle Sales Finance Act,” insofar as any such statute by its terms applies to the transaction, and in the case of conflict between the provisions of this division and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

§ 9204. When security interest attaches; after-acquired property; future advances.

(a) When security interest attaches.—A security interest cannot attach until there is agreement (section 1201 (relating to general definitions)) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(b) When debtor acquires rights in collateral.—For the purposes of this section the debtor has no rights:

- (1) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;
- (2) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;
- (3) in a contract right until the contract has been made; or
- (4) in an account until it comes into existence.

(c) After-acquired property clause authorized.—Except as provided in subsection (d) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(d) Attachment of security interest under after-acquired property

clause.—No security interest attaches under an after-acquired property clause:

(1) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction; or

(2) to consumer goods other than accessions (section 9314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(e) Security agreement may cover future advances.—Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

§ 9205. Use or disposition of collateral without accounting permissible.

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

§ 9206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

(a) Agreement not to assert defenses against assignee.—Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under Division 3 (relating to commercial paper). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(b) Purchase money security interest governed by sales provisions.—When a seller retains a purchase money security interest in goods, Division 2 (relating to sales) governs the sale and any disclaimer, limitation or modification of the warranties of the seller.

§ 9207. Rights and duties when collateral in possession of secured party.

(a) Duty of secured party to use reasonable care.—A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care

includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Rights and duties of parties.—Unless otherwise agreed, when collateral is in the possession of the secured party:

(1) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(3) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(4) the secured party must keep the collateral identifiable but fungible collateral may be commingled; and

(5) the secured party may repledge the collateral upon terms which do not impair the right of the debtor to redeem it.

(c) Liability of secured party for losses.—A secured party is liable for any loss caused by his failure to meet any obligation imposed by subsections (a) and (b) but does not lose his security interest.

(d) Use of collateral by secured party.—A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

§ 9208. Request for statement of account or list of collateral.

(a) General rule.—A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) Compliance by secured party with request.—The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and

address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(c) Charges for furnishing statements.—A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

CHAPTER 93
RIGHTS OF THIRD PARTIES; PERFECTED
AND UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY

Sec.

- 9301. Persons who take priority over unperfected security interests; “lien creditor.”
- 9302. When filing is required to perfect security interest; security interests to which filing provisions of division do not apply.
- 9303. When security interest is perfected; continuity of perfection.
- 9304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- 9305. When possession by secured party perfects security interest without filing.
- 9306. “Proceeds”; rights of secured party on disposition of collateral.
- 9307. Protection of buyers of goods.
- 9308. Purchase of chattel paper and nonnegotiable instruments.
- 9309. Protection of purchasers of instruments and documents.
- 9310. Priority of certain liens arising by operation of law.
- 9311. Alienability of rights of debtor; judicial process.
- 9312. Priorities among conflicting security interests in same collateral.
- 9313. Priority of security interests in fixtures.
- 9314. Accessions.
- 9315. Priority when goods are commingled or processed.
- 9316. Priority subject to subordination.
- 9317. Secured party not obligated on contract of debtor.
- 9318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

§ 9301. Persons who take priority over unperfected security interests; “lien creditor.”

(a) General rule.—Except as otherwise provided in subsection (b), an unperfected security interest is subordinate to the rights of:

(1) persons entitled to priority under section 9312 (relating to priorities among conflicting security interests in same collateral);

(2) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(3) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; and

(4) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(b) Priority of unperfected purchase money security interest.—If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(c) Definition of “lien creditor”.—A “lien creditor” means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

§ 9302. When filing is required to perfect security interest; security interests to which filing provisions of division do not apply.

(a) General rule.—A financing statement must be filed to perfect all security interests except the following:

(1) a security interest in collateral in possession of the secured party under section 9305 (relating to when possession by secured party perfects security interest without filing);

(2) a security interest temporarily perfected in instruments or documents without delivery under section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents) or in proceeds for a ten-day period under section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral);

(3) a purchase money security interest in farm equipment having a purchase price not in excess of \$2,500; but filing is required for a fixture under section 9313 (relating to priority of security interests in fixtures) or for a motor vehicle required to be licensed;

(4) a purchase money security interest in consumer goods; but filing is required for a fixture under section 9313 or for a motor vehicle required to be licensed;

(5) an assignment of accounts or contract rights which does not

alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor; and

(6) a security interest of a collecting bank (section 4208) or arising under Division 2 (relating to sales) (see section 9113) or covered in subsection (c).

(b) Assignment of perfected security interest.—If a secured party assigns a perfected security interest, no filing under this division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(c) When filing provisions of division inapplicable.—The filing provisions of this division do not apply to a security interest in property subject to a statute:

(1) of the United States which provides for a national registration or filing of all security interests in such property; or

(2) of this Commonwealth which provides for central filing of security interests in such property, or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this Commonwealth if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.

(d) Method of perfection when filing provisions inapplicable.—A security interest in property covered by a statute described in subsection (c) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

§ 9303. When security interest is perfected; continuity of perfection.

(a) When security interest is perfected.—A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in section 9302 (relating to when filing is required to perfect security interest), section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents), section 9305 (relating to when possession by secured party perfects security interest without filing) and section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral). If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(b) Continuity of perfection.—If a security interest is originally perfected in any way permitted under this division and is subsequently perfected in some other way under this division, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this division.

§ 9304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Chattel paper, negotiable documents and instruments.—A security interest in chattel paper or negotiable documents may be perfected by

filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (d) and (e).

(b) Goods in possession of issuer of negotiable document therefor.—During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(c) Goods in possession of bailee.—A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the receipt by the bailee of notification of the interest of the secured party or by filing as to the goods.

(d) Temporary perfection for new value given.—A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(e) Temporary perfection on transfer of possession.—A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(1) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(2) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(f) Expiration of period of temporary perfection.—After the 21-day period in subsections (d) and (e) perfection depends upon compliance with applicable provisions of this division.

§ 9305. When possession by secured party perfects security interest without filing.

A security interest in letters of credit and advices of credit (section 5116(b)(1)), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the interest of the secured party. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this division.

The security interest may be otherwise perfected as provided in this division before or after the period of possession by the secured party.

§ 9306. "Proceeds"; rights of secured party on disposition of collateral.

(a) Definition of "proceeds".—"Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(b) Continuity of security interest in collateral and identifiable proceeds.—Except where this division otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(c) Status of security interest in proceeds.—The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(1) a filed financing statement covering the original collateral also covers proceeds; or

(2) the security interest in the proceeds is perfected before the expiration of the ten-day period.

(d) Effect of insolvency proceedings.—In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest:

(1) in identifiable noncash proceeds;

(2) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(3) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(4) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (4) is:

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten-day period.

(e) Priority of security interests in returned or repossessed goods.—If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are

repossessed by the seller or the secured party, the following rules determine priorities:

(1) If the goods are collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(2) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (1) to the extent that the transferee of the chattel paper was entitled to priority under section 9308 (relating to purchase of chattel paper and nonnegotiable instruments).

(3) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (1).

(4) A security interest of an unpaid transferee asserted under paragraph (2) or (3) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

§ 9307. Protection of buyers of goods.

(a) Buyer in ordinary course of business.—A buyer in ordinary course of business (section 1201 (relating to general definitions)) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(b) Buyer of consumer goods and certain farm equipment.—In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$2,500 (other than fixtures, see section 9313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

§ 9308. Purchase of chattel paper and nonnegotiable instruments.

A purchaser of chattel paper or a nonnegotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of

inventory subject to a security interest (section 9306), even though he knows that the specific paper is subject to the security interest.

§ 9309. Protection of purchasers of instruments and documents.

Nothing in this division limits the rights of a holder in due course of a negotiable instrument (section 3302) or a holder to whom a negotiable document of title has been duly negotiated (section 7501) or a bona fide purchaser of a security (section 8301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this division does not constitute notice of the security interest to such holders or purchasers.

§ 9310. Priority of certain liens arising by operation of law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

§ 9311. Alienability of rights of debtor; judicial process.

The rights of a debtor in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

§ 9312. Priorities among conflicting security interests in same collateral.

(a) Precedence of certain rules of priority.—The rules of priority stated in the following sections shall govern where applicable:

Section 4208 (relating to security interest of collecting bank in items, accompanying documents and proceeds).

Section 9301 (relating to persons who take priority over unperfected security interests).

Section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents).

Section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral).

Section 9307 (relating to protection of buyers of goods).

Section 9308 (relating to purchase of chattel paper and nonnegotiable instruments).

Section 9309 (relating to protection of purchasers of instruments and documents).

Section 9310 (relating to priority of certain liens arising by operation of law).

Section 9313 (relating to priority of security interests in fixtures).

Section 9314 (relating to accessions).

Section 9315 (relating to priority when goods are commingled or processed).

Section 9316 (relating to priority subject to subordination).

(b) Security interests in crops.—A perfected security interest in crops

for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(c) Purchase money security interests in inventory.—A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:

(1) the purchase money security interest is perfected at the time the debtor receives possession of the collateral;

(2) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(3) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(d) Other purchase money security interests.—A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(e) Rules of priority in absence of other rules.—In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (c) and (d)), priority between conflicting security interests in the same collateral shall be determined as follows:

(1) in the order of filing if both are perfected by filing, regardless of which security interest attached first under section 9204(a) (relating to when security interest attaches) and whether it attached before or after filing;

(2) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under section 9204(a) and, in the case of a filed security interest, whether it attached before or after filing; and

(3) in the order of attachment under section 9204(a) so long as neither is perfected.

(f) Status of continuously perfected security interest.—For the purpose of the priority rules of subsection (e), a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected

otherwise than by filing if it was originally perfected otherwise than by filing.

§ 9313. Priority of security interests in fixtures.

(a) Applicability of section.—The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this division unless the structure remains personal property under applicable law. The law of this Commonwealth other than this title determines whether and when other goods become fixtures. This title does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(b) Attachment of interest before goods become fixtures.—A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (d).

(c) Attachment of interest after goods become fixtures.—A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (d) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(d) Subordination of fixture security interests.—The security interests described in subsections (b) and (c) do not take priority over:

- (1) a subsequent purchaser for value of any interest in the real estate;
- (2) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or
- (3) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances;

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(e) Removal of fixtures upon default.—When under subsections (b) or (c) and (d) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Chapter 95 (relating to default), remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 9314. Accessions.

(a) Priority of security interest attaching before accession.—A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section “accessions”) over the claims of all persons to the whole except as stated in subsection (c) and subject to section 9315(a) (relating to priority when goods are commingled or processed).

(b) Priority of security interest attaching after accession.—A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (c) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(c) Subordination of accession security interests.—The security interests described in subsections (a) and (b) do not take priority over:

- (1) a subsequent purchaser for value of any interest in the whole;
- (2) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or
- (3) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances;

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(d) Removal of accession upon default.—When under subsection (a), (b) or (c) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may, on default, subject to the provisions of Chapter 95 (relating to default) remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 9315. Priority when goods are commingled or processed.

(a) General rule.—If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

- (1) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
- (2) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (2) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 9314 (relating to accessions).

(b) Multiple security interests.—When under subsection (a) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

§ 9316. Priority subject to subordination.

Nothing in this division prevents subordination by agreement by any person entitled to priority.

§ 9317. Secured party not obligated on contract of debtor.

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability under the secured party for the acts or omissions of the debtor.

§ 9318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(a) Rights of account debtor against assignee.—Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 9206 (relating to agreement not to assert defenses against assignee) the rights of an assignee are subject to:

(1) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(b) Effect of contract modification on assignee.—So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(c) Notification to account debtor of assignment.—The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(d) Contract term prohibiting assignment ineffective.—A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

CHAPTER 94
FILING

Sec.

- 9401. Place of filing; erroneous filing; removal of collateral.
- 9402. Formal requisites of financing statement; amendments.
- 9403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.
- 9404. Termination statement.
- 9405. Assignment of security interest; duties of filing officer.
- 9406. Release of collateral; duties of filing officer.
- 9407. Information from filing officer.
- 9408. Retention of microfilm or other copies in lieu of originals; admissibility of copies in evidence; duties of filing officer.
- 9409. (Reserved).
- 9410. Duties of filing officer.

§ 9401. Place of filing; erroneous filing; removal of collateral.

(a) Place of filing.—The proper place to file in order to perfect a security interest is as follows:

(1) When the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the prothonotary in the county of the residence of the debtor or if the debtor is not a resident of this Commonwealth then in the office of the prothonotary in the county where the goods are kept, and in addition when the collateral is crops in the office of the prothonotary in the county where the land on which the crops are growing or to be grown is located.

(2) When the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded.

(3) In all other cases, in the office of the Secretary of the Commonwealth and in addition, if the debtor has a place of business in only one county of this Commonwealth, also in the office of the prothonotary of such county, or, if the debtor has no place of business in this Commonwealth, but resides in the Commonwealth, also in the office of the prothonotary of the county in which he resides.

(b) Effect of partially valid filing.—A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this division and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(c) Effect of change in location of debtor or collateral.—A filing which is made in the proper county continues effective for four months after a change to another county of the residence of the debtor or place of business

or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.

(d) Filing requirements when collateral brought into Commonwealth.—If collateral is brought into this Commonwealth from another jurisdiction, the rules stated in section 9103 (relating to accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest) determine whether filing is necessary in this Commonwealth.

§ 9402. Formal requisites of financing statement; amendments.

(a) General rule.—A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(b) Effect when signed only by secured party.—A financing statement which otherwise complies with subsection (a) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in the following:

(1) Collateral already subject to a security interest in another jurisdiction when it is brought into this Commonwealth. Such a financing statement must state that the collateral was brought into this Commonwealth under such circumstances.

(2) Proceeds under section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral), if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) Form.—A form substantially as follows is sufficient to comply with subsection (a):

- Name of debtor (or assignor)
- Address:
- Name of secured party (or assignee)
- Address:

1. This financing statement covers the following types (or items) of property:

(Describe).

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate).

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate).

4. (If proceeds or products of collateral are claimed) (Proceeds)—(Products) of the collateral are also covered

Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

(d) Amendments.—The term “financing statement” as used in this division means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(e) Effect of minor errors.—A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

§ 9403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(a) What constitutes filing.—Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this division.

(b) Duration of effectiveness of filing.—A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such 60-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(c) Continuation statement.—A continuation statement may be filed by the secured party (i) within six months before and 60 days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five-year period specified in subsection (b). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (b) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides

otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(d) Duties of filing officer.—A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. The Secretary of the Commonwealth shall not be required to index the statement according to the name of the secured party.

§ 9404. Termination statement.

(a) General rule.—Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(b) Duties of filing officer.—On presentation to the filing officer of such a termination statement he must note it in the index. Unless a statute on disposition of public records provides otherwise, the filing officer shall remove the financing statement from the files, mark it “terminated” and send or deliver the financing statement to the secured party.

§ 9405. Assignment of security interest; duties of filing officer.

(a) Assignment disclosed in financing statement.—A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 9403(d) (relating to what constitutes filing).

(b) Separate statement of assignment.—A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such

separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement.

(c) Status of assignee as secured party.—After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

§ 9406. Release of collateral; duties of filing officer.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement.

§ 9407. Information from filing officer.

(a) Marking copy of statement filed.—If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(b) Furnishing certificates and copies.—Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement, the file number thereof and the names and addresses of each secured party therein.

§ 9408. Retention of microfilm or other copies in lieu of originals; admissibility of copies in evidence; duties of filing officer.

In lieu of retaining the originals of any or all papers filed with him, a filing officer may make microfilm, photographic, photostatic or other copies of them which accurately reproduce such originals and may thereafter dispose of the originals so copied, and any copy so made shall be admissible in evidence in any proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper shall have disposed of the original, then upon the filing of a termination statement the filing officer shall be relieved of the duties imposed upon him by section 9404(b) (relating to termination statement), but instead shall note the termination statement on the index and shall send to the secured party an acknowledgment of the filing of the termination statement.

§ 9409. (Reserved).

§ 9410. Duties of filing officer.

The duties of a filing officer prescribed in this chapter shall relate only to clearly legible papers filed with him or submitted to him for filing. A filing officer shall promptly return to the person submitting the same any paper which is not clearly legible.

CHAPTER 95
DEFAULT

Sec.

- 9501. Default; procedure when security agreement covers both real and personal property.
- 9502. Collection rights of secured party.
- 9503. Right of secured party to take possession after default.
- 9504. Right of secured party to dispose of collateral after default; effect of disposition.
- 9505. Compulsory disposition of collateral; acceptance of collateral as discharge of obligation.
- 9506. Right of debtor to redeem collateral.
- 9507. Liability of secured party for failure to comply with chapter.

§ 9501. Default; procedure when security agreement covers both real and personal property.

(a) Rights and remedies of secured party.—When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9207. The rights and remedies referred to in this subsection are cumulative.

(b) Rights and remedies of debtor.—After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement and those provided in section 9207.

(c) Limitation on waiver of certain provisions.—To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the following provisions of this title may not be waived or varied except as provided with respect to compulsory disposition of collateral (section 9505(a)) and with respect to redemption of collateral (section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(1) Section 9502(b) and section 9504(b) insofar as they require accounting for surplus proceeds of collateral.

(2) Section 9504(c) and section 9505(a) which deal with disposition of collateral.

(3) Section 9505(b) which deals with acceptance of collateral as discharge of obligation.

(4) Section 9506 which deals with redemption of collateral.

(5) Section 9507(a) which deals with the liability of secured party for failure to comply with this chapter.

(d) Rights of secured party when agreement covers real and personal property.—If the security agreement covers both real and personal

property, the secured party may proceed under this chapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this chapter do not apply.

(e) Reduction of secured claim to judgment.—When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

§ 9502. Collection rights of secured party.

(a) General rule.—When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral).

(b) Limitations.—A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

§ 9503. Right of secured party to take possession after default.

(a) General rule.—Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the premises of the debtor under section 9504 (relating to right of secured party to dispose of collateral after default).

(b) Election to proceed by process of law.—If a secured party elects to proceed by process of law he may proceed by writ of replevin or otherwise.

§ 9504. Right of secured party to dispose of collateral after default; effect of disposition.

(a) Disposition of collateral and application of proceeds.—A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to Division 2 (relating to sales). The proceeds of disposition shall be applied in the order following to:

(1) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) the satisfaction of indebtedness secured by the security interest under which the disposition is made; and

(3) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(b) Rights of parties in case of surplus or deficiency.—If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(c) Manner of disposition.—Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this Commonwealth or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(d) Rights of purchaser for value of disposed collateral.—When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the rights of the debtor therein,

discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings:

(1) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(2) in any other case, if the purchaser acts in good faith.

(e) Right of subrogation of person liable to secured party.—A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

§ 9505. Compulsory disposition of collateral; acceptance of collateral as discharge of obligation.

(a) Compulsory disposition of collateral.—If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this chapter a secured party who has taken possession of collateral must dispose of it under section 9504 (relating to right of secured party to dispose of collateral after default) and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under section 9507(a) on liability of secured party.

(b) Acceptance of collateral as discharge of obligation.—In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this Commonwealth or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession the secured party must dispose of the collateral under section 9504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the obligation of the debtor.

§ 9506. Right of debtor to redeem collateral.

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 9504 (relating to right of secured party to dispose of collateral after default) or before the obligation has been discharged under section 9505(b) (relating to acceptance of collateral as discharge of obligation) the debtor or any other secured party

may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

§ 9507. Liability of secured party for failure to comply with chapter.

(a) General rule.—If it is established that the secured party is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this chapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(b) Disposition in commercially reasonable manner.—The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

Section 2. Conforming amendments to Title 15.—Sections 7752(f) and 7946(b) of Title 15 are amended to read:

§ 7752. Organization on a stock share basis.

* * *

(f) Applicability of the Uniform Commercial Code.—The provisions of **[the Uniform Commercial Code] Division 8 of Title 13 (relating to investment securities)** shall not apply in any manner to the shares of a nonprofit corporation.

§ 7946. Effect of division.

* * *

(b) Property rights.—Except as otherwise provided by order, if any, obtained pursuant to section 7549(b) of this title (relating to nondiversion of certain property), all the property, real, personal, and mixed, and

franchises of the dividing corporation, and all debts due on whatever account to it, including subscriptions for membership and other choses in action belonging to it, shall be taken and deemed without further act or deed to be transferred to and vested in the resulting corporations on such a manner and basis and with such effect as is specified in the plan of division, or per capita among the resulting corporations, as tenants in common, if no such specification is made in the plan. The resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities and obligations as each corporation may undertake or incur in its own name, but shall be liable inter se for the debts and liabilities of the dividing corporation in the manner and on the basis specified in the plan of division. No liens upon the property of the dividing corporation shall be impaired by the division. One or more, but less than all, of the resulting corporations shall be free of all the liabilities and obligations of the dividing corporation to the extent, if any, specified in the plan, if no fraud of corporate creditors or members without voting rights and if no violation of law shall be effected thereby, and if all applicable provisions of **[Article 6 of the Uniform Commercial Code] Division 6 of Title 13** (relating to bulk transfers) and all other applicable provisions of law are complied with. Otherwise, the liability of the dividing corporation, or of its members, directors, or officers, shall not be affected by the division, nor shall the rights of the creditors thereof or of any person dealing with such corporation be impaired by such division, and, except as otherwise provided in this section, any claim existing or action or proceeding pending by or against such corporation may be prosecuted to judgment as if such division had not taken place, or the resulting corporations may be proceeded against or substituted in its place as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the debts and liabilities of the dividing corporation.

* * *

Section 3. Conforming amendment to Title 18.—Section 3932 of Title 18, added August 8, 1977 (P.L.184, No.49), is amended to read:

§ 3932. Theft of leased property.

(a) Offense defined.—A person who obtains personal property under an agreement for the lease or rental of the property is guilty of theft if he intentionally deals with the property as his own.

(b) Definition.—As used in this section, a person “deals with the property as his own” if he sells, secretes, destroys, converts to his own use or otherwise disposes of the property.

(c) Presumption.—A person shall be prima facie presumed to have intent if he:

- (1) signs the lease or rental agreement with a name other than his own and fails to return the property within the time specified in the agreement; or
- (2) fails to return the property to its owner within seven days after a

written demand to return the property is delivered by registered or certified mail to the person's last known address.

(d) Exception.—This section shall not apply to secured transactions as defined in [the act of April 6, 1953 (P.L.3, No.1), known as the “Uniform Commercial Code.”] *Title 13 (relating to commercial code)*.

Section 4. Conforming amendment to Title 20.—Section 3321(d) of Title 20 is amended to read:

§ 3321. Nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities.

* * *

(d) Deposit of securities in a clearing corporation.—A personal representative holding securities in its fiduciary capacity, any bank and trust company, trust company or National bank holding securities as an attorney-in-fact pursuant to subsection (c) of this section, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in [Article 8 of the Uniform Commercial Code] *Division 8 of Title 13 (relating to investment securities)*). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank and trust company, trust company or National bank acting as attorney-in-fact for a personal representative shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank and trust company, trust company or National bank so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State chartered institutions, the Department of Banking and, in the case of National banking associations, the comptroller of the currency may from time to time issue including, without limitation, standards for, or the method of making a determination of, the financial responsibility of any clearing corporation in which securities are deposited. A bank and trust company, trust company or National bank acting as custodian for a personal representative shall, on demand by the personal representative, certify in writing to the personal representative the securities so deposited by such bank and trust company, trust company or National bank in such clearing corporation for the account of such personal representative. A personal representative shall, on demand by any party to a judicial proceeding for the settlement of such personal representative's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such

personal representative in such clearing corporation for its account as such personal representative.

* * *

Section 5. Conforming amendments to Title 42.—Sections 5305, 5501 and 5522(b) of Title 42 are amended to read:

§ 5305. Corporate shares.

The tribunals of this Commonwealth shall have jurisdiction, whether or not the persons owning or claiming interests in the shares or share certificates are subject to the jurisdiction of the tribunals of this Commonwealth:

(1) Over shares in a corporation incorporated under the laws of this Commonwealth (subject to the limitations of **[the act of April 6, 1953 (P.L.3, No.1), known as the “Uniform Commercial Code”] Title 13 (relating to commercial code)**).

(2) Over share certificates which are located within this Commonwealth.

(3) Over shares in a corporation represented by share certificates located within this Commonwealth if the law of the jurisdiction of incorporation embodies the share in the share certificates.

§ 5501. Scope of chapter.

(a) General rule.—An action, proceeding or appeal must be commenced within the time specified in or pursuant to this chapter unless in the case of an action or proceeding a different time is prescribed by this title or another statute or, in the case of a civil action or proceeding, a shorter time which is not manifestly unreasonable is prescribed by written agreement.

(b) Uniform Commercial Code.—The provisions of **[the act of April 6, 1953 (P.L.3, No.1), known as the “Uniform Commercial Code,”] Title 13 (relating to commercial code)**, to the extent that they are inconsistent with this chapter, shall control over the provisions of this chapter.

§ 5522. Six months limitation.

* * *

(b) Commencement of action required.—The following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

(2) A petition for the establishment of a deficiency judgment following sale of the collateral of the debtor under the provisions of section 8103 (relating to deficiency judgments).

(3) Any action subject to **[section 6-111] 13 Pa.C.S. § 6111** (relating to limitation of **[action] actions** and levies). **[of the act of April 6, 1953 (P.L.3, No.1), known as the “Uniform Commercial Code.”]**

Section 6. Conforming amendment to Title 75.—Section 1132(a) of Title 75 is amended to read:

§ 1132. Perfection of security interest.

(a) Validity of unperfected interest.—Unless perfected as provided in this subchapter or excepted by section 1131 (relating to applicability of subchapter), a security interest in a vehicle of a type for which a certificate of title is required is not valid against any person as to whose rights an unperfected security interest is subordinate under the provisions of **[the Pennsylvania Uniform Commercial Code] Title 13 (relating to commercial code)**.

* * *

Section 7. Legislative intent.—In enacting this act, it is the intent of the General Assembly to transfer the former provisions of the act of April 6, 1953 (P.L.3, No.1), known as the “Uniform Commercial Code,” reenacted, amended and revised October 2, 1959 (P.L.1023, No.426), to Title 13 of the Pennsylvania Consolidated Statutes (relating to commercial code) without effecting a change in substantive law and the act shall be interpreted and construed to effectuate this intent.

Section 8. Repeal.—The act of April 6, 1953 (P.L.3, No.1), known as the “Uniform Commercial Code,” reenacted, amended and revised October 2, 1959 (P.L.1023, No.426), is repealed.

Section 9. Effective date.—This act shall take effect at 12:01 a.m. on the first day of either January or July, whichever month first occurs not less than 30 days from the date of final enactment of this act.

APPROVED—The 1st day of November, A. D. 1979.

DICK THORNBURGH