No. 1992-97

AN ACT

HB 871

Amending Title 13 (Commercial Code) of the Pennsylvania Consolidated Statutes, conforming the text of the title to the current official text of the Uniform Commercial Code relating to leases, negotiable instruments, bank deposits and collections, funds transfers and uncertificated securities; repealing provisions relating to bulk transfers; and making editorial changes.

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

Section 1. This act shall be known and may be cited as the Uniform Commercial Code Modernization Act.

Section 2. Sections 1101, 1105(b), 1201, 1207, 2101, 2103(c), 2403(d) and 2511(c) of Title 13 of the Pennsylvania Consolidated Statutes are amended to read:

§ 1101. Short title of title.

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

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

* * *

(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).

Sections 2A105 (relating to territorial application of division to goods covered by certificate of title) and 2A106 (relating to limitation on power of parties to consumer lease to choose applicable law and judicial forum).

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 4A507 (relating to choice of law).

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

Section 9103 (relating to perfection provisions of division on secured transactions).

§ 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 ***certificated*** 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. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind.

"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 ***certificated*** 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.]**

(1) With respect to a negotiable instrument, the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession.

(2) With respect to a document of title, the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

"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.]** ***and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.***

"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 or chattel paper 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.]

(1) General definition.—A security interest means an interest in personal property or fixtures which secures payment or performance of an obligation.

(2) Retention or reservation of title to delivered goods.—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."

(3) Buyers of accounts or chattel paper.—The term "security interest" also includes any interest of a buyer of accounts or chattel paper which is subject to Division 9 (relating to secured transactions).

(4) Buyer's interest in identified goods.—The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2401 (relating to passing of title; reservation for security; limited application of section) is not a "security interest," but a buyer may also acquire a "security interest" by complying with Division 9.

(5) Consignments.—Unless a consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment in any event is subject to the provisions on consignment sales (section 2326).

(6) Determination of lease or security interest.—Whether a transaction creates a lease or security interest is determined by the facts of each case; however:

(i) A transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

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

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

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

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

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

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

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

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

(D) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

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

(iii) For purposes of determining whether the transaction is a lease or a security interest:

(A) Additional consideration is not nominal if:

(I) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(II) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

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

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

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

"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)]** *(sections 4210 and 4211),* 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 preexisting claim;

(3) by accepting delivery pursuant to a preexisting 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.

§ 1207. Performance or acceptance under reservation of rights.

(a) General rule.—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.

(b) Exception.—Subsection (a) does not apply to an accord and satisfaction.

§ 2101. Short title of division.

This division shall be known and may be cited as the **["]**Uniform Commercial Code**[—],** ***Article 2,*** Sales.**["]**

§ 2103. Definitions and index of definitions.

* * *

(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]** ***Section 3502.***

"Draft." Section 3104.

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

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(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).

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

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(c) Payment by check.—Subject to the provisions of this title on the effect of an instrument on an obligation **[(section 3802)]** ***(section 3310),*** payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 3. Title 13 is amended by adding a division to read:

DIVISION 2A
LEASES

CHAPTER 2A1
GENERAL PROVISIONS

§ 2A101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Article 2A, Leases.

§ 2A102. Scope.

This division applies to any transaction, regardless of form, that creates a lease.

§ 2A103. 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 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 or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes 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.

"Cancellation." Occurs when either party puts an end to the lease contract for default by the other party.

"Commercial unit." Such a unit of goods as by commercial usage is a single whole for purposes of lease 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 a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

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

"Consumer lease." A lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

"Fault." Wrongful act, omission, breach or default.

"Finance lease." A lease with respect to which:

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

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

(3) one of the following occurs:

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

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

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

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

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

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

(C) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete state-

ment of those promises and warranties, including any disclaimers and limitations of them or of remedies.

"Goods." All things that are movable at the time of identification to the lease contract, or are fixtures (section 2A309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

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

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

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

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

"Leasehold interest." The interest of the lessor or the lessee under a lease contract.

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

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

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

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

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

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

"Merchant lessee." A lessee that is a merchant with respect to goods of the kind subject to the lease.

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

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

"Sublease." A lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

"Supplier." A person from whom a lessor buys or leases goods to be leased under a finance lease.

"Supply contract." A contract under which a lessor buys or leases goods to be leased.

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

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

"Accessions." Section 2A310(a).

"Construction mortgage." Section 2A309(a).

"Encumbrance." Section 2A309(a).

"Fixture filing." Section 2A309(a).

"Fixtures." Section 2A309(a).

"Purchase money lease." Section 2A309(a).

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

"Account." Section 9106.

"Between merchants." Section 2104.

"Buyer." Section 2103(a).

"Chattel paper." Section 9105(a).

"Consumer goods." Section 9109(1).

"Document." Section 9105(a).

"Entrusting." Section 2403(c).

"General intangibles." Section 9106.

"Good faith." Section 2103(a).

"Instrument." Section 9105(a).

"Merchant." Section 2104.

"Mortgage." Section 9105(a).

"Pursuant to commitment." Section 9105(a).

"Receipt." Section 2103(a).

"Sale." Section 2106(a).
"Sale on approval." Section 2326.
"Sale or return." Section 2326.
"Seller." Section 2103(a).

(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.

§ 2A104. Leases subject to other law.

(a) General rule.—A lease, although subject to this division, is also subject to any applicable:

(1) certificate of title statute of this Commonwealth;

(2) certificate of title statute of another jurisdiction (section 2A105); or

(3) consumer protection statute of this Commonwealth.

(b) Conflict between division and statute.—In case of conflict between this division, other than sections 2A105 (relating to territorial application of division to goods covered by certificate of title), 2A304(c) (relating to subsequent lease of goods by lessor) and 2A305(c) (relating to sale or sublease of goods by lessee), and a statute referred to in subsection (a), the statute controls.

(c) Noncompliance with applicable law.—Failure to comply with an applicable law has only the effect specified therein.

§ 2A105. Territorial application of division to goods covered by certificate of title.

Subject to the provisions of sections 2A304(c) (relating to subsequent lease of goods by lessor) and 2A305(c) (relating to sale or sublease of goods by lessee), with respect to goods covered by a certificate of title issued under a statute of this Commonwealth or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

§ 2A106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(a) Choice of law.—If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(b) Choice of judicial forum.—If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

§ 2A107. Waiver or renunciation of claim or right after default.

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

§ 2A108. Unconscionability.

(a) Unconscionable lease.—If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) Unconscionable conduct.—With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(c) Evidence by parties.—Before making a finding of unconscionability under subsection (a) or (b), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose and effect of the lease contract, or clause thereof, or of the conduct.

(d) Award of attorney fees.—In an action in which the lessee claims unconscionability with respect to a consumer lease:

(1) If the court finds unconscionability under subsection (a) or (b), the court shall award reasonable attorney fees to the lessee.

(2) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made.

(3) In determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (a) and (b) is not controlling.

§ 2A109. Option to accelerate at will.

(a) General rule.—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 must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(b) Burden of proof.—With respect to a consumer lease, the burden of establishing good faith under subsection (a) is on the party who exercised the power; otherwise, the burden of establishing lack of good faith is on the party against whom the power has been exercised.

CHAPTER 2A2
FORMATION AND CONSTRUCTION OF LEASE CONTRACT

Sec.

§ 2A201. Statute of frauds.

(a) General rule.—A lease contract is not enforceable by way of action or defense unless:

(1) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(2) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(b) Description of goods or term.—Any description of leased goods or of the lease term is sufficient and satisfies subsection (a)(2), whether or not it is specific, if it reasonably identifies what is described.

(c) Omitted or incorrectly stated terms.—A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (a)(2) beyond the lease term and the quantity of goods shown in the writing.

(d) Enforceability of lease not satisfying general requirements.—A lease contract that 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 or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, 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 that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods that have been received and accepted by the lessee.

(e) Term of lease not satisfying general requirements.—The lease term under a lease contract referred to in subsection (d) is:

(1) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(2) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court a lease term, the term so admitted; or

(3) a reasonable lease term.

§ 2A202. 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 or by course of performance; 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.

§ 2A203. Seals inoperative.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument, and the law with respect to sealed instruments does not apply to the lease contract or offer.

§ 2A204. Formation in general.

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

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

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

§ 2A205. Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance 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 the period of irrevocability

exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§ 2A206. Offer and acceptance in formation of lease contract.

(a) General rule.—Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(b) Beginning requested performance without notice.—If 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.

§ 2A207. Course of performance or practical construction.

(a) Relevancy of accepted performance.—If a lease contract 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 is relevant to determine the meaning of the lease agreement.

(b) Construction of express terms and performance.—The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(c) Waiver or modification of terms inconsistent with performance.—Subject to the provisions of section 2A208 (relating to modification, rescission and waiver), course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

§ 2A208. Modification, rescission and waiver.

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

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

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

(d) Retraction of waiver.—A party who has made a waiver affecting an executory portion of a lease 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.

§ 2A209. Lessee under finance lease as beneficiary of supply contract.

(a) General rule.—The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied,

including those of any third party provided in connection with or as part of the supply contract extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(b) Effect of extension of benefits.—The extension of the benefit of a supplier's promises and warranties to the lessee (subsection (a)) does not:

(1) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(2) impose any duty or liability under the supply contract on the lessee.

(c) Modification or rescission by supplier and lessor.—Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(d) Additional rights of lessee.—In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (a), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

§ 2A210. Express warranties.

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

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

(3) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will 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 lessor use formal words, such as "warrant" or "guarantee," or that the lessor 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 lessor's opinion or commendation of the goods does not create a warranty.

§ 2A211. Warranties against interference and against infringement; lessee's obligation against infringement.

(a) General rule.—There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(b) Warranty of merchant regularly dealing in goods.—Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(c) Obligation of lessee against infringement.—A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

§ 2A212. Implied warranty of merchantability.

(a) General rule.—Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

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

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

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

(3) are fit for the ordinary purposes for which goods of that type are used;

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

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

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

(c) Course of dealing or usage of trade.—Other implied warranties may arise from course of dealing or usage of trade.

§ 2A213. Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

§ 2A214. Exclusion or modification of warranties.

(a) Construction of words or conduct creating or limiting warranties.—Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 2A202 (relating to final written expression: parol or extrinsic evi-

dence), negation or limitation is inoperative to the extent that the construction is unreasonable.

(b) Implied warranties of merchantability and fitness; specific language.—Subject to subsection (c), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention "merchantability," be by a writing and be conspicuous. Subject to subsection (c), to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(c) Implied warranties of merchantability and fitness; alternative methods.—Notwithstanding subsection (b), but subject to subsection (d):

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is" or "with all faults" or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(2) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(3) an implied warranty may also be excluded or modified by course of dealing, course of performance or usage of trade.

(d) Warranties against interference and infringement.—To exclude or modify a warranty against interference or against infringement (section 2A211) or any part of it, the language must be specific, be by a writing and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

§ 2A215. Cumulation and conflict of warranties express or implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines 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.

§ 2A216. Third party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a lessee under this division, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's 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. This section does not

displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified or limited, but an exclusion, modification or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

§ 2A217. Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) when the lease contract is made, if the lease contract is for a lease of goods that are existing and identified;

(2) when the goods are shipped, marked or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

§ 2A218. Insurance and proceeds.

(a) Insurable interest of lessee.—A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(b) Substitution of goods by lessor.—If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(c) Duration of insurable interest of lessor.—Notwithstanding a lessee's insurable interest under subsections (a) and (b), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

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

(e) Agreement to determine obligations of parties.—The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

§ 2A219. Risk of loss.

(a) General rule.—Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(b) Time of passage to lessee.—Subject to the provisions of this division on the effect of default on risk of loss (section 2A220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(1) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery 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 lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(2) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(3) In any case not within paragraph (1) or (2), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor or, in the case of a finance lease, the supplier is a merchant; otherwise, the risk passes to the lessee on tender of delivery.

§ 2A220. Effect of default on risk of loss.

(a) Default by lessor.—Where risk of loss is to pass to the lessee and the time of passage is not stated:

(1) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(2) If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(b) Default by lessee.—Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

§ 2A221. Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 2A219 (relating to risk of loss), then:

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

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

CHAPTER 2A3
EFFECT OF LEASE CONTRACT

§ 2A301. Enforceability of lease contract.

Except as otherwise provided in this division, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

§ 2A302. Title to and possession of goods.

Except as otherwise provided in this division, each provision of this division applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

§ 2A303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

(a) Definition.—As used in this section, the term "creation of a security interest" includes the sale of a lease contract that is subject to Division 9 (relating to secured transactions) by reason of section 9102(a)(2) (relating to policy and subject matter of division).

(b) General rule.—Except as provided in subsections (c) and (d), a provision in a lease agreement which:

(1) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or

(2) makes such a transfer an event of default;

gives rise to the rights and remedies provided in subsection (e), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(c) Certain provisions in lease agreement not enforceable.—A provision in a lease agreement which prohibits the creation or enforcement of a secu-

rity interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection (e) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(d) Transfer of right to damages.—A provision in a lease agreement which:

(1) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation; or

(2) makes such a transfer an event of default;

is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection (e).

(e) Certain rights and remedies.—Subject to subsections (c) and (d):

(1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 2A501(b) (relating to default: procedure).

(2) If paragraph (1) is not applicable and if a transfer is made that is prohibited under a lease agreement or materially impairs the prospect of obtaining return performance by, materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(f) Effect and enforceability of general transfer.—A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(g) Effect of delegation of performance.—Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or any liability for default.

(h) Requirements for written prohibition of transfer in consumer lease.—In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing and conspicuous.

§ 2A304. Subsequent lease of goods by lessor.

(a) General rule.—Subject to section 2A303 (relating to alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights), a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (b) and section 2A527(d) (relating to lessor's rights to dispose of goods), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(1) the lessor's transferor was deceived as to the identity of the lessor;

(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) Merchants regularly dealing in goods.—A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(c) Goods covered by certificate of title.—A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this Commonwealth or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

§ 2A305. Sale or sublease of goods by lessee.

(a) General rule.—Subject to the provisions of section 2A303 (relating to alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights), a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (b) and section 2A511(d) (relating to merchant lessee's duties as to rightfully rejected goods), takes subject to the existing lease contract. A lessee with a

voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease, the lessee has that power even though:

(1) the lessor was deceived as to the identity of the lessee;

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

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

(b) Merchants regularly dealing in goods.—A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(c) Goods covered by certificate of title.—A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this Commonwealth or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

§ 2A306. Priority of certain liens arising by operation of law.

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this division unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

§ 2A307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(a) Creditor of lessee.—Except as otherwise provided in section 2A306 (relating to priority of certain liens arising by operation of law), a creditor of a lessee takes subject to the lease contract.

(b) Creditor of lessor.—Except as otherwise provided in subsections (c) and (d) and in sections 2A306 and 2A308 (relating to special rights of creditors), a creditor of a lessor takes subject to the lease contract unless:

(1) the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(2) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(3) the creditor holds a security interest in the goods which was perfected (section 9303) before the lease contract became enforceable.

(c) Lessee in ordinary course of business.—A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 9303) and the lessee knows of its existence.

(d) Lessee not in ordinary course of business.—A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

§ 2A308. Special rights of creditors.

(a) Creditor of lessor.—A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(b) Nonimpairment of rights of creditor of lessor.—Nothing in this division impairs the rights of creditors of a lessor if the lease contract:

(1) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like; and

(2) is made under circumstances which under any statute or rule of law apart from this division would constitute the transaction a fraudulent transfer or voidable preference.

(c) Creditor of seller.—A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

§ 2A309. Lessor's and lessee's rights when goods become fixtures.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Construction mortgage." A mortgage is a construction mortgage to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates.

"Encumbrance." Includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

"Fixture filing." The filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 9402(e) (relating to formal requisites of financing statement; amendments; mortgage as financing statement).

"Fixtures." Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law.

"Purchase money lease." A lease is a purchase money lease unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.

(b) Lease of goods that are fixtures.—Under this division, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this division of ordinary building materials incorporated into an improvement on land.

(c) Lease under real estate law.—This division does not prevent creation of a lease of fixtures pursuant to real estate law.

(d) Priority of perfected interest of lessor of fixtures.—The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(1) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(2) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(e) Priority of interest of lessor of fixtures whether or not perfected.—The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(1) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(2) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(3) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(4) the lessee has a right to remove the goods as against the encumbrancer or owner.

If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(f) Subordination to construction mortgage.—Notwithstanding subsection (d)(1) but otherwise subject to subsections (d) and (e), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(g) Priority of interest in other cases.—In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(h) Removal of goods if interest of lessor has priority.—If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may:

(1) on default, expiration, termination or cancellation of the lease agreement but subject to the lease agreement and this division; or

(2) if necessary to enforce other rights and remedies of the lessor or lessee under this division;

remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee 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 of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(i) Perfection of interest of lessor.—Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Division 9 (relating to secured transactions).

§ 2A310. Lessor's and lessee's rights when goods become accessions.

(a) Definition.—Goods are "accessions" when they are installed in or affixed to other goods.

(b) Priority of interest before accession.—The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (d).

(c) Priority of interest on or after accession.—The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (d) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(d) Subordination to interest in the whole.—The interest of a lessor or a lessee under a lease contract described in subsection (b) or (c) is subordinate to the interest of:

(1) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(2) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(e) Removal of goods if interest has priority.—When under subsections (b) or (c) and (d) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may:

(1) on default, expiration, termination or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this division; or

(2) if necessary to enforce his other rights and remedies under this division;

remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee 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 party seeking removal gives adequate security for the performance of this obligation.

§ 2A311. Priority subject to subordination.

Nothing in this division prevents subordination by agreement by any person entitled to priority.

CHAPTER 2A4
PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND EXCUSED

Sec.

§ 2A401. Insecurity: adequate assurance of performance.

(a) General rule.—A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(b) Demand for adequate assurance of performance.—If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.

(c) Failure to provide adequate assurance of performance.—A repudiation of the lease contract occurs if assurance of due performance adequate

under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

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

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

§ 2A402. Anticipatory repudiation.

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

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to section 2A401 (relating to insecurity: adequate assurance of performance) and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or this division, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.

In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this division on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 2A524).

§ 2A403. Retraction of anticipatory repudiation.

(a) When allowable.—Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(b) Method.—Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 2A401 (relating to insecurity: adequate assurance of performance).

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

§ 2A404. Substituted performance.

(a) Manner of delivery.—If, without fault of the lessee, the lessor and the supplier, the agreed berthing, loading or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reason-

able substitute is available, the 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:

(1) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(2) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive or predatory.

§ 2A405. Excused performance.

Subject to section 2A404 (relating to substituted performance), the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in paragraph (1) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (2), of the estimated quota thus made available for the lessee.

§ 2A406. Procedure on excused performance.

(a) Right of lessee to terminate or modify contract.—If the lessee receives notification of a material or indefinite delay or an allocation justified under section 2A405 (relating to excused performance), the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A510):

(1) terminate the lease contract (section 2A505(b)); or

(2) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(b) Time limitation on modification.—If, after receipt of a notification from the lessor under section 2A405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

§ 2A407. Irrevocable promises: finance leases.

(a) General rule.—In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(b) Effect of irrevocable and independent promise.—A promise that has become irrevocable and independent under subsection (a):

(1) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(2) is not subject to cancellation, termination, modification, repudiation, excuse or substitution without the consent of the party to whom the promise runs.

(c) Limitation on applicability of section.—This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

CHAPTER 2A5
DEFAULT

Subchapter

A. In General
B. Default by Lessor
C. Default by Lessee

SUBCHAPTER A
IN GENERAL

Sec.

2A501. Default: procedure.
2A502. Notice after default.
2A503. Modification or impairment of rights and remedies.
2A504. Liquidation of damages.
2A505. Cancellation and termination and effect of cancellation, termination, rescission or fraud on rights and remedies.
2A506. Statute of limitations.
2A507. Proof of market rent: time and place.

§ 2A501. Default: procedure.

(a) Determination of default.—Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this division.

(b) Available rights and remedies.—If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this division and, except as limited by this division, as provided in the lease agreement.

(c) Methods of enforcement of contract.—If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including

administrative proceeding, arbitration or the like, in accordance with this division.

(d) Rights and remedies cumulative.—Except as otherwise provided in section 1106(a) (relating to remedies to be liberally administered) or this division or the lease agreement, the rights and remedies referred to in subsections (b) and (c) are cumulative.

(e) Agreements covering real property and goods.—If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this chapter as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this chapter does not apply.

§ 2A502. Notice after default.

Except as otherwise provided in this division or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

§ 2A503. Modification or impairment of rights and remedies.

(a) Provisions in lease agreements.—Except as otherwise provided in this division, the lease agreement may include rights and remedies for default 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.

(b) Specified remedy construed as optional.—Resort to a remedy provided under this division or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this division.

(c) Consequential damages.—Consequential damages may be liquidated under section 2A504 (relating to liquidation of damages), or may otherwise be limited, altered or excluded unless the limitation, alteration or exclusion is unconscionable. Limitation, alteration or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(d) Other rights and remedies unimpaired.—Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this division.

§ 2A504. Liquidation of damages.

(a) General rule.—Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(b) Invalidity or failure of purpose of remedy.—If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (a), or such provision is an exclusive or limited remedy that

circumstances cause to fail of its essential purpose, remedy may be had as provided in this division.

(c) Right of lessee to restitution.—If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 2A525 or 2A526), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

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

(2) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or $500.

(d) Restitution subject to offset.—A lessee's right to restitution under subsection (c) is subject to offset to the extent the lessor 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 lessee directly or indirectly by reason of the lease contract.

§ 2A505. Cancellation and termination and effect of cancellation, termination, rescission or fraud on rights and remedies.

(a) Cancellation of contract.—On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(b) Termination of contract.—On termination of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives.

(c) Damage claim for antecedent default.—Unless the contrary intention clearly appears, expressions of "cancellation," "rescission" or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(d) Misrepresentation or fraud.—Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this division for default.

(e) Inconsistency of claim or remedy.—Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

§ 2A506. Statute of limitations.

(a) General rule.—An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(b) Accrual of cause of action.—A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(c) New action after termination of another.—If 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 default or breach of warranty or indemnity, the 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) Unaffected laws and actions.—This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this division becomes effective.

§ 2A507. Proof of market rent: time and place.

(a) Rent prevailing; general rule.—Damages based on market rent (section 2A519 or 2A528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 2A519 (relating to lessee's damages for nondelivery, repudiation, default and breach of warranty in regard to accepted goods) and 2A528 (relating to lessor's damages for nonacceptance, failure to pay, repudiation or other default).

(b) Rent prevailing at other times.—If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this division is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term 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 difference, including the cost of transporting the goods to or from the other place.

(c) Admissibility of new prevailing rent.—Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this division offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(d) Admissibility of market quotations.—If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

SUBCHAPTER B
DEFAULT BY LESSOR

Sec.

§ 2A508. Lessee's remedies.

(a) General rule.—If a lessor fails to deliver the goods in conformity to the lease contract (section 2A509) or repudiates the lease contract (section 2A402), or a lessee rightfully rejects the goods (section 2A509) or justifiably revokes acceptance of the goods (section 2A517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A510), the lessor is in default under the lease contract and the lessee may:

(1) cancel the lease contract (section 2A505(a));

(2) recover so much of the rent and security as has been paid and is just under the circumstances;

(3) cover and recover damages as to all goods affected, whether or not they have been identified to the lease contract (sections 2A518 and 2A520), or recover damages for nondelivery (sections 2A519 and 2A520); and

(4) exercise any other rights or pursue any other remedies provided in the lease contract.

(b) Recovery of nondelivered goods.—If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(1) if the goods have been identified, recover them (section 2A522); or

(2) in a proper case, obtain specific performance or replevy the goods (section 2A521).

(c) Rights and remedies for other defaults.—If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 2A519(c) (relating to lessee's damages for nondelivery, repudiation, default and breach of warranty in regard to accepted goods).

(d) Damages for breach of warranty.—If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 2A519(d)).

(e) Security interest in goods in lessee's possession.—On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 2A527(e) (relating to lessor's rights to dispose of goods).

(f) Deduction of damages from rent due.—Subject to the provisions of section 2A407 (relating to irrevocable promises: finance leases), a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

§ 2A509. Lessee's rights on improper delivery; rightful rejection.

(a) General rule.—Subject to the provisions of section 2A510 (relating to installment lease contracts: rejection and default) on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(b) Effectiveness of rejection.—Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

§ 2A510. Installment lease contracts: rejection and default.

(a) General rule.—Under an installment lease contract, a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (b) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

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

§ 2A511. Merchant lessee's duties as to rightfully rejected goods.

(a) General rule.—Subject to any security interest of a lessee (section 2A508(e)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) Reimbursement of expenses and commission.—If a merchant lessee (subsection (a)) or any other lessee (section 2A512) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(c) Good faith conduct.—In complying with this section or section 2A512 (relating to lessee's duties as to rightfully rejected goods), the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(d) Rights of good faith purchaser.—A purchaser who purchases in good faith from a lessee pursuant to this section or section 2A512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this division.

§ 2A512. Lessee's duties as to rightfully rejected goods.

(a) General rule.—Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 2A511) and subject to any security interest of a lessee (section 2A508(e)):

(1) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(2) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 2A511 (relating to merchant lessee's duties as to rightfully rejected goods); but

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

(b) Action of lessee not acceptance or conversion.—Action by the lessee pursuant to subsection (a) is not acceptance or conversion.

§ 2A513. Cure by lessor of improper tender or delivery; replacement.

(a) General rule.—If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(b) Substitution of conforming tender.—If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

§ 2A514. Waiver of lessee's objections.

(a) General rule.—In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(1) if, stated seasonably, the lessor or the supplier could have cured it (section 2A513); or

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

(b) Payment against defective documents.—A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

§ 2A515. Acceptance of goods.

(a) General rule.—Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(1) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(2) the lessee fails to make an effective rejection of the goods (section 2A509(b)).

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

§ 2A516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(a) Payment for accepted goods.—A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(b) Effect of acceptance on remedies for default.—A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this division or the lease agreement for nonconformity.

(c) Notice of default and burden of proof.—If a tender has been accepted:

(1) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(2) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 2A211), the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(3) the burden is on the lessee to establish any default.

(d) Notice of litigation to person answerable over.—If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(1) The lessee may give the lessor or the supplier written notice of the litigation. If the notice states that the person notified may come in and

defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then, unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound.

(2) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement, if the claim is one for infringement or the like (section 2A211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then, unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(e) Obligation of lessee to hold lessor or supplier harmless.—Subsections (c) and (d) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 2A211).

§ 2A517. Revocation of acceptance of goods.

(a) General rule.—A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(1) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(2) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(b) Revocation of acceptance if lessor defaults under lease contract.—Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(c) Revocation for other defaults by lessor.—If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(d) Time and notice of revocation.—Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

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

§ 2A518. Cover; substitute goods.

(a) Right and manner of cover.—After default by a lessor under the lease contract of the type described in section 2A508(a) (relating to lessee's remedies) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(b) Damages recoverable.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections 1102(c) and 2A503), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

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

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

(c) Recovery in other cases.—If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (b), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 2A519 (relating to lessee's damages for nondelivery, repudiation, default and breach of warranty in regard to accepted goods) governs.

§ 2A519. Lessee's damages for nondelivery, repudiation, default and breach of warranty in regard to accepted goods.

(a) Measure of damages for nondelivery or rejection.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections 1102(c) and 2A503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A518(b) (relating to cover; substitute goods), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

(c) Measure of damages for nonconforming tender or delivery or other default.—Except as otherwise agreed, if the lessee has accepted goods and given notification (section 2A516(c)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

§ 2A520. Lessee's incidental and consequential damages.

(a) Incidental damages.—Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(b) Consequential damages.—Consequential damages resulting from a lessor's default include:

(1) any loss resulting from general or particular requirements and needs of which the lessor 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.

§ 2A521. Lessee's right to specific performance or replevin.

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

(b) Terms and conditions of decree for specific performance.—A decree for specific performance may include any terms and conditions as to payment of the rent, damages or other relief that the court deems just.

(c) Replevin or other similar remedy.—A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

§ 2A522. Lessee's right to goods on lessor's insolvency.

(a) General rule.—Subject to subsection (b) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 2A217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(b) Goods to conform to contract.—A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

SUBCHAPTER C
DEFAULT BY LESSEE

Sec.

2A523. Lessor's remedies.

2A524. Lessor's right to identify goods to lease contract.

§ 2A523. Lessor's remedies.

(a) General rule.—If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A510), the lessee is in default under the lease contract and the lessor may:

(1) Cancel the lease contract (section 2A505(a)).

(2) Proceed respecting goods not identified to the lease contract (section 2A524).

(3) Withhold delivery of the goods and take possession of goods previously delivered (section 2A525).

(4) Stop delivery of the goods by any bailee (section 2A526).

(5) Dispose of the goods and recover damages (section 2A527), or retain the goods and recover damages (section 2A528), or in a proper case recover rent (section 2A529).

(6) Exercise any other rights or pursue any other remedies provided in the lease contract.

(b) When lessor does not fully exercise right or obtain remedy.—If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (a), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(c) Other rights and remedies.—If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(1) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (a) or (b); or

(2) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (b).

§ 2A524. Lessor's right to identify goods to lease contract.

(a) General rule.—A lessor aggrieved under section 2A523(a) (relating to lessor's remedies) may:

(1) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(2) dispose of goods (section 2A527(a)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(b) Unfinished goods.—If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

§ 2A525. Lessor's right to possession of goods.

(a) Insolvency of lessee.—If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(b) Default by lessee.—After a default by the lessee under the lease contract of the type described in section 2A523(a) or (c)(1) (relating to lessor's remedies) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 2A527).

(c) Method of proceeding on default.—The lessor may proceed under subsection (b) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

§ 2A526. Lessor's stoppage of delivery in transit or otherwise.

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

(b) When lessor loses right.—In pursuing its remedies under subsection (a), the lessor may stop delivery until:

(1) receipt of the goods by the lessee;

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

(3) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(c) Notice and compliance.—

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

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

(3) 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.

§ 2A527. Lessor's rights to dispose of goods.

(a) General rule.—After a default by a lessee under the lease contract of the type described in section 2A523(a) or (c)(1) (relating to lessor's remedies) or after the lessor refuses to deliver or takes possession of goods (section 2A525 or 2A526) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(b) Damages recoverable.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections 1102(c) and 2A503), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(1) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

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

(3) any incidental damages allowed under section 2A530 (relating to lessor's incidental damages), less expenses saved in consequence of the lessee's default.

(c) Recovery in other cases.—If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (b), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A528 (relating to lessor's damages for nonacceptance, failure to pay, repudiation or other default) governs.

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

(e) Accountability for profits.—The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A508(e)).

§ 2A528. Lessor's damages for nonacceptance, failure to pay, repudiation or other default.

(a) General rule.—Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A504) or otherwise determined pursuant to agreement of the parties (sections 1102(c) and 2A523), if a lessor

elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A527(b) (relating to lessor's rights to dispose of goods), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A523(a) or (c)(1) (relating to lessor's remedies) or, if agreed, for other default of the lessee:

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

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

(3) any incidental damages allowed under section 2A530 (relating to lessor's incidental damages), less expenses saved in consequence of the lessee's default.

(b) Exception.—If the measure of damages provided in subsection (a) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§ 2A529. Lessor's action for the rent.

(a) General rule.—After default by the lessee under the lease contract of the type described in section 2A523(a) or (c)(1) (relating to lessor's remedies) or, if agreed, after other default by the lessee, if the lessor complies with subsection (b), the lessor may recover from the lessee as damages:

(1) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 2A219):

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under section 2A530 (relating to lessor's incidental damages), less expenses saved in consequence of the lessee's default; and

(2) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under section 2A530, less expenses saved in consequence of the lessee's default.

(b) Duty of lessor to hold goods.—Except as provided in subsection (c), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(c) Rights of lessor before collection of judgment.—The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (a). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 2A527 (relating to lessor's rights to dispose of goods) or 2A528 (relating to lessor's damages for nonacceptance, failure to pay, repudiation or other default), and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 2A527 or 2A528.

(d) Rights of lessee after payment of judgment.—Payment of the judgment for damages obtained pursuant to subsection (a) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(e) Remedy if rent not allowable.—After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due or has repudiated (section 2A402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under sections 2A527 and 2A528.

§ 2A530. Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

§ 2A531. Standing to sue third parties for injury to goods.

(a) General rule.—If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(1) the lessor has a right of action against the third party; and

(2) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

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

(c) Consent of parties as to suing.—Either party with the consent of the other may sue for the benefit of whom it may concern.

§ 2A532. Lessor's rights to residual interest.

In addition to any other recovery permitted by this division or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

Section 4. Division 3 of Title 13 is repealed.

Section 5. Title 13 is amended by adding a division to read:

DIVISION 3
NEGOTIABLE INSTRUMENTS

CHAPTER 31
GENERAL PROVISIONS AND DEFINITIONS

§ 3101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Article 3, Negotiable Instruments.

§ 3102. Subject matter.

(a) Applicability.—This division applies to negotiable instruments. It does not apply to money, to payment orders governed by Division 4A (relating to funds transfers) or to securities governed by Division 8 (relating to investment securities).

(b) Conflict.—If there is conflict between this division and Division 4 (relating to bank deposits and collections) or 9 (relating to secured transactions), Division 4 and Division 9 govern.

(c) Federal Reserve regulations and operating circulars.—Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve banks supersede any inconsistent provision of this division to the extent of the inconsistency.

§ 3103. 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:

"Acceptor." A drawee who has accepted a draft.

"Drawee." A person ordered in a draft to make payment.

"Drawer." A person who signs or is identified in a draft as a person ordering payment.

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

"Maker." A person who signs or is identified in a note as a person undertaking to pay.

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

"Ordinary care." In the case of a person engaged in business, means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this division or Division 4 (relating to bank deposits and collections).

"Party." A party to an instrument.

"Promise." A written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

"Prove." With respect to a fact means to meet the burden of establishing the fact (section 1201).

"Remitter." A person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

"Acceptance." Section 3409.
"Accommodated party." Section 3419.
"Accommodation party." Section 3419.
"Alteration." Section 3407.
"Anomalous indorsement." Section 3205.
"Blank indorsement." Section 3205.
"Cashier's check." Section 3104.
"Certificate of deposit." Section 3104.
"Certified check." Section 3409.
"Check." Section 3104.
"Consideration." Section 3303.
"Draft." Section 3104.
"Holder in due course." Section 3302.
"Incomplete instrument." Section 3115.
"Indorsement." Section 3204.
"Indorser." Section 3204.
"Instrument." Section 3104.
"Issue." Section 3105.
"Issuer." Section 3105.
"Negotiable instrument." Section 3104.
"Negotiation." Section 3201.
"Note." Section 3104.
"Payable at a definite time." Section 3108.
"Payable on demand." Section 3108.
"Payable to bearer." Section 3109.
"Payable to order." Section 3109.
"Payment." Section 3602.
"Person entitled to enforce." Section 3301.
"Presentment." Section 3501.
"Reacquisition." Section 3207.
"Special indorsement." Section 3205.
"Teller's check." Section 3104.
"Transfer of instrument." Section 3203.
"Traveler's check." Section 3104.
"Value." Section 3303.

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

"Bank." Section 4105.
"Banking day." Section 4104.
"Clearing house." Section 4104.
"Collecting bank." Section 4105.
"Depositary bank." Section 4105.
"Documentary draft." Section 4104.
"Intermediary bank." Section 4105.

"Item." Section 4104.

"Payor bank." Section 4105.

"Suspends payments." Section 4104.

(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.

§ 3104. Negotiable instrument.

(a) Definition of "negotiable instrument".—Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:

(i) an undertaking or power to give, maintain or protect collateral to secure payment;

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) Definition of "instrument".—"Instrument" means a negotiable instrument.

(c) Negotiable instrument and check.—An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) When promise or order not an instrument.—A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this division.

(e) Note and draft.—An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) Definition of "check".—"Check" means:

(1) a draft, other than a documentary draft, payable on demand and drawn on a bank; or

(2) a cashier's check or teller's check.

An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) Definition of "cashier's check".—"Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) Definition of "teller's check".—"Teller's check" means a draft drawn by a bank:

(1) on another bank; or

(2) payable at or through a bank.

(i) Definition of "traveler's check".—"Traveler's check" means an instrument that:

(1) is payable on demand;

(2) is drawn on or payable at or through a bank;

(3) is designated by the term "traveler's check" or by a substantially similar term; and

(4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) Definition of "certificate of deposit".—"Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

§ 3105. Issue of instrument.

(a) Definition of "issue".—"Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) When certain instruments are binding on maker or drawer.—An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) Definition of "issuer".—"Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

§ 3106. Unconditional promise or order.

(a) When conditional.—Except as provided in this section, for the purposes of section 3104(a) (relating to negotiable instrument), a promise or order is unconditional unless it states:

(1) an express condition to payment;

(2) that the promise or order is subject to or governed by another writing; or

(3) that rights or obligations with respect to the promise or order are stated in another writing.

A reference to another writing does not of itself make the promise or order conditional.

(b) When promise or order not made conditional.—A promise or order is not made conditional:

(1) by a reference to another writing for a statement of rights with respect to collateral, prepayment or acceleration; or

(2) because payment is limited to resort to a particular fund or source.

(c) Promise or order not made conditional when countersignature as condition to payment is required.—If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature

appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 3104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) Promise or order not made conditional by containing certain statements required by law.—If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 3104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

§ 3107. Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

§ 3108. Payable on demand or at definite time.

(a) Payable on demand.—A promise or order is "payable on demand" if it:

(1) states that it is payable on demand or at sight or otherwise indicates that it is payable at the will of the holder; or

(2) does not state any time of payment.

(b) Payable at a definite time.—A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of:

(1) prepayment;

(2) acceleration;

(3) extension at the option of the holder; or

(4) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) Payable upon demand made before fixed date.—If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

§ 3109. Payable to bearer or to order.

(a) Payable to bearer.—A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) Payable to order.—A promise or order that is not payable to bearer is payable to order if it is payable:

(1) to the order of an identified person; or

(2) to an identified person or order.

A promise or order that is payable to order is payable to the identified person.

(c) Payable to an identified person.—An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to section 3205(a) (relating to special indorsement; blank indorsement; anomalous indorsement). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to section 3205(b).

§ 3110. Identification of person to whom instrument is payable.

(a) Intent of issuer.—The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) When signature of issuer made by automated means.—If the signature of the issuer of an instrument is made by automated means, such as a checkwriting machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) Identification of person to whom instrument is payable and rules for determining holder.—A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) a trust, an estate or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office or a successor to the incumbent.

(d) Instrument payable to two or more persons.—If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

§ 3111. Place of payment.

Except as otherwise provided for items in Division 4 (relating to bank deposits and collections), an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

§ 3112. Interest.

(a) General rule.—Unless otherwise provided in the instrument:

(1) an instrument is not payable with interest; and

(2) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Instrument may provide for interest.—Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

§ 3113. Date of instrument.

(a) Dated instrument.—An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 4401(c) (relating to when bank may charge account of customer), an instrument payable on demand is not payable before the date of the instrument.

(b) Undated instrument.—If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

§ 3114. Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

§ 3115. Incomplete instrument.

(a) Definition of "incomplete instrument".—"Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Enforcement.—Subject to subsection (c), if an incomplete instrument is an instrument under section 3104 (relating to negotiable instrument), it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 3104, but, after completion, the requirements of section 3104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) Alteration of incomplete instrument.—If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 3407 (relating to alteration).

(d) Burden of establishing alteration.—The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

§ 3116. Joint and several liability; contribution.

(a) Joint and several liability.—Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Contribution.—Except as provided in section 3419(e) (relating to instruments signed for accommodation) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge.—Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

§ 3117. Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented or nullified by an agreement under this section, the agreement is a defense to the obligation.

§ 3118. Statute of limitations.

(a) Note payable at definite time.—Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Note payable on demand.—Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Unaccepted draft.—Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) Certified check, teller's check, cashier's check and traveler's check.—An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) Certificate of deposit.—An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but, if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) Accepted draft.—An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced:

(1) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time; or

(2) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Conversion, breach of warranty and other Division 3 actions.—Unless governed by other law regarding claims for indemnity or contribution, an action:

(1) for conversion of an instrument, for money had and received or like action based on conversion;

(2) for breach of warranty; or

(3) to enforce an obligation, duty or right arising under this division and not governed by this section;

must be commenced within three years after the cause of action accrues.

§ 3119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this division or Division 4 (relating to bank deposits and collections), the defendant 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. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

CHAPTER 32
NEGOTIATION, TRANSFER AND INDORSEMENT

Sec.
3201. Negotiation.
3202. Negotiation subject to rescission.
3203. Transfer of instrument; rights acquired by transfer.
3204. Indorsement.
3205. Special indorsement; blank indorsement; anomalous indorsement.
3206. Restrictive indorsement.
3207. Reacquisition.

§ 3201. Negotiation.

(a) Definition of "negotiation".—"Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Manner of negotiation.—Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

§ 3202. Negotiation subject to rescission.

(a) General rule.—Negotiation is effective even if obtained:

(1) from an infant, a corporation exceeding its powers or a person without capacity;

(2) by fraud, duress or mistake; or

(3) in breach of duty or as part of an illegal transaction.

(b) Rescission or other remedies.—To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

§ 3203. Transfer of instrument; rights acquired by transfer.

(a) When transfer effected.—An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Rights obtained upon transfer of instrument.—Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in

due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Right of transferee to demand indorsement.—Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) Effect of transfer of less than entire instrument.—If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this division and has only the rights of a partial assignee.

§ 3204. Indorsement.

(a) Definition of "indorsement".—"Indorsement" means a signature, other than that of a signer as maker, drawer or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) Definition of "indorser".—"Indorser" means a person who makes an indorsement.

(c) When transferee is a holder.—For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) Wrong name.—If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

§ 3205. Special indorsement; blank indorsement; anomalous indorsement.

(a) Special indorsement.—If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in section 3110 (relating to identification of person to whom instrument is payable) apply to special indorsements.

(b) Blank indorsement.—If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) Conversion of blank indorsement into special indorsement.—The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) Definition of "anomalous indorsement".—"Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§ 3206. Restrictive indorsement.

(a) Indorsement prohibiting further transfer or negotiation.—An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) Conditional indorsement.—An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) Specified purpose indorsement.—If an instrument bears an indorsement described in section 4201(b) (relating to status of collecting bank as agent and provisional status of credits; applicability of division; item indorsed "pay any bank") or in blank or to a particular bank using the words "for deposit," "for collection" or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Indorsement for benefit of indorser or another person.—Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in section 3307 (relating to notice of breach of fiduciary duty), a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) Holder in due course.—The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) Defense of obligor.—In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

§ 3207. Reacquisition.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

CHAPTER 33
ENFORCEMENT OF INSTRUMENTS

Sec.

§ 3301. Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means:

(1) the holder of the instrument;

(2) a nonholder in possession of the instrument who has the rights of a holder; or

(3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 3309 (relating to enforcement of lost, destroyed or stolen instrument) or 3418(d) (relating to payment or acceptance by mistake).

A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§ 3302. Holder in due course.

(a) Definition of "holder in due course".—Subject to subsection (c) and section 3106(d) (relating to unconditional promise or order), "holder in due course" means the holder of an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument described in section 3306 (relating to claims to an instrument); and

(vi) without notice that any party has a defense or claim in recoupment described in section 3305(a) (relating to defenses and claims in recoupment).

(b) Notice of discharge.—Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment or claim to the instrument.

(c) When one does not acquire rights of holder in due course.—Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(1) by legal process or by purchase in an execution, bankruptcy or creditor's sale or similar proceeding;

(2) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(3) as the successor in interest to an estate or other organization.

(d) Limited right as holder in due course; partial performance.—If, under section 3303(a)(1) (relating to value and consideration), the promise of performance that is the consideration for an instrument has been partially

performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) Limited right as holder in due course; security interest.—If:

(1) the person entitled to enforce an instrument has only a security interest in the instrument; and

(2) the person obliged to pay the instrument has a defense, claim in recoupment or claim to the instrument that may be asserted against the person who granted the security interest;

the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) Manner of notice.—To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) Applicability of other law.—This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

§ 3303. Value and consideration.

(a) Value.—An instrument is issued or transferred for value if:

(1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) the instrument is issued or transferred in exchange for a negotiable instrument; or

(5) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) Definition of "consideration".—"Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

§ 3304. Overdue instrument.

(a) Instrument payable on demand.—An instrument payable on demand becomes overdue at the earliest of the following times:

(1) on the day after the day demand for payment is duly made;

(2) if the instrument is a check, 90 days after its date; or

(3) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) Instrument payable at a definite time.—With respect to an instrument payable at a definite time, the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Instrument not overdue if default in payment of interest.—Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

§ 3305. Defenses and claims in recoupment.

(a) General rule.—Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on:

(i) infancy of the obligor to the extent it is a defense to a simple contract;

(ii) duress, lack of legal capacity or illegality of the transaction which, under other law, nullifies the obligation of the obligor;

(iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this division or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument, but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) Right of holder in due course to enforce obligation.—The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Claims and defenses of person other than obligor on instrument.—Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment or claim to the instrument (section 3306) of another person, but the other person's claim

to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) Instrument signed for accommodation.—In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy and lack of legal capacity.

§ 3306. Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

§ 3307. Notice of breach of fiduciary duty.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Fiduciary." An agent, trustee, partner, corporate officer or director or other representative owing a fiduciary duty with respect to an instrument.

"Represented person." The principal, beneficiary, partnership, corporation or other person to whom the duty stated under the definition of fiduciary is owed.

(b) General rule.—If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

§ 3308. Proof of signatures and status as holder in due course.

(a) Proof of signatures.—In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 3402(a) (relating to signature by representative).

(b) Status as holder in due course.—If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 3301 (relating to person entitled to enforce instrument), unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§ 3309. Enforcement of lost, destroyed or stolen instrument.

(a) Enforcement.—A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) Proof.—A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 3308 (relating to proof of signatures and status as holder in due course) applies to the case as if the person seeking enforcement had produced the instrument. The court may

not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

§ 3310. Effect of instrument on obligation for which taken.

(a) Certified check, cashier's check or teller's check given in payment of obligation.—Unless otherwise agreed, if a certified check, cashier's check or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Note or uncertified check taken for obligation.—Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in paragraph (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) Other instruments taken for obligation.—If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is:

(1) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor; or

(2) that stated in subsection (b) in any other case.

§ 3311. Accord and satisfaction by use of instrument.

(a) Requirements.—If a person against whom a claim is asserted proves that:

(1) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(2) the amount of the claim was unliquidated or subject to a bona fide dispute; and

(3) the claimant obtained payment of the instrument;

the following subsections apply.

(b) Proof of conspicuous statement.—Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Designated person, office or place and 90-day limitations.—Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that:

(i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office or place; and

(ii) the instrument or accompanying communication was not received by that designated person, office or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) Discharge.—A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

CHAPTER 34
LIABILITY OF PARTIES

Sec.

§ 3401. Signature.

(a) Nonliability in absence of signature.—A person is not liable on an instrument unless:

(1) the person signed the instrument; or

(2) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 3402 (relating to signature by representative).

(b) Form of signature.—A signature may be made:

(1) manually or by means of a device or machine; and

(2) by the use of any name, including a trade or assumed name, or by a word, mark or symbol executed or adopted by a person with present intention to authenticate a writing.

§ 3402. Signature by representative.

(a) Represented person bound by signature.—If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) When representative is bound by signature.—If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if the form of the signature does not show unambiguously that the signature is made in a representative capacity or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) Checks.—If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

§ 3403. Unauthorized signature.

(a) Ineffectiveness or ratification.—Unless otherwise provided in this division or Division 4 (relating to bank deposits and collections), an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this division.

(b) Signature of organization.—If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) Liability.—The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this division which makes the unauthorized signature effective for the purposes of this division.

§ 3404. Impostors; fictitious payees.

(a) Impostor.—If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Fictitious payee.—If a person whose intent determines to whom an instrument is payable (section 3110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument or the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) When indorsement made in name of payee.—Under subsection (a) or (b), an indorsement is made in the name of a payee if:

(1) it is made in a name substantially similar to that of the payee; or

(2) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) Failure to exercise ordinary care.—With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss result-

ing from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

§ 3405. Employer's responsibility for fraudulent indorsement by employee.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Employee." Includes an independent contractor and employee of an independent contractor retained by the employer.

"Fraudulent indorsement."

(1) In the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer.

(2) In the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

"Responsibility." With respect to instruments means authority:

(1) to sign or indorse instruments on behalf of the employer;

(2) to process instruments received by the employer for bookkeeping purposes, for deposit to an account or for other disposition;

(3) to prepare or process instruments for issue in the name of the employer;

(4) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer;

(5) to control the disposition of instruments to be issued in the name of the employer; or

(6) to act otherwise with respect to instruments in a responsible capacity.

The term does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail or similar access.

(b) Rights and liabilities.—For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Application.—Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if:

(1) it is made in a name substantially similar to the name of that person; or

(2) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

§ 3406. Negligence contributing to forged signature or alteration of instrument.

(a) Failure to exercise ordinary care.—A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Allocation of loss.—Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Burden of proof.—Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

§ 3407. Alteration.

(a) Definition of "alteration".—"Alteration" means:

(1) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party; or

(2) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Fraudulent alteration; discharge.—Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) Certain persons not affected by discharge.—A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument according to its original terms or, in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

§ 3408. Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

§ 3409. Acceptance of draft; certified check.

(a) Definition of "acceptance".—"Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) Acceptance of incomplete, overdue or dishonored draft.—A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue or has been dishonored.

(c) Failure to date acceptance of sight draft.—If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) Definition of "certified check".—"Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

§ 3410. Acceptance varying draft.

(a) Right of holder to refuse acceptance.—If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) Effect of acceptance designating place of payment.—The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) Assent of holder to acceptance.—If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

§ 3411. Refusal to pay cashier's checks, teller's checks and certified checks.

(a) Definition.—As used in this section, the term "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) Refusal to pay.—If the obligated bank wrongfully:

(1) refuses to pay a cashier's check or certified check;

(2) stops payment of a teller's check; or

(3) refuses to pay a dishonored teller's check;

the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages not recoverable under certain circumstances.—Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because:

(1) the bank suspends payments;

(2) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(3) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(4) payment is prohibited by law.

§ 3412. Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 (relating to incomplete instrument) and 3407 (relating to alteration). The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under section 3415 (relating to obligation of indorser).

§ 3413. Obligation of acceptor.

(a) General rule.—The acceptor of a draft is obliged to pay the draft:

(1) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(2) if the acceptance varies the terms of the draft, according to the terms of the draft as varied; or

(3) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 (relating to incomplete instrument) and 3407 (relating to alteration).

The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under section 3414 (relating to obligation of drawer) or 3415 (relating to obligation of indorser).

(b) Certified check or accepted draft.—If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

§ 3414. Obligation of drawer.

(a) Scope of section.—This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) Obligation of drawer if unaccepted draft is dishonored.—If an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(1) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(2) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 (relating to incomplete instrument) and 3407 (relating to alteration).

The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under section 3415 (relating to obligation of indorser).

(c) Draft accepted by bank.—If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) Draft accepted by drawer other than bank.—If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft

if the draft is dishonored by the acceptor is the same as the obligation of an indorser under section 3415(a) and (c).

(e) Disclaimer of liability.—If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) Certain protections.—If:

(1) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date;

(2) the drawee suspends payments after expiration of the 30-day period without paying the check; and

(3) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check;

the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

§ 3415. Obligation of indorser.

(a) General rule.—Subject to subsections (b), (c) and (d) and to section 3419(d) (relating to instruments signed for accommodation), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument:

(1) according to the terms of the instrument at the time it was indorsed; or

(2) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3115 (relating to incomplete instrument) and 3407 (relating to alteration).

The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) Disclaimer of liability.—If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) Notice of dishonor.—If notice of dishonor of an instrument is required by section 3503 (relating to notice of dishonor) and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) Draft accepted by bank.—If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) Discharge of liability.—If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

§ 3416. Transfer warranties.

(a) Warranties to transferees.—A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) the warrantor is a person entitled to enforce the instrument;

(2) all signatures on the instrument are authentic and authorized;

(3) the instrument has not been altered;

(4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) Damages for breach of warranty.—A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) Prohibition against disclaimer of warranties regarding checks.—The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) Action for breach of warranty.—A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 3417. Presentment warranties.

(a) Statement of warranties.—If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered; and

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) Damages for breach of warranty.—A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) Defense.—If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3404 (relating to impostors; fictitious payees) or 3405 (relating to employer's responsibility for fraudulent indorsement by employee) or the drawer is precluded under section 3406 (relating to negligence contributing to forged signature or alteration of instrument) or 4406 (relating to duty of customer to discover and report unauthorized signature or alteration) from asserting against the drawee the unauthorized indorsement or alteration.

(d) Statement of warranty in certain other cases.—If a dishonored draft is presented for payment to the drawer or an indorser or any other instrument is presented for payment to a party obliged to pay the instrument and payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) Prohibition against disclaimer of warranties regarding checks.—The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) Action for breach of warranty.—A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 3418. Payment or acceptance by mistake.

(a) General rule.—Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that:

(1) payment of the draft had not been stopped pursuant to section 4403 (relating to right of customer to stop payment; burden of proof of loss); or

(2) the signature of the drawer of the draft was authorized;

the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Other cases.—Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsec-

tion (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, recover the payment from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance.

(c) Limitation on remedies.—The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 3417 (relating to presentment warranties) or 4407 (relating to right of payor bank to subrogation on improper payment).

(d) Under certain circumstances an instrument is deemed dishonored.—Notwithstanding section 4215 (relating to final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal), if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

§ 3419. Instruments signed for accommodation.

(a) Accommodation party.—If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) Liability of accommodation party.—An accommodation party may sign the instrument as maker, drawer, acceptor or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) Presumption.—A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement ~~or~~ is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 3605 (relating to discharge of indorsers and accommodation parties), the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) Limitation on liability.—If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(1) execution of judgment against the other party has been returned unsatisfied;

(2) the other party is insolvent or in an insolvency proceeding;

(3) the other party cannot be served with process; or

(4) it is otherwise apparent that payment cannot be obtained from the other party.

(e) Rights between accommodation and accommodated parties.—An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

§ 3420. Conversion of instrument.

(a) General rule.—The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument or a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.

(b) Measure of damages.—In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) Limitation on liability.—A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

CHAPTER 35
DISHONOR

Sec.

§ 3501. Presentment.

(a) Definition of "presentment".—"Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument:

(1) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

(2) to accept a draft made to the drawee.

(b) Application of certain rules.—The following rules are subject to Division 4 (relating to bank deposits and collections), agreement of the parties and clearinghouse rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must:

(i) exhibit the instrument;

(ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may:

(i) return the instrument for lack of a necessary indorsement; or

(ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

§ 3502. Dishonor.

(a) Dishonor of note.—Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of unaccepted draft.—Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishon-

ored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 4301 (relating to deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank) or 4302 (relating to responsibility of payor bank for late return of item) or becomes accountable for the amount of the check under section 4302.

(2) If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if:

(i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of unaccepted documentary draft.—Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3) and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of accepted draft.—Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) Certain limitations.—In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 3504 (relating to excused presentment and notice of dishonor), dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) Late acceptance cures dishonor.—If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§ 3503. Notice of dishonor.

(a) Requirement of notice.—The obligation of an indorser stated in section 3415(a) (relating to obligation of indorser) and the obligation of a

drawer stated in section 3414(d) (relating to obligation of drawer) may not be enforced unless:

(1) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(2) notice of dishonor is excused under section 3504(b) (relating to excused presentment and notice of dishonor).

(b) Manner of notice.—Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Time of notice.—Subject to section 3504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given:

(1) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument; or

(2) by any other person within 30 days following the day on which the person receives notice of dishonor.

With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

§ 3504. Excused presentment and notice of dishonor.

(a) Excused presentment.—Presentment for payment or acceptance of an instrument is excused if:

(1) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(2) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;

(3) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer;

(4) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or

(5) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Excused notice of dishonor.—Notice of dishonor is excused if:

(1) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument; or

(2) the party whose obligation is being enforced waived notice of dishonor.

A waiver of presentment is also a waiver of notice of dishonor.

(c) Excused delay in notice of dishonor.—Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

§ 3505. Evidence of dishonor.

(a) Admissible evidence.—The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) which purports to be a protest.

(2) A purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor.

(3) A book or record of the drawee, payor bank or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) Protest.—A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

CHAPTER 36
DISCHARGE AND PAYMENT

Sec.

§ 3601. Discharge and effect of discharge.

(a) Discharge.—The obligation of a party to pay the instrument is discharged as stated in this division or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Effect of discharge.—Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

§ 3602. Payment.

(a) General rule.—Subject to subsection (b), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 3306 (relating to claims to an instrument) by another person.

(b) Obligation not discharged.—The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) a claim to the instrument under section 3306 is enforceable against the party receiving payment and:

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

§ 3603. Tender of payment.

(a) Applicability of contract law.—If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) Effect of refusal of tender of payment.—If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) Obligation to pay interest discharged.—If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§ 3604. Discharge by cancellation or renunciation.

(a) Methods of discharge.—A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument:

(1) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation or cancellation of the instrument, cancellation or striking out of the party's signature or the addition of words to the instrument indicating discharge; or

(2) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Certain rights unaffected.—Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

§ 3605. Discharge of indorsers and accommodation parties.

(a) Definition.—As used in this section, the term "indorser" includes a drawer having the obligation described in section 3414(d) (relating to obligation of drawer).

(b) Effect of discharge in certain situation.—Discharge, under section 3604 (relating to discharge by cancellation or renunciation), of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) Agreement to extension of due date.—If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) Agreement to material modification.—If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) Impairment of collateral; discharge of indorser or accommodation party.—If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) Impairment of collateral; discharge of party jointly and severally liable.—If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Impairing value of an interest in collateral.—Under subsection (e) or (f), impairing value of an interest in collateral includes:

(1) failure to obtain or maintain perfection or recordation of the interest in collateral;

(2) release of collateral without substitution of collateral of equal value;

(3) failure to perform a duty to preserve the value of collateral owed, under Division 9 (relating to secured transactions) or other law, to a debtor or surety or other person secondarily liable; or

(4) failure to comply with applicable law in disposing of collateral.

(h) Accommodation party not discharged in certain circumstances.—An accommodation party is not discharged under subsection (c), (d) or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 3419(c) (relating to instruments signed for accommodation) that the instrument was signed for accommodation.

(i) Other limitations on discharge.—A party is not discharged under this section if:

(1) the party asserting discharge consents to the event or conduct that is the basis of the discharge; or

(2) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

Section 6. Sections 4101, 4102, 4103, 4104 and 4105 of Title 13 are amended to read:

§ 4101. Short title of division.

This division shall be known and may be cited as the **["]**Uniform Commercial Code**[—]**, ***Article 4,*** 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]** ***negotiable instruments***) 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.]** ***If there is conflict, this division governs Division 3, but Division 8 governs this division.***

(b) **[Liability]** ***Law applicable regarding liability*** of bank with respect to items handled.—The liability of a bank for action or nonaction with respect to **[any]** ***an*** 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]**, ***but the parties to the agreement cannot*** 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]** ***the*** lack or failure**[; but]**. ***However,*** the parties may ***determine*** by agreement **[determine]** the standards by which **[such responsibility]** ***the responsibility of the bank*** is to be measured if **[such]** ***those*** standards are not manifestly unreasonable.

(b) Rules and regulations having effect of agreements.—Federal Reserve regulations and operating **[letters, clearing house]** ***circulars, clearinghouse*** 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]** ***circulars is*** the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with **[clearing house]** ***clearinghouse*** rules and the like or with a general banking usage not disapproved by this division, ***is*** prima facie **[constitutes]** the exercise of ordinary care.

(d) Effect of approval of certain procedures ***by this division***.—The specification or approval of certain procedures by this division **[does not constitute]** ***is not*** disapproval of other procedures **[which]** ***that*** 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]** ***that*** could not have been realized by the **[use]** ***exercise*** of ordinary care**[, and where]**. ***If*** there is ***also*** bad faith it includes ***any*** other damages**[, if any suffered by]** the party ***suffered*** 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 ***deposit or credit*** account with a bank **[and includes a checking, time, interest or savings account.]**, ***including a demand, time, savings, passbook, share draft or like account, other than an account evidenced by a certificate of deposit.***

"Afternoon." The period of a day between noon and midnight.

"Banking day." **[That]** ***The*** part of **[any]** ***a*** day on which a bank is open to the public for carrying on substantially all of its banking functions.

["Clearing house." **Any]** ***"Clearinghouse."*** ***An*** association of banks or other payors regularly clearing items.

"Customer." **[Any]** ***A*** person having an account with a bank or for whom a bank has agreed to collect items **[and includes]**, ***including*** a bank **[carrying]** ***that maintains*** an account **[with]** ***at*** another bank.

"Documentary draft." **[Any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft.]** ***A draft to be presented for acceptance or payment if specified documents, certificated securities (section 8102) or instructions for uncertificated securities (section 8308) or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the draft.***

"Draft." ***A draft as defined in section 3104 (relating to negotiable instrument) or an item, other than an instrument, that is an order.***

"Drawee." ***A person ordered in a draft to make payment.***

"Item." **[Any instrument for the payment of money even though it is not negotiable but does not include money.]** ***An instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Division 4A (relating to funds transfers) or a credit or debit card slip.***

"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]** ***clearinghouse*** settlement, in a charge or credit or by remittance, or otherwise as **[instructed]** ***agreed***. 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:

"Agreement for electronic presentment." ***Section 4110.***

"Bank." ***Section 4105.***

"Collecting bank." Section 4105.

"Depositary bank." Section 4105.

"Intermediary bank." Section 4105.

"Payor bank." Section 4105.

"Presenting bank." Section 4105.

["Remitting bank." Section 4105.]

"Presentment notice." ***Section 4110.***

(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.]
"Acceptance." Section 3409.
"Alteration." Section 3407.
"Cashier's check." Section 3104.
"Certificate of deposit." Section 3104.
"Certified check." Section 3409.
"Check." Section 3104.
"Good faith." Section 3103.
"Holder in due course." Section 3302.
"Instrument." Section 3104.
"Notice of dishonor." Section 3503.
"Order." Section 3103.
"Ordinary care." Section 3103.
"Person entitled to enforce." Section 3301.
"Presentment." Section 3501.
"Promise." Section 3103.
"Prove." Section 3103.
"Teller's check." Section 3104.
"Unauthorized signature." Section 3403.

(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. **["Depositary]** ***"Bank"; "depositary*** 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:

"Bank." A person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company.

"Collecting bank." **[Any]** *A* bank handling **[the]** *an* item for collection except the payor bank.

"Depositary bank." The first bank to **[which an item is transferred for collection]** *take an item* even though it is also the payor bank *unless the item is presented for immediate payment over the counter.*

"Intermediary bank." **[Any]** *A* bank to which an item is transferred in course of collection except the depositary or payor bank.

"Payor bank." A bank **[by which an item is payable as drawn or accepted.]** *that is the drawee of a draft.*

"Presenting bank." **[Any]** *A* bank presenting an item except a payor bank.

["Remitting bank." Any payor or intermediary bank remitting for an item.]

Section 7. Title 13 is amended by adding a section to read:

§ *4106. Payable through or payable at bank; collecting bank.*

(a) "Payable through" a bank.—If an item states that it is "payable through" a bank identified in the item, the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and the item may be presented for payment only by or through the bank.

(b) "Payable at" a bank.—If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on the bank.

(c) Draft names nonbank drawee.—If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

Section 8. Sections 4106, 4107, 4108 and 4109 of Title 13 are amended to read:

§ **[4106]** *4107.* 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]** *must* be given under this division and under Division 3 (relating to **[commercial paper]** *negotiable instruments*).

§ **[4107]** *4108.* Time of receipt of items.

(a) **[Cut-off]** *Cutoff* 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]** *cutoff* hour for the handling of money and items and the making of entries on its books.

(b) Items or deposits received after **[cut-off]** *cutoff* hour.—**[Any]** *An* item or deposit of money received on any day after a **[cut-off]** *cutoff* 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]** *4109.* Delays.

(a) **[Delay]** *Two-banking-day 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]** *of a specified item drawn on a payor other than a bank,* and with or without the approval of any person involved, *may* waive, modify or extend time limits imposed or permitted by this title for a period not **[in excess of an]** *exceeding two* additional banking **[day]** *days* without discharge of **[secondary parties and without]** *drawers or indorsers or* liability to its transferor or **[any]** *a* 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 *the delay is* caused by interruption of communication *or computer* facilities, suspension of payments by another bank, war, emergency conditions, *failure of equipment* or other circumstances beyond the control of the bank **[provided it]** *and the bank* 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.]

Section 9. Title 13 is amended by adding sections to read:

§ 4110. Electronic presentment.

(a) Definition of "agreement for electronic presentment".—"Agreement for electronic presentment" means an agreement, clearinghouse rule or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item ~~or~~ information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor and other matters concerning items subject to the agreement.

(b) When presentment made.—Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) Presentment by presentment notice.—If presentment is made by presentment notice, a reference to "item" or "check" in this division means the presentment notice unless the context otherwise indicates.

§ 4111. Statute of limitations.

An action to enforce an obligation, duty or right arising under this division must be commenced within three years after the cause of action accrues.

Section 10. Sections 4201, 4202, 4203, 4204, 4205, 4206 and 4207 of Title 13 are amended to read:

§ 4201. **[Presumption and duration of agency status]** *Status* of collecting **[banks]** *bank as agent* 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]** *before* 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]**, *the bank, with respect to the item,* 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 *recoupment or* setoff. **[When]** *If* an item is handled by banks for purposes of presentment, payment **[and collection]**, *collection or return,* the relevant provisions of this division apply even though action of *the* 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 ***until the item has been***:

(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 ***or return***; when action **[seasonable]** ***timely***.

(a) When collecting bank must **[use]** ***exercise*** ordinary care.—A collecting bank must **[use]** ***exercise*** 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 depositary 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; ***and***

(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.]** ***Exercise of ordinary care.—A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.***

(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 the possession of others or*** in transit **[or in the possession of others]**.

§ 4203. Effect of instructions.

Subject to **[the provisions of]** Division 3 **[(relating to commercial paper)]** ***(relating to negotiable instruments)*** concerning conversion of instruments **[(section 3419) and the provisions of both Division 3 and this division concerning]** ***(section 3420) and*** restrictive indorsements ***(section 3206)***, only a collecting bank's transferor can give instructions **[which]** ***that*** 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]** ***the*** instructions or in accordance with any agreement with its transferor.

§ 4204. Methods of sending and presenting; sending **[direct]** ***directly*** to payor bank.

(a) Collecting bank to send items by reasonably prompt method.—A collecting bank **[must]** ***shall*** send items by ***a*** reasonably prompt method, taking into consideration **[any]** relevant instructions, the nature of the item, the number of **[such]** ***those*** items on hand, **[and]** the cost of collection involved and the method generally used by it or others to present **[such]** ***those*** items.

(b) Persons to whom bank may send items.—A collecting bank may send:

(1) **[any item direct]** ***an item directly*** to the payor bank;

(2) **[any item to any]** ***an item to a*** nonbank payor if authorized by its transferor; and

(3) **[any]** ***an*** item other than documentary drafts to **[any]** ***a*** nonbank payor, if authorized by Federal Reserve regulation or operating **[letter, clearing house rule]** ***circular, clearinghouse 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 ***or other payor*** has requested that presentment be made.

[§ 4205. Supplying missing indorsement; no notice from prior indorsement.

(a) Supplying missing indorsement.—A depositary 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 depositary 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 depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the immediate transferor of the bank.]

§ *4205. Depositary bank holder of unindorsed item.*

If a customer delivers an item to a depositary bank for collection:

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of section 3302 (relating to holder in due course), it is a holder in due course; and

(2) the depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

§ 4206. Transfer between banks.

Any agreed method **[which]** ***that*** 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 war-

ranties 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.]

§ 4207. Transfer warranties.

(a) General rule.—A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) the warrantor is a person entitled to enforce the item;

(2) all signatures on the item are authentic and authorized;

(3) the item has not been altered;

(4) the item is not subject to a defense or claim in recoupment (section 3305(a)) of any party that can be asserted against the warrantor; and

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) Effect of dishonor.—If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3115 (relating to incomplete instrument) and 3407 (relating to alteration). The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) Measure of damages for breach of warranty.—A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) Prohibition against certain disclaimers and discharge.—The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) Cause of action.—A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 11. Title 13 is amended by adding sections to read:

§ 4208. Presentment warranties.

(a) General rule.—If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered; and

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) Measure of damages for breach of warranty.—A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) Defense.—If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3404 (relating to imposters; fictitious payees) or 3405 (relating to employer's responsibility for fraudulent indorsement by employee) or the drawer is precluded under section 3406 (relating to negligence contributing to forged signature or alteration of instrument) or 4406 (relating to duty of customer to discover and report unauthorized signature or alteration) from asserting against the drawee the unauthorized indorsement or alteration.

(d) Other warranties.—If a dishonored draft is presented for payment to the drawer or an indorser or any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) Prohibition against certain disclaimers and discharge.—The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach

and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) Cause of action.—A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 4209. Encoding and retention warranties.

(a) Encoding warranty.—A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) Retention warranty.—A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) Measure of damages for breach of warranty.—A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Section 12. Sections 4208, 4209, 4210 and 4211 of Title 13 are amended to read:

§ **[4208]** *4210.* Security interest of collecting bank in items, accompanying documents and proceeds.

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

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

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon **[and whether or not]** *or* 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]** *If credit* 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]** *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 *to that extent* and is subject to **[the provisions of]** Division 9 (relating to secured transactions) **[except that]**, *but*:

(1) no security agreement is necessary to make the security interest enforceable (section 9203(a)[(2)]*(1)* (relating to attachment and 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]** ***4211.*** When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, **[the]** ***a*** bank has given value to the extent **[that]** it has a security interest in an item **[provided that],** ***if*** the bank otherwise complies with the requirements of section 3302 (relating to holder in due course).

§ **[4210]** ***4212.*** Presentment by notice of item not payable by, through or at a bank; liability of **[secondary parties]** ***drawer or indorser.***

(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)]** ***3501 (relating to presentment)*** 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]** ***drawer or indorser.—If*** presentment is made by notice and **[neither honor nor]** ***payment, acceptance or*** request for compliance with a requirement under section **[3505 is]** ***3501 is not*** 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]** ***drawer or indorser*** by sending **[him]** *it* 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.]

Section 13. Title 13 is amended by adding a section to read:

§ *4213. Medium and time of settlement by bank.*

(a) Certain rules regarding settlement by bank.—With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearinghouse rules, and the like, or agreement. In the absence of such prescription:

(1) the medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) the time of settlement is:

(i) with respect to tender of settlement by cash, a cashier's check or teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to section 4A406(a) (relating to payment by originator to beneficiary; discharge of underlying obligation) to the person receiving settlement.

(b) When settlement occurs under certain circumstances not covered by subsection (a).—If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no set-

tlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) Settlement by cashier's check or teller's check.—If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) Settlement by tender of authority to charge account of bank making settlement in bank receiving settlement.—If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

Section 14. Sections 4212, 4213, 4214, 4301, 4302, 4303, 4401, 4402, 4403, 4405, 4406, 4407, 4501, 4502, 4503 and 4504 of Title 13 are amended to read:

§ **[4212]** *4214.* Right of charge-back or refund*; liability of collecting bank; return of item.*

(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. *If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit or obtain refund from its customer, but it is liable for any loss resulting from the delay.* 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 depositary 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 depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary 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.]** *Return of item by collecting bank.—A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.*

(c) Right of depositary-payor bank to charge-back or refund.—A depositary bank **[which]** ***that*** 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]** ***previous use of a*** credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item **[but any]**, ***but a*** 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]** ***money***.—If credit is given in dollars as the equivalent of the value of an item payable in **[a foreign currency]** ***foreign money,*** the dollar amount of any charge-back or refund **[shall]** ***must*** be calculated on the basis of the **[buying sight]** ***bank-offered spot*** rate for the foreign **[currency]** ***money*** 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]** ***4215.*** 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 ***first*** done any of the following**[, whichever happens first]**:

(1) Paid the item in cash.

(2) Settled for the item without **[reserving]** ***having*** a right to revoke the settlement **[and without having such right]** under statute, **[clearing house rule]** ***clearinghouse 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]** ***clearinghouse*** 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) Effect of provisional settlement which does not become final.—If provisional settlement for an item does not become final, the item is not finally paid.

[(b)] ***(c)*** 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]** ***clearinghouse*** 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)] ***(d)*** 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)] ***(e)*** When credit becomes available for withdrawal.—Subject to ***applicable law stating a time for availability of funds and*** 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]** ***a customer's account*** becomes available for withdrawal as of right:

(1) **[in any case where]** ***if*** the bank has received a provisional settlement for the item, when **[such]** ***the*** settlement becomes final and the bank has had a reasonable time to **[learn that the settlement is final]** ***receive return of the item and the item has not been received within that time***; and

(2) **[in any case where]** ***if*** the bank is both **[a]** ***the*** depositary bank and **[a]** ***the*** 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)] ***(f)*** When deposit of money becomes available for withdrawal.—**[A deposit of money in a bank is final when made but, subject to]** ***Subject to applicable law stating a time for availability of funds and*** any right of **[the]** ***a*** bank to apply **[the]** ***a*** deposit to an obligation of the **[customer, the deposit]** ***depositor, a deposit of money*** becomes available for withdrawal as of right at the opening of the next banking day of the bank **[following]** ***after*** receipt of the deposit.

§ **[4214]** ***4216***. Insolvency and preference.

(a) Return of unpaid item by agent of closed bank.—**[Any item in or coming]** ***If an item is in or comes*** into the possession of a payor or collecting bank **[which]** ***that*** suspends payment and **[which item is not]** ***the item has not been*** finally paid **[shall]**, ***the item must*** 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]** ***settlement's*** becoming final if **[such]** ***the*** 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 ***the bank*** suspends payments without making a settlement for the item with its customer which ***settlement***

is or becomes final, the owner of the item has a preferred claim against **[such]** ***the*** collecting bank.

§ 4301. Deferred posting; recovery of payment by return of items; time of dishonor***; return of items by payor bank***.

(a) Return by payor bank of item provisionally settled.—**[Where an authorized settlement]** ***If a payor bank settles*** for a demand item **[(other than a documentary draft) received by a payor bank]** ***other than a documentary draft presented*** 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]** ***the settlement 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]** ***the*** 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]** ***presented*** through a **[clearing house]** ***clearinghouse***, when it is delivered to the presenting or last collecting bank or to the **[clearing house]** ***clearinghouse*** or is sent or delivered in accordance with **[its]** ***clearinghouse*** 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] ***(a) General rule.—If*** an item is presented **[on]** ***to*** 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]** ***in which*** it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, **[regardless of]** whether ***or not*** it is also the depositary 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.

(b) Liability of payor bank subject to certain defenses.—The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (section 4208) or proof that the

person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

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

(a) When items subject to knowledge, notice, **[stop-order]** ***stop-payment order***, legal process or set-off.—Any knowledge, notice or **[stop-order]** ***stop-payment order*** received by, legal process served upon or set-off exercised by a payor bank**[, whether or not effective under other rules of law]** ***comes too late*** 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]** ***stop-payment 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]** ***earliest*** of the following:

(1) **[Accepted or certified]** ***The bank accepts or certifies*** the item.

(2) **[Paid]** ***The bank pays*** the item in cash.

(3) **[Settled]** ***The bank settles*** for the item without **[reserving]** ***having*** a right to revoke the settlement **[and without having such right]** under statute, **[clearing house]** ***clearinghouse*** 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] ***The bank becomes*** 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).

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(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]**.

§ 4401. When bank may charge account of customer.

(a) General rule.—**[As against its customer, a]** *A* bank may charge against **[his account any item which is otherwise]** ***the account of a customer an item that is*** properly payable from that account even though the charge creates an overdraft. ***An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.***

(b) Limitation on customer liability.—A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) Postdated checks.—A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 4403(b) (relating to right of customer to stop payment; burden of proof of loss) for stop-payment orders and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 4303 (relating to when items subject to notice, stop-payment order, legal process or set-off; order in which items may be charged or certified). If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 4402 (relating to liability of bank to customer for wrongful dishonor; time of determining insufficiency of account).

[(b)] *(d)* Payment to holder on altered or completed item.—A bank **[which]** *that* in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) the original **[tenor of his]** *terms of the* altered item; or

(2) the **[tenor of his]** *terms of the* 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*; time of determining insufficiency of account*.

(a) Wrongful dishonor.—Except as otherwise provided in this division, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) Liability of bank.—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]** *Liability* is limited to actual damages proved**[. If so proximately caused and proved damages]** *and* 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.

(c) Determination of bank.—A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

§ 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]** ***or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty*** received at **[such]** ***a*** time and in **[such manner as to afford]** ***a manner that affords*** the bank a reasonable opportunity to act on it **[prior to]** ***before*** any action by the bank with respect to the item described in section 4303 (relating to when items subject to notice, **[stop-order]** ***stop-payment order***, legal process or set-off**[)].]**; ***order in which items may be charged or certified). If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.***

(b) Duration of **[stop payment]** ***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.]** ***A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.***

(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]** ***stop-payment order or order to close an account*** is on the customer. ***The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 4402 (relating to liability of bank to customer for wrongful dishonor; time of determining insufficiency of account).***

§ 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]** ***the*** 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]** ***before*** 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.] ***Statement of account.—A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount and date of payment.***

(b) Retention of items.—If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) Duty of customer.—If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

[(b)] ***(d)*** Effect of failure to report unauthorized signature or alteration.—If the bank **[establishes]** ***proves*** that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection **[(a)]** ***(c)***, the customer is precluded from asserting against the bank:

(1) **[his]** ***the customer's*** unauthorized signature or any alteration on the item if the bank also **[establishes]** ***proves*** that it suffered a loss by reason of **[such]** ***the*** failure; and

(2) **[an]** ***the customer's*** 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.]** ***if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.***

[(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.]

(e) Allocation of loss.—If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

[(d)] *(f)* 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]** *after* the statement **[and]** *or* items are made available to the customer (subsection (a)) discover and report **[his]** *the customer's* unauthorized signature *on* 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]** *on the item* is precluded from asserting against the bank **[such]** *the* unauthorized signature **[or indorsement or such]** *or* alteration. *If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 4208 (relating to presentment warranties) with respect to the unauthorized signature or alteration to which the preclusion applies.*

[(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 *to stop payment, or after an account has been closed,* 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]** *is* 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.

§ 4501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank **[which]** *that* takes a documentary draft for collection **[must]** *shall* 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]**, *shall* seasonably notify its customer of **[such]** *the* 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] ***If*** 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]** ***the*** 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]** ***the referee's 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] ***However,*** 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]** ***those*** 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]** ***that,*** 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.

Section 15. Title 13 is amended by adding a division to read:

DIVISION 4A
FUNDS TRANSFERS

Chapter

4A1. Subject Matter and Definitions
4A2. Issue and Acceptance of Payment Order
4A3. Execution of Sender's Payment Order by Receiving Bank
4A4. Payment
4A5. Miscellaneous Provisions

CHAPTER 4A1
SUBJECT MATTER AND DEFINITIONS

Sec.
4A101. Short title of division.
4A102. Subject matter.
4A103. Payment order; definitions.
4A104. Funds transfer; definitions.
4A105. Other definitions.
4A106. Time payment order is received.
4A107. Federal Reserve regulations and operating circulars.
4A108. Exclusion of consumer transactions governed by Federal law.

§ 4A101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Article 4A, Funds Transfers.

§ 4A102. Subject matter.

Except as otherwise provided in section 4A108 (relating to exclusion of consumer transactions governed by Federal law), this division applies to funds transfers defined in section 4A104 (relating to funds transfer; definitions).

§ 4A103. Payment order; definitions.

(a) Definition of "payment order" and related terms.—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:

(1) "Payment order." An instruction of a sender to a receiving bank, transmitted orally, electronically or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system or communication system for transmittal to the receiving bank.

(2) "Beneficiary." The person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank." The bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank." The bank to which the sender's instruction is addressed.

(5) "Sender." The person giving the instruction to the receiving bank.

(b) Instruction.—If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) When payment order is issued.—A payment order is issued when it is sent to the receiving bank.

§ 4A104. Funds transfer; definitions.

(a) Definition of "funds transfer".—"Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) Definition of "intermediary bank".—"Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) Definition of "originator".—"Originator" means the sender of the first payment order in a funds transfer.

(d) Definition of "originator's bank".—"Originator's bank" means:

(1) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(2) the originator if the originator is a bank.

§ 4A105. Other 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:

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

"Bank." A person engaged in the business of banking, including a savings bank, savings and loan association, credit union and trust company. A branch or separate office of a bank is a separate bank for purposes of this division.

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

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

"Funds-transfer system." A wire transfer network, automated clearinghouse or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

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

"Prove." With respect to a fact, means to meet the burden of establishing the fact (section 1201).

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

"Acceptance." Section 4A209.
"Beneficiary." Section 4A103.
"Beneficiary's bank." Section 4A103.
"Executed." Section 4A301.
"Execution date." Section 4A301.
"Funds transfer." Section 4A104.
"Funds-transfer system rule." Section 4A501.
"Intermediary bank." Section 4A104.
"Originator." Section 4A104.
"Originator's bank." Section 4A104.
"Payment by beneficiary's bank to beneficiary." Section 4A405.
"Payment by originator to beneficiary." Section 4A406.
"Payment by sender to receiving bank." Section 4A403.
"Payment date." Section 4A401.
"Payment order." Section 4A103.
"Receiving bank." Section 4A103.
"Security procedure." Section 4A201.
"Sender." Section 4A103.

(c) Index of definitions in other divisions.—The following definitions in Division 4 (relating to bank deposits and collections) apply to this division:
"Clearinghouse." Section 4104.
"Item." Section 4104.
"Suspends payments." Section 4104.

(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.

§ 4A106. Time payment order is received.

(a) General rule.—The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1201 (relating to general definitions). A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations or amendments or to different categories of payment orders, cancellations or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) When date of certain required action does not fall on funds-transfer business day.—If this division refers to an execution date or payment date or states a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a

funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this division.

§ 4A107. Federal Reserve regulations and operating circulars.

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve banks supersede any inconsistent provision of this division to the extent of the inconsistency.

§ 4A108. Exclusion of consumer transactions governed by Federal law.

This division does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.), as amended from time to time.

CHAPTER 4A2
ISSUE AND ACCEPTANCE OF PAYMENT ORDER

Sec.

§ 4A201. Security procedure.

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of:

(1) verifying that a payment order or communication amending or canceling a payment order is that of the customer; or

(2) detecting error in the transmission or the content of the payment order or communication.

A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

§ 4A202. Authorized and verified payment orders.

(a) Authorized payment order.—A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) Verified payment order.—If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if:

(1) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders; and

(2) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer.

The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of security procedure.—Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if:

(1) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer; and

(2) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) Definition of "sender".—The term "sender" in this division includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) Amendments and cancellations of payment orders.—This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Rights and obligations.—Except as provided in this section and in section 4A203(a)(1) (relating to unenforceability of certain verified payment orders), rights and obligations arising under this section or section 4A203 may not be varied by agreement.

§ 4A203. Unenforceability of certain verified payment orders.

(a) General rule.—If an accepted payment order is not, under section 4A202(a) (relating to authorized and verified payment orders), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 4A202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault.

Information includes any access device, computer software or the like.

(b) Amendments of payment orders.—This section applies to amendments of payment orders to the same extent it applies to payment orders.

§ 4A204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) General rule.—If a receiving bank accepts a payment order issued in the name of its customer as sender which is not authorized and not effective as the order of the customer under section 4A202 (relating to authorized and verified payment orders) or not enforceable, in whole or in part, against the customer under section 4A203 (relating to unenforceability of certain verified payment orders), the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time.—Reasonable time under subsection (a) may be fixed by agreement as stated in section 1204(b) (relating to time; reasonable time; "seasonably"), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

§ 4A205. Erroneous payment orders.

(a) Types of erroneous payment orders.—

(1) The rules set forth under paragraph (2) apply if an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order:

(i) erroneously instructed payment to a beneficiary not intended by the sender;

(ii) erroneously instructed payment in an amount greater than the amount intended by the sender; or

(iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender.

(2) (i) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 4A206 (relating to transmission of payment order through funds-transfer or other communication system) complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subparagraphs (ii) and (iii).

(ii) If the funds transfer is completed on the basis of an erroneous payment order described in paragraph (1)(i) or (iii), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(iii) If the funds transfer is completed on the basis of a payment order described in paragraph (1)(ii), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) Duty of sender.—If the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) Amendments to payment orders.—This section applies to amendments to payment orders to the same extent it applies to payment orders.

§ 4A206. Transmission of payment order through funds-transfer or other communication system.

(a) General rule.—If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve banks.

(b) Cancellations and amendments of payment orders.—This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

§ 4A207. Misdescription of beneficiary.

(a) Reference to nonexistent or unidentifiable person or account.—Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) Name and account number identify different persons.—If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) Applicable rules when bank pays person identified by number.—If a payment order described in subsection (b) is accepted, the originator's payment order described the beneficiary inconsistently by name and number and the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) When person identified by number not entitled to receive payment.—In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered

from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

§ 4A208. Misdescription of intermediary bank or beneficiary's bank.

(a) Identification only by identifying number.—This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number:

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) Identification by name and identifying number; identification of different persons.—This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons:

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by paragraph (1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the

sender's payment order is a breach of the obligation stated in section 4A302(a)(1) (relating to obligations of receiving bank in execution of payment order).

§ 4A209. Acceptance of payment order.

(a) Receiving bank.—Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Beneficiary's bank.—Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank:

(i) pays the beneficiary as stated in section 4A405(a) or (b) (relating to payment by beneficiary's bank to beneficiary); or

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to section 4A403(a)(1) or (2) (relating to payment by sender to receiving bank); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within one hour after that time, or one hour after the opening of the next business day of the sender following the payment date if that time is later.

If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Limitations on acceptance.—Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) Payment order by originator of funds transfer to originator's bank.—A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the

payment order is subsequently canceled pursuant to section 4A211(b) (relating to cancellation and amendment of payment order), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

§ 4A210. Rejection of payment order.

(a) Manner of rejection.—A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, any means complying with the agreement is reasonable and any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) When sender learns after execution date that sender's order has not been executed.—This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 4A211(d) (relating to cancellation and amendment of payment order) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) When receiving bank suspends payments.—If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance and rejection; mutually exclusive.—Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

§ 4A211. Cancellation and amendment of payment order.

(a) Communication.—A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Communication received before payment order accepted.—Subject to subsection (a), a communication by the sender canceling or amending a

payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) Communication received after payment order accepted.—After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank:

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order:

(i) that is a duplicate of a payment order previously issued by the sender;

(ii) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator.

If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) When unaccepted payment order canceled by operation of law.—An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) Canceled payment order.—A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Liability of sender.—Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) When payment order revoked by death or incompetency.—A payment order is not revoked by the death or incompetency of the sender unless the receiving bank knows of the death or of an adjudication of incom-

petency under 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) and has reasonable opportunity to act before acceptance of the order.

(h) When funds-transfer system rule not effective.—A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

§ 4A212. Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this division but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this division or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 4A209 (relating to acceptance of payment order), and liability is limited to that provided in this division. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this division or by express agreement.

CHAPTER 4A3
EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

Sec.

§ 4A301. Execution and execution date.

(a) Execution.—A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) Execution date.—"Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

§ 4A302. Obligations of receiving bank in execution of payment order.

(a) General rule.—Except as provided in subsections (b), (c) and (d), if the receiving bank accepts a payment order pursuant to section 4A209(a) (relating to acceptance of payment order), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning:

(i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer; or

(ii) the means by which payment orders are to be transmitted in the funds transfer.

If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Discretion of receiving bank.—Unless otherwise instructed, a receiving bank executing a payment order may:

(1) use any funds-transfer system if use of that system is reasonable in the circumstances; and

(2) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank.

A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Manner by which receiving bank may execute payment order in certain circumstances.—Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Certain prohibited acts of receiving bank.—Unless instructed by the sender, the receiving bank:

(1) may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and

(2) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

§ 4A303. Erroneous execution of payment order.

(a) Issuance of payment order in amount greater than amount of sender's order.—A receiving bank that:

(1) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order; or

(2) issues a payment order in execution of the sender's order and then issues a duplicate order;

is entitled to payment of the amount of the sender's order under section 4A402(c) (relating to obligation of sender to pay receiving bank) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) Issuance of payment order in amount less than amount of sender's order.—A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 4A402(c) if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) Issuance of payment order to wrong beneficiary.—If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

§ 4A304. Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in section 4A303 (relating to erroneous execution of payment order) receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 4A402(d) (relating to obligation of

sender to pay receiving bank) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

§ 4A305. Liability for late or improper execution or failure to execute payment order.

(a) Liability for improper execution resulting in delay in payment.—If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 4A302 (relating to obligations of receiving bank in execution of payment order) results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) Other liability resulting from improper execution.—If execution of a payment order by a receiving bank in breach of section 4A302 results in:

(1) noncompletion of the funds transfer;

(2) failure to use an intermediary bank designated by the originator; or

(3) issuance of a payment order that does not comply with the terms of the payment order of the originator;

the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) Additional damages.—In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) Failure to execute payment order.—If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Attorney fees.—Reasonable attorney fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Prohibition against modification of liability by agreement.—Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

CHAPTER 4A4
PAYMENT

Sec.
4A401. Payment date.
4A402. Obligation of sender to pay receiving bank.
4A403. Payment by sender to receiving bank.
4A404. Obligation of beneficiary's bank to pay and give notice to beneficiary.
4A405. Payment by beneficiary's bank to beneficiary.
4A406. Payment by originator to beneficiary; discharge of underlying obligation.

§ 4A401. Payment date.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

§ 4A402. Obligation of sender to pay receiving bank.

(a) Scope of section.—This section is subject to sections 4A205 (relating to erroneous payment orders) and 4A207 (relating to misdescription of beneficiary).

(b) Payment order issued to beneficiary's bank.—With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) Payment order issued to receiving bank other than beneficiary's bank.—This subsection is subject to subsection (e) and to section 4A303 (relating to erroneous execution of payment order). With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) Refund.—If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 4A204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order) and 4A304 (relating to duty of sender to report erroneously executed payment order), interest is payable on the refundable amount from the date of payment.

(e) Certain subrogation rights.—If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund

payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 4A302(a)(1) (relating to obligations of receiving bank in execution of payment order), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) Prohibition against modification by agreement of certain rights of sender.—The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

§ 4A403. Payment by sender to receiving bank.

(a) When payment occurs.—Payment of the sender's obligation under section 4A402 (relating to obligation of sender to pay receiving bank) to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve bank or through a funds-transfer system.

(2) If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) Multilateral settlements.—If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) When two banks transmit payment orders to each other under agreement that settlement will be at certain date.—If two banks transmit payment

orders to each other under an agreement that settlement of the obligations of each bank to the other under section 4A402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) Other cases when payment occurs.—In a case not covered by subsection (a), the time when payment of the sender's obligation under section 4A402(b) or (c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

§ 4A404. Obligation of beneficiary's bank to pay and give notice to beneficiary.

(a) Obligation.—Subject to sections 4A211(e) (relating to cancellation and amendment of payment order) and 4A405(d) and (e) (relating to payment by beneficiary's bank to beneficiary), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) Notice.—If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) Prohibition against modification of certain rights of beneficiary.—The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

§ 4A405. Payment by beneficiary's bank to beneficiary.

(a) Beneficiary's bank credits an account of beneficiary; when payment occurs.—If the beneficiary's bank credits an account of the beneficiary of a

payment order, payment of the bank's obligation under section 4A404(a) (relating to obligation of beneficiary's bank to pay and give notice to beneficiary) occurs when and to the extent:

(1) the beneficiary is notified of the right to withdraw the credit;

(2) the bank lawfully applies the credit to a debt of the beneficiary; or

(3) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) Beneficiary's bank does not credit an account of beneficiary; when payment occurs.—If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 4A404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Certain conditions to payment or agreements not enforceable.—Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) Automated clearinghouse transfers.—A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(1) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(2) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule; and

(3) the beneficiary's bank did not receive payment of the payment order that it accepted.

If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 4A406 (relating to payment by originator to beneficiary; discharge of underlying obligation).

(e) Funds-transfer systems having loss-sharing rules.—This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, the beneficiary's bank is entitled to recover payment from

the beneficiary, no payment by the originator to the beneficiary occurs under section 4A406 and, subject to section 4A402(e) (relating to obligation of sender to pay receiving bank), each sender in the funds transfer is excused from its obligation to pay its payment order under section 4A402(c) because the funds transfer has not been completed.

§ 4A406. Payment by originator to beneficiary; discharge of underlying obligation.

(a) Payment.—Subject to sections 4A211(e) (relating to cancellation and amendment of payment order) and 4A405(d) and (e) (relating to payment by beneficiary's bank to beneficiary), the originator of a funds transfer pays the beneficiary of the originator's payment order:

(1) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(2) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) Discharge.—If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless:

(1) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation;

(2) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment;

(3) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and

(4) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract.

If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 4A404(a) (relating to obligation of beneficiary's bank to pay and give notice to beneficiary).

(c) Rule for determining whether discharge occurs.—For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless, upon demand by the beneficiary, the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights may be varied only by agreement.—Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

CHAPTER 4A5
MISCELLANEOUS PROVISIONS

Sec.

§ 4A501. Variation by agreement and effect of funds-transfer system rule.

(a) Variation by agreement.—Except as otherwise provided in this division, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) Effect of funds-transfer system rule.—"Funds-transfer system rule" means a rule of an association of banks:

(1) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders; or

(2) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

Except as otherwise provided in this division, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this division and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 4A404(c) (relating to obligation of beneficiary's bank to pay and give notice to beneficiary), 4A405(d) (relating to payment by beneficiary's bank to beneficiary) and 4A507(c) (relating to choice of law).

§ 4A502. Creditor process served on receiving bank; setoff by beneficiary's bank.

(a) Definition.—As used in this section, the term "creditor process" means levy, attachment, garnishment, notice of lien, sequestration or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) Creditor process served on receiving bank.—This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the

creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) Payment orders issued to beneficiary's bank.—If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process served on beneficiary's bank.—Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

§ 4A503. Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain:

(1) a person from issuing a payment order to initiate a funds transfer;

(2) an originator's bank from executing the payment order of the originator; or

(3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order or otherwise acting with respect to a funds transfer.

§ 4A504. Order in which items and payment orders may be charged to account; order of withdrawals from account.

(a) Priority among obligations paid from account.—If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) Priority among withdrawals from account.—In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

§ 4A505. Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted

by the bank and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

§ 4A506. Rate of interest.

(a) By agreement or funds-transfer system rule.—If, under this division, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(1) by agreement of the sender and receiving bank; or

(2) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) Method of calculation when not determined by agreement or rule.—If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

§ 4A507. Choice of law.

(a) General rule.—The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) By agreement.—If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) By funds-transfer system rule.—A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(1) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(2) the rights and obligations of some or all parties to a funds transfer, any part of which is carried out by means of the system.

A choice of law made pursuant to paragraph (1) is binding on participating banks. A choice of law made pursuant to paragraph (2) is binding on the originator, other sender or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) Inconsistency between agreement and rule.—In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) Inconsistency between choice-of-law rules of systems.—If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the system, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Section 16. Sections 5101, 5103(c), 5111(a) and 5114(b) introductory paragraph and (1) of Title 13 are amended to read:

§ 5101. Short title of division.

This division shall be known and may be cited as the ["]Uniform Commercial Code[—], ***Article 5,*** Letters of Credit.["]

§ 5103. Definitions and index of definitions.

* * *

(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]** ***Section 3409.***

"Contract for sale." Section 2106.

"Draft." Section 3104.

"Holder in due course." Section 3302.

"Midnight deadline." Section 4104.

"Security." Section 8102.

* * *

§ 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]** ***negotiable instruments***), 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).

* * *

§ 5114. Duty and privilege of issuer to honor; right to reimbursement.

* * *

(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 ***certificated*** 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 ***certificated*** security (section 8302); and

* * *

Section 17. Division 6 of Title 13 is repealed.

Section 18. Sections 7101, 8101, 8102, 8103, 8104, 8105, 8106 and 8107 of Title 13 are amended to read:

§ 7101. Short title of division.

This division shall be known and may be cited as the **["]**Uniform Commercial Code**[—]**, ***Article 7,*** Documents of Title.**["]**

§ 8101. Short title of division.

This division shall be known and may be cited as the **["]**Uniform Commercial Code**[—]**, ***Article 8,*** 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:

"Certificated security."

(1) A share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

(i) represented by an instrument issued in bearer or registered form;

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

(2) If a partnership interest in a limited partnership is evidenced by a certificate of partnership interest, the certificate is a certificated security.

"Clearing corporation." A corporation ***registered as a "clearing agency" under the Federal securities laws or a corporation***:

(1) at least 90% of **[the]** ***whose*** capital stock **[of which]** is held by or for one or more **[persons (other than individuals)]** ***organizations, none of which, other than a national securities exchange or association, holds in excess of 20% of the capital stock of the corporation, and*** each of **[whom]** ***which is***:

(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]** ***Federal securities laws***; 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]** ***the Federal securities laws***;

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]** ***it*** at or prior to the time of their taking office as directors of **[such]** ***the*** corporation and who have purchased only so much of such capital stock as **[may be]** ***is*** necessary to permit them to qualify as **[such]** directors.

"Custodian bank." **[Any]** *A* bank or trust company **[which]** ***that*** 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.]

"Security." A security is either a certificated or an uncertificated security:

(1) If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires.

(2) A writing **[which]** ***that*** is a ***certificated*** security is governed by this division and not by Division 3 (relating to **[commercial paper]** ***negotiable instruments***) even though it also meets the requirements of that division. This division does not apply to money.

(3) ***If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this division.***

(4) A ***certificated*** security is in "registered form" **[when]** ***if:***

(i) it specifies a person entitled to the security or to the rights it **[evidences]** ***represents;*** and **[when]**

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of **[an]** ***the*** issuer or the security so states.

[(4)] ***(5)*** A ***certificated*** security is in "bearer form" **[when]** ***if*** 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.

"Uncertificated security."

(1) A share, participation or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

(2) Any partnership interest in a limited partnership which is not evidenced by a certificated security is an uncertificated security only if the partnership interest is approved for trading on a national securities exchange registered under the Federal securities laws or for quotation in the automated quotation system of a national securities association registered under the Federal securities laws.

(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]** ***8302***.

"Bona fide purchaser." Section 8302.

"Broker." Section 8303.

"Debtor." Section 9105.

"Financial intermediary." Section 8313.

"Guarantee of the signature." Section 8402.

"Initial transaction statement." Section 8408.

"Instruction." Section 8308.

"Intermediary bank." Section 4105.

"Issuer." Section 8201.

"Overissue." Section 8104.

"Secured party." Section 9105.

"Security agreement." Section 9105.

(c) 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.

§ 8103. Lien of issuer.

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) the security is certificated and the right of the issuer to **[such]** ***the*** lien is noted conspicuously **[on the security.]** ***thereon; or***

(2) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration

of transfer, pledge or release, the initial transaction statement sent to the registered owner or the registered pledgee.

§ 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, *if*:

(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]** *the* security **[to]** *for* him *and either to deliver a certificated security or to register the transfer of an uncertificated security to him* against surrender of **[the]** *any certificated* 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]** *Certificated securities* negotiable; *statements and instructions not negotiable;* presumptions.

(a) **[Securities]** *Certificated securities* negotiable.—**[Securities]** *Certificated securities* governed by this division are negotiable instruments.

(b) *Statements not negotiable.—Statements (section 8408), notices or the like sent by the issuer of uncertificated securities and instructions (section 8308) are neither negotiable instruments nor certificated securities.*

(c) Presumptions and burden of proof.—In any action on a security:

(1) unless specifically denied in the pleadings, each signature on **[the]** *a certificated* security **[or]**, in a necessary indorsement, *on an initial transaction statement or on an instruction* is admitted;

(2) **[when]** *if* 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]** *if* signatures *on a certificated security* are admitted or established, production of the **[instrument]** *security* 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) *if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and*

(5) 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 *law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the* validity of a security, *the effectiveness of registration by the issuer,* and the rights and duties of the issuer with respect to*:*

(1) registration of transfer **[are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.]** *of a certificated security;*

(2) registration of transfer, pledge or release of an uncertificated security; and

(3) sending of statements of uncertificated securities.

§ 8107. Securities **[deliverable]** *transferable*; action for price.

(a) Securities **[deliverable]** *transferable.*—Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to **[deliver]** *transfer* securities may **[deliver]** *transfer* any *certificated* security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or in blank, *or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.*

(b) Action for price of securities.—**[When]** *If* the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price *of*:

(1) **[of]** *certificated* securities accepted by the buyer; **[and]**

(2) *uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and*

(3) **[of]** other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

Section 19. Title 13 is amended by adding a section to read:

§ *8108. Registration of pledge and release of uncertificated securities.*

A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this division are terminated by the registration of release.

Section 20. Sections 8201, 8202, 8203, 8204, 8205, 8206, 8207 and 8208 of Title 13 are amended to read:

§ 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 *certificated* 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]** *represented* by the *certificated* security;

(2) *creates shares, participations or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests or obligations are uncertificated securities;*

(3) directly or indirectly creates fractional interests in his rights or property, which fractional interests are **[evidenced]** *represented* by *certificated* securities; or

[(3)] ***(4)*** 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]** ***a certificated*** security ***or on statements of uncertificated securities sent pursuant to section 8408 (relating to statements of uncertificated securities).***

(c) Person for whom transfer books maintained.—With respect to registration of a transfer, ***pledge or release*** (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:

(1) if the security is certificated, those stated on the security **[and];**

(2) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or, if his interest is transferred to him other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(3) those made part of the security by reference, ***on the certificated security or in the initial transaction statement,*** 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 ***stated on the certificated security or contained in the statement.***

[Such a] ***A*** reference ***under paragraph (3)*** does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the ***certificated*** security ***or statement*** expressly states that a person accepting it admits **[such]** notice.

(b) Defect affecting validity of security.—

[(1)] A ***certificated*** security ***in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value,*** other than **[one]** ***a security*** 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]** ***with respect to the*** purchaser **[for value and]** ***if he is*** 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]** ***with respect to*** a subsequent purchaser for value and without notice of the defect.

[(2) The rule of paragraph (1)] ***This subsection*** applies to an issuer **[which]** ***that*** 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 ***certificated*** security ***or an initial transaction statement*** 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 ***of a certificated or uncertificated security,*** including nondelivery and conditional delivery of **[the]** ***a certificated*** 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]** ***that*** is the subject of the contract or in the plan or arrangement pursuant to which **[such]** ***the*** 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]** ***creating*** a right to immediate performance of the principal obligation **[evidenced]** ***represented*** by **[the]** ***a certificated*** security or **[which]** ***that*** 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 ***if***:

(1) **[if]** the act or event is one requiring the payment of money **[or],** the delivery of ***certificated*** securities, ***the registration of transfer of uncertificated securities,*** or **[both]** ***any of these*** on presentation or surrender of the ***certificated*** security **[and such],** ***the*** 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]** ***that*** has been revoked is not within subsection (a).

§ 8204. Effect of restrictions by issuer on transfer.

[Unless noted conspicuously on the security a] *A* restriction on transfer ***of a security*** imposed by the issuer, even though otherwise lawful, is ineffective **[except]** against **[a]** ***any*** person **[with]** ***without*** actual knowledge of it ~~unless:~~

(1) the security is certificated and the restriction is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or the registered pledgee.

§ 8205. Effect of unauthorized signature on **[issue]** ***certificated security or initial transaction statement.***

An unauthorized signature placed on a ***certificated*** security prior to or in the course of issue ***or placed on an initial transaction statement*** is ineffective **[except that],** ***but*** the signature is effective in favor of a purchaser for value **[and]** ***of the certificated security or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent, if the purchaser is*** without notice of the lack of authority **[if]** ***and*** 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]** ***of initial transaction statements or the*** immediate preparation for signing ***of any of them***; or

(2) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security ***or initial transaction statement.***

§ 8206. Completion or alteration of **[instrument]** ***certificated security or initial transaction statement.***

(a) Completion of ***certificated*** security **[containing necessary signatures.—Where a].**—***If a certificated*** 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]** ***the*** incorrectness.

(b) Enforceability of improperly altered ***certificated*** security.—A complete ***certificated*** security **[which]** ***that*** has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms.

(c) Completion of initial transaction statement.—If an initial transaction statement contains the signatures necessary to its validity, 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 statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(d) Effectiveness of improperly altered initial transaction statement.—A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

§ 8207. Rights ***and duties*** of issuer with respect to registered owners ***and registered pledges.***

(a) **[General rule]** ***Registered owner of certificated security.***—Prior to due presentment for registration of transfer of a ***certificated*** 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) *Registered owner of uncertificated security.—Subject to the provisions of subsections (c), (d) and (f), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.*

(c) Registered owner of uncertificated security subject to registered pledge.—The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(d) Transfer instructions from registered pledgee of uncertificated security.—Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(1) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(2) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(3) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(e) Continuity of perfection of security interest.—Continuity of perfection of a security interest is not broken by registration of transfer under subsection (d)(2) or by registration of release and pledge under subsection (d)(3), if the security interest is assigned.

(f) Uncertificated security subject to registered pledge.—If an uncertificated security is subject to a registered pledge:

(1) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(2) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(3) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(g) 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 *certificated* security *or an initial transaction statement* as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value *of the*

certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(1) the *certificated* security *or initial transaction statement* is genuine;

(2) his own participation in the issue *or registration of the transfer, pledge or release* of the security is within his capacity and within the scope of the **[authorization]** *authority* 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.

Section 21. The heading of Chapter 83 of Title 13 is amended to read:

CHAPTER 83
[PURCHASE] *TRANSFER*

Section 22. Sections 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8309, 8310, 8311, 8312, 8313, 8314, 8315, 8316, 8317, 8318, 8319 and 8320 of Title 13 are amended to read:

§ 8301. Rights acquired by purchaser**[; "adverse claim"; title acquired by bona fide purchaser]**.

(a) Rights acquired by purchaser.—Upon **[delivery]** *transfer* of a security *to a purchaser (section 8313),* 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.]** *unless the rights of the purchaser are limited by section 8302(d) (relating to "bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser).*

[(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)] *(b)* Rights acquired by **[purchaser]** *transferee* of limited interest.—A **[purchaser]** *transferee* of a limited interest acquires rights only to the extent of the interest **[purchased]** *transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.*

§ 8302. "Bona fide purchaser**[.]**"*; "adverse claim"; title acquired by bona fide purchaser.*

(a) Bona fide purchaser.—A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim*:*

(1) who takes delivery of a *certificated* security in bearer form or **[of one]** in registered form, issued **[to him]** or indorsed to him or in blank**[.]***;*

(2) to whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or

(3) to whom a security is transferred under the provisions of section 8313(a)(3), (4)(i) or (7) (relating to when transfer to purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary").

(b) Adverse claim.—"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.

(c) Rights acquired by bona fide purchaser.—A bona fide purchaser in addition to acquiring the rights of a purchaser (section 8301) also acquires his interest in the security free of any adverse claim.

(d) Limitation on rights acquired from bona fide purchaser.—Notwithstanding section 8301(a) (relating to rights acquired by purchaser), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.

§ 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]** *the* person is subject.

§ 8304. Notice to purchaser of adverse claims.

(a) **[General rule]** *Notice to purchaser of certificated security.*—A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) of a *certificated* 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) Notice to purchaser of uncertificated security.—A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under section 8403(d) (relating to duty of issuer as to adverse claims) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or the registered pledgee.

[(b)] *(c)* Duty of inquiry in fiduciary transactions.—The fact that the purchaser (including a broker for the seller or buyer) *of a certificated or uncertificated security* 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 *constructive*

notice of adverse claims. **[If, however,]** ***However, if*** 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]** ***that*** creates a right to immediate performance of the principal obligation **[evidenced]** ***represented*** by **[the]** ***a certificated*** security or **[which]** sets a date on or after which **[the]** ***a certificated*** 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]** ***transfer***:

(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 ***of certificated securities; warranties of originators of instructions.***

(a) Warranties of **[presenter to issuer]** ***person presenting certificated security.***—A person who presents a ***certificated*** 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 ***and*** without notice of adverse claims who receives a new, reissued or reregistered ***certificated*** security on registration of transfer ***or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him*** warrants only that he has no knowledge of any unauthorized signature (section 8311) in a necessary indorsement.

(b) Warranties of person transferring ***a certificated*** security to purchaser for value.—A person by transferring a ***certificated*** 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 ***of*** no fact which might impair the validity of the security.

(c) Warranties of intermediary delivering ***certificated*** security.—**[Where]** ***If*** a ***certificated*** 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]** ***a certificated*** 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 of person originating instruction; issuer.—A person who originates an instruction warrants to the issuer that:

(1) he is an appropriate person to originate the instruction; and

(2) at the time the instruction is presented to the issuer, he will be entitled to the registration of transfer, pledge or release.

(f) Warranties of person originating instruction; signature guarantor.—A person who originates an instruction warrants to any person specially guaranteeing his signature (section 8312(c)) that:

(1) he is an appropriate person to originate the instruction; and

(2) at the time the instruction is presented to the issuer:

(i) he will be entitled to the registration of transfer, pledge or release; and

(ii) the transfer, pledge or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction.

(g) Other warranties of person originating instruction.—A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (section 8312(f)) that:

(1) he is an appropriate person to originate the instruction;

(2) the uncertificated security referred to therein is valid; and

(3) at the time the instruction is presented to the issuer:

(i) the transferor will be entitled to the registration of transfer, pledge or release;

(ii) the transfer, pledge or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge or release will be rightful.

(h) Warranties of person who originates instruction of release or transfer.—If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of subsection (g)(2) and (3)(ii) and (iii).

(i) Warranties of person who transfers uncertificated security to purchaser for value.—A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(1) his transfer is effective and rightful; and

(2) the uncertificated security is valid.

[(e)] *(j)* Warranties, rights and privileges of broker.—A broker gives to his customer and to the issuer and a purchaser the *applicable* 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] *If* a *certificated* 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]** *Indorsements; instructions.*

(a) Manner of indorsement.—An indorsement of a *certificated* 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]** *his* 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.]

(c) Effect of partial indorsement.—An indorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(d) Definition of "instruction".—An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge or release from pledge of the uncertificated security specified therein be registered.

(e) Instruction originated by appropriate person.—An instruction originated by an appropriate person is:

(1) a writing signed by an appropriate person; or

(2) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized, and the issuer may rely on it as completed even though it has been completed incorrectly.

(f) Definition of "appropriate person" in certain cases.—An "appropriate person" in subsection (a) means the person specified by the certificated security or by special indorsement to be entitled to the security.

(g) Definition of "appropriate person" in other cases.—"An appropriate person" in subsection (e) means:

(1) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(2) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(h) Definition of "appropriate person" in additional cases.—In addition to the persons designated in subsections (f) and (g), "an appropriate person" in subsections (a) and (e) includes:

(1) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(2) if the persons designated are described as 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;

(3) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian or like fiduciary;

(4) if the persons designated are described as 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;

(5) a person having power to sign under applicable law or controlling instrument; and

(6) to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

(i) Indorser not a guarantor.—Unless otherwise agreed, the indorser of a certificated security by his indorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the

issuer but only the obligations provided in section 8306 (relating to warranties on presentment and transfer of certificated securities; warranties of originators of instructions).

[(f)] ***(j)*** Status of appropriate person.—Whether the person signing is appropriate is determined as of the date of signing and an indorsement ***made by or an instruction originated*** by **[such a person]** ***him*** does not become unauthorized for the purposes of this division by virtue of any subsequent change of circumstances.

[(g)] ***(k)*** 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, ***pledge or release,*** does not render his indorsement ***or an instruction originated by him*** unauthorized for the purposes of this division.

§ 8309. Effect of indorsement without delivery.

An indorsement of a ***certificated*** security, whether special or in blank, does not constitute a transfer until delivery of the ***certificated*** security on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the ***certificated*** security.

§ 8310. Indorsement of ***certificated*** security in bearer form.

An indorsement of a ***certificated*** 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]** ***possesses***.

§ 8311. Effect of unauthorized indorsement ***or instruction***.

Unless the owner ***or pledgee*** has ratified an unauthorized indorsement ***or instruction*** 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 ***certificated*** security on registration of transfer ***or received an initial transaction statement confirming the registration of transfer, pledge or release of an equivalent uncertificated security to him***; and

(2) an issuer who registers the transfer of a ***certificated*** security upon the unauthorized indorsement ***or who registers the transfer, pledge or release of an uncertificated security upon the unauthorized instruction*** is subject to liability for improper registration (section 8404).

§ 8312. Effect of guaranteeing signature, **[or]** indorsement ***or instruction***.

(a) Warranties of signature guarantor.—Any person guaranteeing a signature of an indorser of a ***certificated*** 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 person guaranteeing signature of originator of instruction.—Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction (section 8308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;

(3) the signer had legal capacity to sign; and

(4) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(c) Warranties of person specially guaranteeing signature of originator of an instruction.—Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (b)) but also warrants that at the time the instruction is presented to the issuer:

(1) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

(2) the transfer, pledge or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction.

(d) Limitations on warranties.—The guarantor under subsections (a) and (b) or the special guarantor under subsection (c) does not otherwise warrant the rightfulness of the particular transfer, pledge or release.

[(b)] *(e)* Warranties of indorsement guarantor.—Any person **[may guarantee]** *guaranteeing* an indorsement of a *certificated* security **[and by so doing warrants not only the signature (subsection (a))]** *makes not only the warranties of a signature guarantor under subsection (a)* but also *warrants* 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.]**

(f) Warranties of person guaranteeing certain instructions.—Any person guaranteeing an instruction requesting the transfer, pledge or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (c) but also warrants the rightfulness of the particular transfer, pledge or release in all respects.

(g) Matters which issuer may not require.—No issuer may require a special guarantee of signature (subsection (c)), a guarantee of indorsement (subsection (e)) or a guarantee of instruction (subsection (f)) as a condition to registration of transfer, pledge or release.

[(c)] *(h)* 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]** *the* person for any loss resulting from breach of the warranties.

§ 8313. When **[delivery]** ***transfer*** to purchaser occurs; **[broker of purchaser]** ***financial intermediary*** as **[holder]** ***bona fide purchaser; "financial intermediary."***

(a) When **[delivery]** ***transfer*** to purchaser occurs.—**[Delivery]** ***Transfer of a security or a limited interest (including a security interest) therein*** to a purchaser occurs **[when]** ***only***:

(1) ***at the time*** he or a person designated by him acquires possession of a ***certificated*** security;

(2) at the time the transfer, pledge or release of an uncertificated security is registered to him or a person designated by him;

[(2)] ***(3) at the time*** his **[broker]** ***financial intermediary*** acquires possession of a ***certificated*** security specially indorsed to or issued in the name of the purchaser;

[(3) his broker] ***(4) at the time a financial intermediary, not a clearing corporation,*** 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**[;]**:

(i) a specific certificated security in the possession of the financial intermediary;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

[(4)] ***(5)*** with respect to an identified ***certificated*** security to be delivered while still in the possession of a third person **[when]**, ***not a financial intermediary, at the time*** that person acknowledges that he holds for the purchaser; **[or]**

(6) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

[(5)] ***(7) at the time*** appropriate entries ***to the account of the purchaser or a person designated by him*** on the books of a clearing corporation are made under section 8320 (relating to transfer or pledge within **[a]** central depository system)**[.]**;

(8) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(9) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(10) with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraph (1), (2), (3), (4) or (7), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(b) Rights of purchaser in security held by **[broker]** *financial intermediary*.—The purchaser is the owner of a security held for him by **[his broker,]** *a financial intermediary,* but **[is not the holder]** *cannot be a bona fide purchaser of a security so held* except **[as]** *in the circumstances* specified in subsection (a)**[(2)]**(3), *(4)(i)* and **[(5)]** *(7)*. **[Where]** *If* a security *so held* is part of a fungible bulk, *as in the circumstances specified in subsection (a)(4)(ii) and (iii),* the purchaser is the owner of a proportionate property interest in the fungible bulk.

(c) Notice of adverse claim to security held by **[broker]** *financial intermediary*.—Notice of an adverse claim received by the **[broker]** *financial intermediary* or by the purchaser after the **[broker]** *financial intermediary* takes delivery *of a certificated security* as a holder for value *or after the transfer, pledge or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value* is not effective either as to the **[broker]** *financial intermediary* or as to the purchaser. However, as between the **[broker]** *financial intermediary* and the purchaser, the purchaser may demand **[delivery]** *transfer* of an equivalent security as to which no notice of **[an]** adverse claim has been received.

(d) Definition of "financial intermediary".—A "financial intermediary" is a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

§ 8314. Duty to **[deliver]** *transfer*, when completed.

(a) Sale through broker.—Unless otherwise agreed **[where]**, *if* 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]** *transfer at the time he;*

(i) places **[such]** a *certificated* 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];

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(2) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to **[deliver by placing the]** *transfer at the time he:*

(i) places a certificated security **[or a like security]** in the possession of the buying broker or a person designated by **[him or by effecting]** *the buying broker;*

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) effects 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]** *transfer* a security under a contract of purchase is not fulfilled until he:

(1) places **[the]** *a certificated* 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.]** *the purchaser;*

(2) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(3) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(c) Sales to brokers.—Unless made on an exchange, a sale to a broker purchasing for his own account is within **[this]** subsection *(b)* and not within subsection (a).

§ 8315. Action against **[purchaser]** *transferee* 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]** *as* against anyone except a bona fide purchaser, *may:*

(1) reclaim possession of the *certificated* security **[or]** ***wrongfully transferred;***

(2) obtain possession of any new *certificated* security **[evidencing]** ***representing*** all or part of the same rights **[or];**

(3) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(4) have damages.

(b) Unauthorized **[endorsement]** ***indorsements.***—If the transfer is wrongful because of an unauthorized indorsement ***of a certificated security,*** the owner may also reclaim or obtain possession of the security or ***a*** new ***certificated*** 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 ***certificated*** security ***or to compel the origination of a transfer instruction*** may be specifically enforced and **[its]** ***the*** transfer ***of a certificated or uncertificated security*** enjoined and **[the]** ***a certificated*** security impounded pending the litigation.

§ 8316. Right of purchaser to requisites for registration of transfer, ***pledge or release*** on books.

Unless otherwise agreed, the transferor **[must]** ***of a certificated security or the transferor, pledgor or pledgee of an uncertificated security*** on due demand ***must*** supply his purchaser with any proof of his authority to transfer, ***pledge or release*** or with any other requisite **[which may be]** necessary to obtain registration of the transfer, ***pledge or release*** of the security; but, if the transfer, ***pledge or release*** is not for value, a transferor, ***pledgor or pledgee*** need not do so unless the purchaser furnishes the necessary expenses. Failure ***within a reasonable time*** to comply with a demand made **[within a reasonable time]** gives the purchaser the right to reject or rescind the transfer, ***pledge or release.***

§ 8317. **[Attachment or levy upon security]** ***Rights of creditor.***

(a) **[Seizure required.—No]** ***General rule for certificated securities.—Subject to the exceptions in subsections (c) and (d), no*** attachment or levy upon a ***certificated*** security or any share or other interest **[evidenced]** ***represented*** thereby which is outstanding **[shall be]** ***is*** valid until the security is actually seized by the officer making the attachment or levy, but a ***certificated*** security which has been surrendered to the issuer may be **[attached or levied upon at the source.]** ***reached by a creditor by legal process at the chief executive office of the issuer in the United States.***

(b) General rule for uncertificated securities.—An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the chief executive office of the issuer in the United States.

(c) Reaching interest of debtor when secured party is not financial intermediary.—The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary

(or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(d) Reaching interest of debtor when secured party is financial intermediary.—The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(e) Effect of lien upon transfer of security to third party.—Unless otherwise provided by law, the lien of a creditor upon the interest of a debtor in a security obtained pursuant to subsection (c) or (d) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but, in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

[(b)] *(f)* Remedies available.—A creditor whose debtor is the owner of a security **[shall be]** *is* entitled to **[such]** aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching **[such]** *the* security or in satisfying the claim by means **[thereof as is]** allowed at law or in equity in regard to property **[which]** *that* cannot readily be **[attached or levied upon]** *reached* by ordinary legal process.

§ 8318. No conversion by good faith **[delivery]** *conduct*.

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 *certificated* securities and sold, pledged or delivered them *or has sold or caused the transfer or pledge of uncertificated securities over which he had control* 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]** *so to deal with the securities*.

§ 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]** *a certificated* security *or transfer instruction* has been accepted, *or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within ten days after receipt of the initial transaction statement confirming the registration,* or payment has been made, but the contract is enforceable under this paragraph only to the extent of **[such]** *the* delivery, *registration* 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 pleadings, testimony or otherwise in court that a contract was made for *the* 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 *or release*.—**[If a security:]** ***In addition to other methods, a transfer, pledge or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor or pledgee and increasing the account of the transferee, pledgee or pledgor by the amount of the obligation, or the number of shares or rights transferred, pledged or released, if the security is shown on the account of a transferor, pledgor or pledgee on the books of the clearing corporation, is subject to the control of the clearing corporation and:***

(1) ***if certificated:***

(i) is in the custody of **[a]** *the* clearing corporation **[or of]**, ***another clearing corporation,*** a custodian bank or a nominee of **[either subject to the instructions of the clearing corporation;]** ***any of them; and***

[(2)] ***(ii)*** is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation **[or]**, ***a*** custodian bank or a nominee of **[either; and]** ***any of them; or***

(2) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank or a nominee of any of them.

[(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 ***made*** 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 ***or releases*** of the same security.

(c) Effect of transfer **[or]**, pledge ***or release***.—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.]** ***is effective (section 8313) and the purchaser acquires the rights of the transferor (section 8301). A pledge or release under this section is the transfer of a limited interest.*** 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)).]** ***the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (section 8321).*** A transferee or pledgee under this section **[is a holder]** ***may be a bona fide purchaser (section 8302).***

(d) Transfer or pledge not a registration.—A transfer or pledge under this section **[does]** ***is*** 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]** ***or*** the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

Section 23. Title 13 is amended by adding a section to read:

§ *8321. Enforceability, attachment, perfection and termination of security interests.*

(a) Enforceability and attachment.—A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of section 8313(a) (relating to when transfer to purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary").

(b) Perfection.—A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under section 8313(a)(9) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of section 8313(a) are satisfied.

(c) Other provisions.—A security interest in a security is subject to the provisions of Division 9 (relating to secured transactions), but:

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

(2) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in section 8313(a)(8), (9) or (10).

The secured party has the rights and duties provided under section 9207 (relating to rights and duties when collateral in possession of secured party), to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(d) Termination and temporary perfection.—Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of section 8313(a). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal or registration of transfer. In that case, the security interest becomes

unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of section 8313(a).

Section 24. Sections 8401, 8402, 8403, 8404, 8405 and 8406 of Title 13 are amended to read:

§ 8401. Duty of issuer to register transfer, ***pledge or release.***

(a) General rule.—**[Where]** ***If*** a ***certificated*** security in registered form is presented to the issuer with a request to register transfer ***or an instruction is presented to the issuer with a request to register transfer, pledge or release,*** the issuer **[is under a duty to]** ***shall*** register the transfer, ***pledge or release*** as requested if:

(1) the security is indorsed ***or the instruction was originated*** by the appropriate person or persons (section 8308);

(2) reasonable assurance is given that those indorsements ***or instructions*** are genuine and effective (section 8402);

(3) the issuer has no duty **[to inquire into]** ***as to*** adverse claims or has discharged **[any such]** ***the*** duty (section 8403);

(4) any applicable law relating to the collection of taxes has been complied with; and

(5) the transfer, ***pledge or release*** is in fact rightful or is to a bona fide purchaser.

(b) Liability for failure or delay in **[registering transfer]** ***registration.***—**[Where]** ***If*** an issuer is under a duty to register a transfer, ***pledge or release*** of a security, the issuer is also liable to the person presenting **[it]** ***a certificated security or an instruction*** for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, ***pledge or release.***

§ 8402. Assurance that indorsements ***and instructions*** are effective.

(a) Assurances that issuer may require.—The issuer may require the following assurance that each necessary indorsement ***of a certificated security or each instruction*** (section 8308) is genuine and effective:

(1) In all cases, a guarantee of the signature (section 8312(a) ***or (b)***) of the person indorsing ***a certificated security or originating an instruction, including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity.***

(2) **[Where]** ***If*** the indorsement is ***made or the instruction is originated*** by an agent, appropriate assurance of authority to sign.

(3) **[Where]** ***If*** the indorsement is ***made or the instruction is originated*** by a fiduciary, appropriate evidence of appointment or incumbency.

(4) **[Where]** ***If*** there is more than one fiduciary, reasonable assurance that all who are required to sign have done so.

(5) **[Where]** ***If*** the indorsement is ***made or the instruction is originated*** 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]** ***if they*** 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, ***pledge or release***; 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]** ***that*** document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to **[such]** ***the*** evidence **[provided such standards]** ***if they*** 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, ***pledge or release***.

§ 8403. **[Limited duty of inquiry]** ***Duty of issuer as to adverse claims.***

(a) **[General rule]** ***Duty of issuer as to certificated security.***—An issuer to whom a ***certificated*** security is presented for registration **[is under a duty to]** ***shall*** inquire into adverse claims if:

(1) a written notification of an adverse claim is received at a time and in a manner **[which affords]** ***affording*** the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered ***certificated*** 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]** ***assurance that indorsements and instructions are effective***).

(b) **[Method of inquiry]** ***Discharge of duty as to certificated security.***—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 ***certificated*** 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) *there is filed with the issuer* 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]** *if* a *certificated* 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 *certificated* 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.

(d) Duty of issuer as to uncertificated security.—An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(1) claims embodied in a restraining order, injunction or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (e);

(2) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (e);

(3) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

(4) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under section 8402(d).

(e) Discharge of duty as to uncertificated security.—If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:

(1) Including a notation of the claim in any statements sent with respect to the security under section 8408(c), (f) and (g) (relating to statements of uncertificated securities).

(2) Refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(f) Notation of adverse claim.—If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under section 8408.

(g) Exceptions to duty of issuer.—Notwithstanding subsections (d) and (e), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(1) the claim was embodied in legal process which expressly provides otherwise;

(2) the claim was asserted in a written notification from the registered pledgee;

(3) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under section 8402(d) in connection with the pledgee's request for transfer; or

(4) the transfer requested is to the registered owner.

§ 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, ***pledgee*** or any other person suffering loss as a result of the registration of a transfer, ***pledge or release*** of a security if:

(1) there were on or with **[the]** ***a certificated*** security the necessary indorsements ***or the issuer has received an instruction originated by an appropriate person*** (section 8308); and

(2) the issuer had no duty **[to inquire into]** ***as to*** adverse claims or has discharged **[any such]** ***the*** duty (section 8403).

(b) Transfer to person not entitled.—**[Where]** *If* an issuer has registered a transfer of a ***certificated*** security to a person not entitled to it, the issuer on demand **[must]** ***shall*** 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 ***certificated*** securities); or

(3) **[such]** ***the*** delivery would result in overissue, in which case the liability of the issuer is governed by section 8104 (relating to effect of overissue; ***"overissue"***).

(c) Improper registration.—If an issuer has improperly registered a transfer, pledge or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

(1) the registration was pursuant to subsection (a); or

(2) the registration would result in overissue, in which case the liability of the issuer is governed by section 8104.

§ 8405. Lost, destroyed and stolen *certificated* securities.

(a) Failure of owner to notify issuer.—**[Where]** *If* a *certificated* 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]** *If* the owner of a *certificated* security claims that the security has been lost, destroyed or wrongfully taken, the issuer **[must]** *shall* issue a new *certificated* security *or, at the option of the issuer, an equivalent uncertificated 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 *certificated* security presented for transfer.—If, after the issue of **[the]** *a* new *certificated or uncertificated* security, a bona fide purchaser of the original *certificated* security presents it for registration of transfer, the issuer **[must]** *shall* 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; *"overissue"*). In addition to any rights on the indemnity bond, the issuer may recover the new *certificated* security from the person to whom it was issued or any person taking under him except a bona fide purchaser *or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.*

§ 8406. Duty of authenticating trustee, transfer agent or registrar.

(a) General rule.—**[Where]** *If* a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its *certificated* securities or *in the registration of transfers, pledges and releases of its uncertificated securities,* 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, *he has* the same obligation to the holder or owner of **[the]** *a certificated* security *or to the owner or pledgee of an uncertificated 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.

Section 25. Title 13 is amended by adding sections to read:

§ *8407. Exchangeability of securities.*

(a) Applicability of section.—No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(b) Duty to issue uncertificated security for certificated security.—Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (section 8403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions and claims that were noted on the certificated security.

(c) Duty to issue certificated security for uncertificated security.—Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims as to which the issuer has a duty under section 8403(d) (relating to duty of issuer as to adverse claims) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(1) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(2) the registered pledgee, if the uncertificated security was subject to a registered pledge.

§ *8408. Statements of uncertificated securities.*

(a) Initial transaction statement for transfer.—Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units transferred;

(3) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(4) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8403(d) (relating to duty of issuer as to adverse claims)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(5) the date the transfer was registered.

(b) Initial transaction statement for pledge.—Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units pledged;

(3) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(4) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has duty under section 8403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(5) the date the pledge was registered.

(c) Initial transaction statement for release.—Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units released from pledge;

(3) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(4) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(5) the date the release was registered.

(d) What constitutes initial transaction statement.—An "initial transaction statement" is the statement sent to:

(1) the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (a);

(2) the registered pledgee pursuant to subsection (b); or

(3) the registered owner pursuant to subsection (c).

Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "initial transaction statement."

(e) Statement of transfer.—Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units transferred;

(3) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(4) the date the transfer was registered.

(f) Periodic statement of registered owner.—At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the name and address and any taxpayer identification number of the registered owner;

(3) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(4) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(5) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8403(d)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions or adverse claims.

(g) Periodic statement to registered pledgee.—At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the name and address and any taxpayer identification number of the registered owner;

(3) the name and address and any taxpayer identification number of the registered pledgee;

(4) the number of shares or units subject to the pledge; and

(5) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8403(d)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions or adverse claims.

(h) Limitation on duty to such statements.—If the issuer sends the statements described in subsections (f) and (g) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(i) Legend required on statements.—Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

Section 26. Sections 9101 and 9103(c)(1) and (f) of Title 13 are amended to read:

§ 9101. Short title of division.

This division shall be known and may be cited as the ["]Uniform Commercial Code[—], *Article 9,* Secured Transactions.["]

§ 9103. Perfection of security interests in multiple state transactions.

* * *

(c) Accounts, general intangibles and mobile goods.—

(1) This subsection applies to accounts (other than an account described in subsection (e) relating to minerals) and general intangibles ***(other than uncertificated securities)*** and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (b).

* * *

(f) Uncertificated securities.—

[(1) Except as provided in paragraph (2), the] ***The*** law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

[(2) In the case of a registered corporation as defined in 15 Pa.C.S. § 2502 (relating to registered corporation status), which has a class or series, or any part thereof, of uncertificated securities listed on the New York Stock Exchange or the American Stock Exchange, the law (excluding the conflict of laws rules) of the jurisdiction in which those exchanges are located governs the perfection and the effect of perfection or nonperfection of a security interest in such uncertificated securities.]

Section 27. The definition of "instrument" in section 9105(a) of Title 13 is amended to read:

§ 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:

* * *

"Instrument." A negotiable instrument (defined in section 3104), or a ***certificated*** 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.

* * *

Section 28. Section 9111 of Title 13 is repealed.

Section 29. Sections 9113, 9203(a), 9206(a), 9302(a)(6), 9304(a), (d) and (e), 9305, 9309 and 9312(a) and (g) of Title 13 are amended to read:

§ 9113. Security interests arising under division on sales ***or division on leases.***

A security interest arising solely under Division 2 (relating to sales) ***or 2A (relating to leases)*** 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.]**:

(i) Division 2 in the case of a security interest arising solely under Division 2; or

(ii) Division 2A in the case of a security interest arising solely under Division 2A.

§ 9203. Attachment and enforceability of security interest; proceeds, formal requisites.

(a) Enforceability.—Subject to the provisions of section **[4208]** ***4210*** on the security interest of a collecting bank, ***section 8321 on security interests in securities*** 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 with respect to the collateral and does not attach unless:

(1) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(2) value has been given; and

(3) the debtor has rights in the collateral.

* * *

§ 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]** ***negotiable instruments***). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

* * *

§ 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:

* * *

(6) a security interest of a collecting bank **[(section 4208) or]** ***(section 4210) or in securities (section 8321) or*** arising under Division 2 (relating to sales) (see section 9113) or covered in subsection (c); and

* * *

§ 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, money and instruments.—A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than ***certificated securities or*** 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) and section 9306(b) and (c) (relating to "proceeds"; rights of secured party on disposition of collateral).

* * *

(d) Temporary perfection for new value given.—A security interest in instruments ***(other than certificated securities)*** 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 ***(other than a certificated security)***, 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, but priority between conflicting security interests in the goods is subject to section 9312(c) (relating to priorities among conflicting security interests in same collateral); 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.

* * *

§ 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 ***(other than certificated securities)***, money, 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.

§ 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]** ***8302***) 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.

§ 9312. Priorities among conflicting security interests in same collateral.

(a) Precedence of certain rules of priority.—The rules of priority stated in other sections of this chapter and in the following sections shall govern where applicable:

Section **[4208]** ***4210*** (relating to security interest of collecting bank in items, accompanying documents and proceeds).

Section 9103 (relating to perfection of security interests in multiple state transactions).

Section 9114 (relating to consignment).

* * *

(g) Future advances.—If future advances are made while a security interest is perfected by filing or the taking of possession ***or under section 8321 (relating to enforceability, attachment, perfection and termination of security interests)***, the security interest has the same priority for the purposes of subsection (e) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Section 30. Rights and obligations that arose under 13 Pa.C.S. Div. 6 (relating to bulk transfers) and 13 Pa.C.S. § 9111 (relating to applicability of bulk transfer laws) before their repeal remain valid and may be enforced as though those provisions had not been repealed.

Section 31. The following acts and parts of acts are repealed:

As much as reads "all applicable provisions of 13 Pa.C.S. Div. 6 (relating to bulk transfers) and all other" of 15 Pa.C.S. § 1957(b)(1).

As much as reads "all applicable provisions of Division 6 of Title 13 (relating to bulk transfers) and all other" of 15 Pa.C.S. § 5957(b).

42 Pa.C.S. § 5522(b)(3).

Section 32. This act shall take effect in one year.

APPROVED—The 9th day of July, A. D. 1992.

ROBERT P. CASEY