

MAINE STATE LEGISLATURE

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**[DUE TO ITS SIZE, THIS LAW HAS BEEN DIVIDED INTO TWO
ELECTRONIC FILES. THIS IS THE SECOND FILE.]**

Part 8. Miscellaneous.

Sec. 3-801. Drafts in a set.

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other party has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated, the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer, payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

Sec. 3-802. Effect of instrument on obligation for which it is given.

(1) Unless otherwise agreed, where an instrument is taken for an underlying obligation

(a) The obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) In any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored, action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

Sec. 3-803. Notice to third party. Where a defendant receives notice that he is being sued for breach of an obligation for which a third person is answerable over under this article, he may give the third person written notice of the obligation, and the person notified may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified

does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the 2 litigations, then unless after reasonable receipt of the notice the person notified does come in and defend, he is so bound.

Sec. 3-804. Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

Sec. 3-805. Instruments not payable to order or to bearer. This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

Article 4.

Bank Deposits and Collections.

Part 1. General Provisions and Definitions.

Sec. 4-101. Short title. This article shall be known and may be cited as "Uniform Commercial Code—Bank Deposits and Collections."

Sec. 4-102. Applicability.

(1) To the extent that items within this article are also within the scope of articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of article 3 but the provisions of article 8 govern those of this article.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Sec. 4-103. Variation by agreement; measure of damages; certain action constituting ordinary care.

(1) The effect of the provisions of this article may be varied by agreement, except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured, if such standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this article or pursuant to federal reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any suffered by the party as a proximate consequence.

Sec. 4-104. Definitions and index of definitions.

(1) In this article, unless the context otherwise requires,

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account.

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

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.

(d) "Clearing house" means any association of banks or other payors regularly clearing items.

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank.

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft.

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money.

(h) "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.

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor.

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final.

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

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

"Collecting bank."	Section 4-105.
"Depository bank."	Section 4-105.
"Intermediary bank."	Section 4-105.
"Payor bank."	Section 4-105.
"Presenting bank."	Section 4-105.
"Remitting bank."	Section 4-105.

(3) The following definitions in other articles apply to this article:

"Acceptance."	Section 3-410.
"Certificate of deposit."	Section 3-104.
"Certification."	Section 3-411.
"Check."	Section 3-104.
"Draft."	Section 3-104.
"Holder in due course."	Section 3-302.
"Notice of dishonor."	Section 3-508.
"Presentment."	Section 3-504.
"Protest."	Section 3-509.
"Secondary party."	Section 3-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 4-105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank." In this article, unless the context otherwise requires.

(1) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank.

(2) "Payor bank" means a bank by which an item is payable as drawn or accepted.

(3) "Intermediary bank" means any bank to which an item is transferred in course of collection, except the depository or payor bank.

(4) "Collecting bank" means any bank handling the item for collection, except the payor bank.

(5) "Presenting bank" means any bank presenting an item except a payor bank.

(6) "Remitting bank" means any payor or intermediary bank remitting for an item.

Sec. 4-106. Separate office of a bank. A branch or separate office of a bank maintaining its own deposit ledgers is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3.

Sec. 4-107. Time of receipt of items.

(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 P. M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Sec. 4-108. Delays.

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this chapter for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter, or by instructions is excused, if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank, provided it exercises such diligence as the circumstances require.

Sec. 4-109. 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 a customer's account;

(5) Correcting or reversing an entry or erroneous action with respect to the item.

Part 2. Collection of Items; Depository and Collecting Banks.

Sec. 4-201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay any bank."

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (section 4-211, subsection (3) and sections 4-212 and 4-213), the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) 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

- (a) Until the item has been returned to the customer initiating collection; or
- (b) Until the item has been specially indorsed by a bank to a person who is not a bank.

Sec. 4-202. Responsibility for collection; when action seasonable.

(1) A collecting bank must use ordinary care in

- (a) Presenting an item or sending it for presentment; and
- (b) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depository bank under section 4-212, subsection (2) after learning that the item has not been paid or accepted, as the case may be; and
- (c) Settling for an item when the bank receives final settlement; and
- (d) Making or providing for any necessary protest; and
- (e) Notifying its transfer of any loss or delay in transit within a reasonable time after discovery thereof.

(2) 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.

(3) Subject to subsection (1), (a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

Sec. 4-203. Effect of instructions. Subject to the provisions of article 3 concerning conversion of instruments (section 3-419) and the provisions of both article 3 and this article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

Sec. 4-204. Methods of sending and presenting; sending direct to payor bank.

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) Any item direct to the payor bank;

(b) Any item to any nonbank payor if authorized by its transferor; and

(c) Any item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

Sec. 4-205. Supplying missing indorsement; no notice from prior indorsement.

(1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title, unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or creditor to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

Sec. 4-206. Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

Sec. 4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.

(1) 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

(a) 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

(b) 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 maker's own signature; or

(ii) To a drawer with respect to the drawer's own signature, whether or not the drawer is also 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 drawer's signature was unauthorized; and

(c) 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; or

(ii) To the drawer of a draft, whether or not the drawer is also the drawee; or

(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.

(2) 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

(a) 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; and

(b) All signatures are genuine or authorized; and

(c) The item has not been materially altered; and

(d) No defense of any party is good against him; and

(e) 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.

(3) The warranties and the engagement to honor set forth in subsections (1) and (2) arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment, and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) 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.

Sec. 4-208. Security interest of collecting bank in items, accompanying documents and proceeds.

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

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

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

(c) If it makes an advance on or against the item.

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

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of article 9, except that

(a) No security agreement is necessary to make the security interest enforceable (section 9-203, subsection (1), paragraph (b)); and

(b) No filing is required to perfect the security interest; and

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

Sec. 4-209. When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item, provided that the bank otherwise complies with the requirements of section 3-302 on what constitutes a holder in due course.

Sec. 4-210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.

(1) 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 3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

Sec. 4-211. Media of remittance; provisional and final settlement in remittance cases.

(1) A collecting bank may take in settlement of an item

(a) A check of the remitting bank or of another bank on any bank, except the remitting bank; or

(b) 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; or

(c) Appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) 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.

(2) 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 (1) 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.

(3) 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,

(a) If the remittance instrument or authorization to charge is of a kind approved by subsection (1) 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;

(b) 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 (1), paragraph (b), at the time of the receipt of such remittance check or obligation; or

(c) If in a case not covered by paragraph (a) or (b) 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.

Sec. 4-212. Right of charge-back or refund.

(1) 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 its customer's account or obtain refund from its customer whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (section 4-211, subsection (3), and section 4-213, subsection (2) and (3)).

(2) Within the time and manner prescribed by this section and section 4-301, 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 shall become and remain final.

- (3) A depository bank which is also the payor may charge-back the amount of any item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 4-301).
- (4) The right to charge-back is not affected by
 - (a) Prior use of the credit given for the item; or
 - (b) Failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.
- (5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.
- (6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency, the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Sec. 4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

- (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:
 - (a) Paid the item in cash; or
 - (b) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
 - (c) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
 - (d) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under paragraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

- (2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits and credits in an account between them, then to the extent that provisional debits or credits for the time 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.

(3) If a collecting bank receives a settlement for an item which is or becomes final (section 4-211, subsection (3), section 4-213, subsection (2)), 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.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) In any case where the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) In any case where the bank is both a depository bank and a payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

Sec. 4-214. Insolvency and preference.

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) 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 a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (section 4-211, subsection (3), section 4-213, subsection (1), paragraph (d), subsections (2) and (3)).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

Part 3. Collection of Items: Payor Banks.

Sec. 4-301. Deferred posting; recovery of payment by return of items; time of dishonor.

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any payment, if before it has made final payment (section 4-213, subsection (1)) and before its midnight deadline it

(a) Returns the item; or

(b) Sends written notice of dishonor or nonpayment, if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books, it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (1).

(3) 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.

(4) An item is returned

(a) As to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

Sec. 4-302. Payor bank's responsibility for late return of item. In the absence of a valid defense such a breach of a presentment warranty (section 4-207, subsection (1)) settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(1) A demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it, or regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item, unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

Sec. 4-303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty

to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

- (a) Accepted or certified the item;
 - (b) Paid the item in cash;
 - (c) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;
 - (d) 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; or
 - (e) Become accountable for the amount of the item under section 4-213, subsection (1), paragraph (d) and under section 4-302 dealing with the payor bank's responsibility for late return of items.
- (2) Subject to the provisions of subsection (1), items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

Part 4. Relationship Between Payor Bank and its Customer.

Sec. 4-401. When bank may charge customer's account.

- (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.
- (2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to
 - (a) The original tenor of his altered item; or
 - (b) The tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Sec. 4-402. Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake, liability is limited to actual damages proved. If so proximately caused and proved, damages may include damages for an arrest or prosecution of the customer or other

consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

Sec. 4-403. Customer's right to stop payment; burden of proof of loss.

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 4-303.

(2) 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 6 months, unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

Sec. 4-404. Bank not obligated to pay check more than 6 months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Sec. 4-405. Death or incompetence of customer.

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken, if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

Sec. 4-406. Customer's duty to discover and report unauthorized signature or alteration.

(1) 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 for 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.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1), the customer is precluded from asserting against the bank

(a) His unauthorized signature or any alteration on the item, if the bank also establishes that it suffered a loss by reason of such failure; and

(b) An unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply, if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank, a customer, who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within 3 years from that time discover and report any unauthorized indorsement, is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) 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 customer's claim.

Sec. 4-407. Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(1) Of any holder in due course on the item against the drawer or maker; and

(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.

Part 5. Collection of Documentary Drafts.

Sec. 4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for

presentment, and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact, even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

Sec. 4-502. Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Sec. 4-503. 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 article 5, 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 3 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 instruction from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services, it must use diligence and good faith to ascertain the reason for dishonor, must inform its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents, except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

Sec. 4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

Article 5.

Letters of Credit.

Sec. 5-101. Short title. This article shall be known and may be cited as "Uniform Commercial Code—Letters of Credit."

Sec. 5-102. Scope.**(1) This article applies**

- (a) To a credit issued by a bank, if the credit requires a documentary draft or a documentary demand for payment; and
- (b) To a credit issued by a person other than a bank, if the credit requires that the draft or demand for payment be accompanied by a document of title; and
- (c) To a credit issued by a bank or other person, if the credit is not within paragraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article.

Sec. 5-103. Definitions.**(1) In this article unless the context otherwise requires**

- (a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.
- (b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.
- (c) An "issuer" is a bank or other person issuing a credit.
- (d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.
- (e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

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

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

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

"Notation credit."	Section 5-108.
"Presenter."	Section 5-112, subsection (3).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Accept" or "Acceptance."	Section 3-410.
"Contract for sale."	Section 2-106.
"Draft."	Section 3-104.
"Holder in due course."	Section 3-302.
"Midnight deadline."	Section 4-104.
"Security."	Section 8-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 5-104. Formal requirements; signing.

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

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

Sec. 5-105. Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

Sec. 5-106. Time and effect of establishment of credit.

(1) Unless otherwise agreed a credit is established

(a) As regards the customer, as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

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

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

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

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

Sec. 5-107. Advice of credit; confirmation; error in statement of terms.

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

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer.

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

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

Sec. 5-108. "Notation credit"; exhaustion of credit.

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

(2) Under a notation credit,

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

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

(3) If the credit is not a notation credit,

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

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

Sec. 5-109. Issuer's obligations to its customer.

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but, unless otherwise agreed does not include liability or responsibility

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

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

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

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but, unless otherwise agreed, assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

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

Sec. 5-110. Availability of credit in portions; presenter's reservation of lien or claim.

(1) Unless otherwise specified, a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified, a person by presenting a documentary draft or demand for a payment under a credit relinquishes upon its honor all claims

to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

Sec. 5-111. Warranties on transfer and presentment.

(1) 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 articles 3, 4, 7 and 8.

(2) Unless otherwise agreed, a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under articles 7 and 8.

Sec. 5-112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".

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

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

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

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

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

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit, even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

Sec. 5-113. Indemnities.

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

(2) An indemnity agreement inducing honor, negotiation or reimbursement, unless otherwise explicitly agreed, applies to defects in the documents but not in the goods.

Sec. 5-114. Issuer's duty and privilege to honor; right to reimbursement.

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

(2) 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 7-507) or of a security (section 8-306) or is forged or fraudulent or there is fraud in the transaction,

(a) 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 3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 7-502) or a bona fide purchaser of a security (section 8-302); and

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

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

Sec. 5-115. Remedy for improper dishonor anticipatory repudiation.

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

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

Sec. 5-116. Transfer and assignment.

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

(2) Even though the credit specifically states that it is nontransferable or nonassignable, the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under article 9 on secured transactions and is governed by that article, except that

(a) The assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and

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

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

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

Sec. 5-117. Insolvency of bank holding funds for documentary credit.

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by section 5-102, subsection (1), paragraphs (a) or (b) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results;

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

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

(c) A charge to a general or current account with a bank, if specifically consented to for the purpose of indemnity against or payment of drafts or

demands for payment drawn under the designated credit, falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

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

Article 6.

Bulk Transfers.

Sec. 6-101. Short title. This article shall be known and may be cited as "Uniform Commercial Code—Bulk Transfers."

Sec. 6-102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 9-109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by section 6-103, all bulk transfers of goods located within this State are subject to this article.

(5) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 6-103. Transfers excepted from this article.

The following transfers are not subject to this article:

- (1) Those made to give security for the performance of an obligation;
- (2) General assignments for the benefit of all the creditors of the transferor and subsequent transfers by the assignee thereunder;
- (3) Transfers in settlement or realization of a lien or other security interest;
- (4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

- (5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;
- (6) Transfers to a person maintaining a known place of business in this State who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;
- (7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;
- (8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this State an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

Sec. 6-104. Schedule of property, list of creditors.

- (1) Except as provided with respect to auction sales (section 6-107), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless
 - (a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and
 - (b) The parties prepare a schedule of the property transferred sufficient to identify it; and
 - (c) The transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the Secretary of State.
- (2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

Sec. 6-105. Notice to creditors. In addition to the requirements of section 6-104, any bulk transfer subject to this article except one made by auction sale (section 6-107) is ineffective against any creditor of the transferor unless at least 10 days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 6-106).

Sec. 6-106. The notice.

(1) The notice to creditors (section 6-105) shall state

(a) That a bulk transfer is about to be made; and

(b) The names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee; and

(c) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point, then the notice shall state further

(a) The location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) The address where the schedule of property and list of creditors (section 6-104) may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

Sec. 6-107. Auction sales; "auctioneer."

(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 6-104);

(b) Give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons, their liability is joint and several.

Sec. 6-108. What creditors protected. The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 6-105 and 6-106) are not entitled to notice.

Sec. 6-109. Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this article, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect; but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

Sec. 6-110. Limitation of actions and levies. No action under this article shall be brought nor levy made more than 6 months after the date on which the transferee took possession of the goods, unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within 6 months after its discovery.

Article 7.

Warehouse Receipts, Bills of Lading and Other Documents of Title.

Part 1. General.

Sec. 7-101. Short title. This article shall be known and may be cited as "Uniform Commercial Code—Documents of Title."

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

(1) In this article, unless the context otherwise requires,

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

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

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

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

(e) "Document" means document of title as defined in the general definitions in article 1 (section 1-201).

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

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

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

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are

"Duly negotiate." Section 7-501.

"Person entitled under the document." Section 7-403, subsection (4).

(3) Definitions in other articles applying to this article and the sections in which they appear are

"Contract for sale." Section 2-106.

"Overseas." Section 2-323.

"Receipt of goods." Section 2-103.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 7-103. Relation of article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of the State or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto.

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

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

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

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

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

Sec. 7-105. Construction against negative implication. The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

Part 2. Warehouse Receipts: Special Provisions.

Sec. 7-201. Who may issue a warehouse receipt; storage under government bond.

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

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

Sec. 7-202. Form of warehouse receipt; essential terms; optional terms.

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

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

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

(b) The date of issue of the receipt;

- (c) The consecutive number of the receipt;
 - (d) A statement whether the goods received will be delivered to the bearer, to a specified person or to a specified person or his order;
 - (e) The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;
 - (f) A description of the goods or of the packages containing them;
 - (g) The signature of the warehouseman, which may be made by his authorized agent;
 - (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
 - (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.
- (3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this chapter and do not impair his obligation of delivery (section 7-403) or his duty of care (section 7-204). Any contrary provisions shall be ineffective.

Sec. 7-203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading, relying in either case upon the description therein of the goods, may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown," "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

Sec. 7-204. Duty of care; contractual limitation of warehouseman's liability.

- (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances, but unless otherwise agreed, he is not liable for damages which could not have been avoided by the exercise of such care.
- (2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and

setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

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

Sec. 7-205. Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Sec. 7-206. Termination of storage at warehouseman's option.

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

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

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

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

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

Sec. 7-207. Goods must be kept separate; fungible goods.

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

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

Sec. 7-208. Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

Sec. 7-209. Lien of warehouseman.

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

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of

them by him to a good faith purchaser for value would have been valid, but is not effective against a person as to whom the document confers no right in the goods covered by it under section 7-503.

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

Sec. 7-210. Enforcement of warehouseman's lien.

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

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

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

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

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

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

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

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held and the time and place of the

sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.

- (3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.
- (4) The warehouseman may buy at any public sale pursuant to this section.
- (5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.
- (6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.
- (7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.
- (8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).
- (9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

Part 3. Bills of Lading; Special Provisions.

Sec. 7-301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.

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

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

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

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

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

Sec. 7-302. Through bills of lading and similar documents.

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

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

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods, when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on

the document therefor, as may be evidenced by any receipt, judgment or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by any one entitled to recover on the document therefor.

Sec. 7-303. Diversion; reconsignment; change of instructions.

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

(a) The holder of a negotiable bill; or

(b) The consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

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

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

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

Sec. 7-304. Bills of lading in a set.

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

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

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

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

(5) The bailee is obliged to deliver in accordance with part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

Sec. 7-305. Destination bills.

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

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

Sec. 7-306. Altered bill of lading. An authorized alteration of filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Sec. 7-307. Lien of carrier.

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

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

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

Sec. 7-308. Enforcement of carrier's lien.

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has

sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in section 7-210, subsection (2).

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

Sec. 7-309. Duty of care; contractual limitation of carrier's liability.

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

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

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

Part 4. Warehouse Receipts and Bills of Lading: General Obligations.

Sec. 7-401. Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

- (1) The document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or
- (2) The issuer may have violated laws regulating the conduct of his business; or
- (3) The goods covered by the document were owned by the bailee at the time the document was issued; or
- (4) The person issuing the document does not come within the definition of warehouseman, if it purports to be a warehouse receipt.

Sec. 7-402. Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Sec. 7-403. Obligation of warehouseman or carrier to deliver; excuse.

- (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:
 - (a) Delivery of the goods to a person whose receipt was rightful as against the claimant;
 - (b) Damage to or delay, loss or destruction of the goods for which the bailee is not liable;
 - (c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;
 - (d) The exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 2-705);
 - (e) A diversion, reconsignment or other disposition pursuant to the provisions of this article (section 7-303) or tariff regulating such right;
 - (f) Release, satisfaction or any other fact affording a personal defense against the claimant;
 - (g) Any other lawful excuse.

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

(3) Unless the person claiming is one against whom the document confers no right under section 7-503, subsection (1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

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

Sec. 7-404. No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

Part 5. Warehouse Receipts and Bills of Lading: Negotiation and Transfer.

Sec. 7-501. Form of negotiation and requirements of "due negotiation."

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

(2)

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

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

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

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

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

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

Sec. 7-502. Rights acquired by due negotiation.

(1) Subject to section 7-503 and to the provisions of section 7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

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

(2) Subject to section 7-503, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or documents has been made to a third person.

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

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

(a) Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 7-403) or with power of disposition under this chapter (sections 2-403 and 9-307) or other statute or rule of law; nor

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

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

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

Sec. 7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

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

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) By those creditors of the transferor who could treat the sale as void under section 2-402; or

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

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

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

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

Sec. 7-505. Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Sec. 7-506. Delivery without indorsement; right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Sec. 7-507. Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under section 7-508, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

- (1) That the document is genuine; and
- (2) That he has no knowledge of any fact which would impair its validity or worth; and
- (3) That his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Sec. 7-508. Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

Sec. 7-509. Receipt or bill; when adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (article 2) and on letters of credit (article 5).

Part 6. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions.

Sec. 7-601. Lost and missing documents.

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

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

Sec. 7-602. Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a per-

son who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding, unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Sec. 7-603. Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivering until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods or by original action, whichever is appropriate.

Article 8.

Investment Securities.

Part 1. Short Title and General Matters.

Sec. 8-101. Short title; inconsistency with Uniform Act for Simplification of Fiduciary Security Transfers.

(1) This article shall be known and may be cited as "Uniform Commercial Code—Investment Securities."

(2) If in any respect there is any inconsistency between this article and the Uniform Act for Simplification of Fiduciary Security Transfers, chapter 53, sections 72-A to 72-K, the provisions of chapter 53, sections 72-A to 72-K shall control.

Sec. 8-102. Definitions and index of definitions.

(1) In this article unless the context otherwise requires

(a) A "security" is an instrument which

(i) Is issued in bearer or registered form; and

(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; and

(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.

(b) A writing which is a security is governed by this article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that article. This article does not apply to money.

(c) A security is in “registered form” when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in “bearer form” when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A “subsequent purchaser” is a person who takes other than by original issue.

(3) A “clearing corporation” is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

(4) A “custodian bank” is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

“Adverse claim”.	Section 8-301.
“Bona fide purchaser”.	Section 8-302.
“Broker”.	Section 8-303.
“Guarantee of the signature”.	Section 8-402.
“Intermediary bank”.	Section 4-105.
“Issuer”.	Section 8-201.
“Overissue”.	Section 8-104.

(6) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 8-103. Issuer’s lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

Sec. 8-104. Effect of overissue; “overissue.”

(1) The provisions of this article 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

(a) If an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) 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.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

Sec. 8-105. Securities negotiable; presumptions.

(1) Securities governed by this article are negotiable instruments.

(2) In any action on a security,

(a) Unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) When the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) When signatures are admitted or established, production of the instrument entitles a holder to recover on it, unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) 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 8-202).

Sec. 8-106. Applicability. The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of law rules) of the jurisdiction of organization of the issuer.

Sec. 8-107. Securities deliverable; action for price.

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

(a) Of securities accepted by the buyer; and

(b) Of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

Part 2. Issue—Issuer.

Sec. 8-201. "Issuer."

(1) With respect to obligations on or defenses to a security, "issuer" includes a person who

- (a) Places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or
 - (b) Directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or
 - (c) Becomes responsible for or in place of any other person described as an issuer in this section.
- (2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.
- (3) With respect to registration of transfer (part 4 of this article) "issuer" means a person on whose behalf transfer books are maintained.

Sec. 8-202. Issuer's responsibility and defenses; notice of defect or defense.

- (1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the security expressly states that a person accepting it admits such notice.
- (2)
- (a) A security other than one issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.
 - (b) The rule of paragraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received 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.
- (3) Except as otherwise provided in the case of certain unauthorized signatures on issue (section 8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.
- (4) All other defenses of the issuer, including nondelivery and conditional delivery of the security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

Sec. 8-203. Staleness as notice of defects or defenses.

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after 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,

(a) If the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) If the act or event is not covered by paragraph (a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

Sec. 8-204. Effect of issuer's restrictions on transfer. Unless noted conspicuously on the security, a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

Sec. 8-205. Effect of unauthorized signature on issue. An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority, if the signing has been done by

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(2) An employee of the issuer or any of the foregoing entrusted with responsible handling of the security.

Sec. 8-206. Completion or alteration of instrument.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect,

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

Sec. 8-207. Rights of issuer with respect to registered owners.

(1) Prior to due presentment for registration of transfer of a security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

Sec. 8-208. Effect of signature on authenticating trustee, registrar or transfer agent.

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) The security is genuine and in proper form; and

(b) His own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) He has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

Part 3. Purchase.

Sec. 8-301. Rights acquired by purchaser; title acquired by bona fide purchaser.

(1) Upon delivery of a security, the purchaser acquires the rights in the security which his transferor had or had actual authority to convey, except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim. "Adverse claim" includes a claim that a transfer was or would be unauthorized or wrongful or that a particular adverse person is the owner or has an interest in the security.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Sec. 8-302. "Bona fide purchaser." A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

Sec. 8-303. "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 article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

Sec. 8-304. Notice to purchaser of adverse claims.

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) 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

(b) The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Sec. 8-305. Staleness as notice of adverse claims. An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims, except in the case of a purchase

(1) After one year from any date set for such presentment or surrender for redemption or exchange; or

(2) After 6 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.

Sec. 8-306. Warranties on presentment and transfer.

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registra-

tion, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

- (a) His transfer is effective and rightful; and
- (b) The security is genuine and has not been materially altered; and
- (c) He knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

Sec. 8-307. Effect of delivery without indorsement; right to compel indorsement. Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

Sec. 8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) 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.

(3) "An appropriate person" in subsection (1) means

(a) The person specified by the security or by special indorsement to be entitled to the security; or

(b) 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; or

(c) 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; or

(d) 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; or

(e) 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; or

(f) A person having power to sign under applicable law or controlling instrument; or

(g) To the extent that any of the foregoing persons may act through an agent, his authorized agent.

(4) Unless otherwise agreed, the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) 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.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this article.

Sec. 8-309. Effect of indorsement without delivery. An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

Sec. 8-310. Indorsement of security in bearer form. An indorsement of a security in bearer form may give notice of adverse claims (section 8-304), but does not otherwise affect any right to registration the holder may possess.

Sec. 8-311. Effect of unauthorized indorsement. Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness,

- (1) He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and
- (2) An issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 8-404).

Sec. 8-312. Effect of guaranteeing signature or indorsement.

- (1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing
 - (a) The signature was genuine; and
 - (b) The signer was an appropriate person to indorse (section 8-308); and
 - (c) The signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

- (2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection (1)) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.
- (3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

Sec. 8-313. When delivery to the purchaser occurs; purchaser's broker as holder.

- (1) Delivery to a purchaser occurs when
 - (a) He or a person designated by him acquires possession of a security; or
 - (b) His broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or
 - (c) His broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or
 - (d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser.

(e) Appropriate entries on the books of a clearing corporation are made under section 8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

Sec. 8-314. Duty to deliver, when completed.

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers,

(a) The selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested, causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) The selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange, a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

Sec. 8-315. Action against purchaser based upon wrongful transfer.

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this article on unauthorized indorsements (section 8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

Sec. 8-316. Purchaser's right to requisites for registration of transfer on books. Unless otherwise agreed, the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security, but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

Sec. 8-317. Attachment or levy upon security.

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Sec. 8-318. No conversion by good faith delivery. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

Sec. 8-319. 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; or

(2) Delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(3) Within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) The party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

Sec. 8-320. Transfer or pledge within a central depository system.

(1) If a security

(a) Is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) 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.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) 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 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 9-304 and 9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

Part 4. Registration.

Sec. 8-401. Duty of issuer to register transfer.

(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested, if

- (a) The security is indorsed by the appropriate person or persons (section 8-308); and
 - (b) Reasonable assurance is given that those indorsements are genuine and effective (section 8-402); and
 - (c) The issuer has no duty to inquire into adverse claims or has discharged any such duty (section 8-403); and
 - (d) Any applicable law relating to the collection of taxes has been complied with; and
 - (e) The transfer is in fact rightful or is to a bona fide purchaser.
- (2) Where an issuer is under a duty to register a transfer of a security, the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

Sec. 8-402. Assurance that indorsements are effective.

- (1) The issuer may require the following assurance that each necessary indorsement (section 8-308) is genuine and effective:
- (a) In all cases, a guarantee of the signature (section 8-312, subsection (1)) of the person indorsing; and
 - (b) Where the indorsement is by an agent, appropriate assurance of authority to sign;
 - (c) Where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;
 - (d) Where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
 - (e) Where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.
- (2) A “guarantee of the signature” in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.
- (3) “Appropriate evidence of appointment or incumbency” in subsection (1) means
- (a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(b) In any other case a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph except to the extent that the contents relate directly to the appointment or incumbency.

(4) 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 paragraph (b) of subsection 3 both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

Sec. 8-403. Limited duty of inquiry.

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) A written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) The issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) or section 8-402.

(2) The issuer may discharge any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either

(a) An appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) An indemnity bond sufficient in the issuer's judgment 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.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 8-402 or receives notification of an adverse claim under subsection (1) of

this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) An issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) 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

(c) 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.

Sec. 8-404. Liability and nonliability for registration.

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security, if

(a) There were on or with the security the necessary indorsements (section 8-308); and

(b) The issuer had no duty to inquire into adverse claims or discharged any such duty (section 8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it, the issuer on demand must deliver a like security to the true owner, unless

(a) The registration was pursuant to subsection (1); or

(b) The owner is precluded from asserting any claim for registering the transfer under section 8-405, subsection (1); or

(c) Such delivery would result in overissue, in which case the issuer's liability is governed by section 8-104.

Sec. 8-405. Lost, destroyed and stolen securities.

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable

time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 8-404 or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security, if the owner

(a) So requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

Sec. 8-406. Duty of authenticating trustees, transfer agent or registrar.

(1) Where a person acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities,

(a) He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) He has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) 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.

Article 9.

Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

Part 1. Short Title, Applicability and Definitions.

Sec. 9-101. Short title. This article shall be known and may be cited as "Uniform Commercial Code—Secured Transactions."

Sec. 9-102. Policy and scope of article.

(1) Except as otherwise provided in section 9-103 on multiple state transactions and in section 9-104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of this State

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) To any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 9-310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

Sec. 9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods, already subject to a security interest.

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this State, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this State, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction, such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this State. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this State, the validity of the security interest in this State is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this State and it was brought into this State within 30 days after the security interest attached for purposes other than transportation through the state, then the validity of the security interest in this State is to be determined by the law of this State. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this State, the security interest continues perfected in this State for 4 months and also thereafter, if within the 4-month period it is perfected in this State. The security interest may also be perfected in this State after the expiration of the 4-month period; in such case perfection dates from the time of perfection in this State. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this State, it may be perfected in this State; in such case perfection dates from the time of perfection in this State.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this State or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and section 9-302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this State or the transaction which creates the security interest otherwise bears an appropriate relation to this State, this article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.

Sec. 9-104. Transactions excluded from article. This article does not apply

(1) To a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(2) To a landlord's lien; or

(3) To a lien given by statute or other rule of law for services or materials, except as provided in section 9-310 on priority of such liens; or

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

- (5) To an equipment trust covering railway rolling stock; or
- (6) To a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or
- (7) To a transfer of an interest or claim in or under any policy of insurance; or
- (8) To a right represented by a judgment; or
- (9) To any right of set-off; or
- (10) Except to the extent that provision is made for fixtures in section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (11) To a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

Sec. 9-105. Definitions and index of definitions.

- (1) In this article, unless the context otherwise requires:
 - (a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;
 - (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or series of instruments, the group of writings taken together constitutes chattel paper;
 - (c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;
 - (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
 - (e) "Document" means document of title as defined in the general definitions in article 1 (section 1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also includes the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in section 3-104) or a security (defined in section 8-102) 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;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

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

"Account."	Section 9-106.
"Consumer goods."	Section 9-109, subsection (1).
"Contract right."	Section 9-106.
"Equipment."	Section 9-109, subsection (2).
"Farm products."	Section 9-109, subsection (3).
"General intangibles."	Section 9-106.
"Inventory."	Section 9-109, subsection (4).
"Lien creditor."	Section 9-301, subsection (3).
"Proceeds."	Section 9-306, subsection (1).
"Purchase money security interest."	Section 9-107.

(3) The following definitions in other articles apply to this article:

"Check."	Section 3-104.
"Contract for sale."	Section 2-106.
"Holder in due course."	Section 3-302.
"Note."	Section 3-104.
"Sale."	Section 2-106.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 9-106. Definitions: "account"; "contract right"; "general intangibles." "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by per-

formance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

Sec. 9-107. Definitions: "purchase money security interest." A security interest is a "purchase money security interest" to the extent that it is

- (1) Taken or retained by the seller of the collateral to secure all or part of its price; or
- (2) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Sec. 9-108. When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property, his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt, if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Sec. 9-109. Classification of goods: "consumer goods"; "equipment"; "farm products"; "inventory." Goods are

- (1) "Consumer goods," if they are used or bought for use primarily for personal, family or household purposes;
- (2) "Equipment," if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency, or if the goods are not included in the definitions of inventory, farm products or consumer goods;
- (3) "Farm products," if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or of livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. "Crops" include oysters on leased, licensed or owned beds. If goods are farm products, they are neither equipment nor inventory;
- (4) "Inventory," if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Sec. 9-110. Sufficiency of description. For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific, if it reasonably identifies what is described.

Sec. 9-111. Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under article 6 (section 6-103).

Sec. 9-112. Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 9-502, subsection (2) or under section 9-504, subsection (1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (1) To receive statements under section 9-208;
- (2) To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 9-505;
- (3) To redeem the collateral under section 9-506;
- (4) To obtain injunctive or other relief under section 9-507, subsection (1); and
- (5) To recover losses to him under section 9-208, subsection (2).

Sec. 9-113. Security interests arising under article on sales. A security interest arising solely under the article on sales (article 2) is subject to the provisions of this article 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; and
- (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 the article on sales (article 2).

Part 2. Validity of Security Agreement and Rights of Parties Thereto.

Sec. 9-201. General validity of security agreement. Except as otherwise provided by this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Sec. 9-202. Title to collateral immaterial. Each provision of this article with regard to rights, obligations and remedies applies, whether title to collateral is in the secured party or in the debtor.

Sec. 9-203. Enforceability of security interest; proceeds, formal requisites.

- (1) Subject to the provisions of section 4-208 on the security interest of a collecting bank and section 9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties, unless

- (a) The collateral is in the possession of the secured party; or
- (b) The debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this article, is also subject to the applicable provisions of sections 210 to 227 and 249 to 260 of chapter 59, and to sections 131 to 136 of chapter 100 and in the case of conflict between the provisions of this article and any such statute the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 9-204. When security interest attaches; after-acquired property; future advances.

(1) A security interest cannot attach until there is agreement (section 1-201, subsection (3)) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place, unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section, the debtor has no rights

- (a) In crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;
- (b) In fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;
- (c) In a contract right until the contract has been made;
- (d) In an account until it comes into existence.

(3) Except as provided in subsection (4), a security agreement may provide that collateral whenever acquired shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

- (a) To crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may, if so agreed, attach to crops to be grown on the land concerned during the period of such real estate transaction;
- (b) To consumer goods other than accessions (section 9-314), when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

Sec. 9-205. Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

Sec. 9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

(1) 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 the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods, the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Sec. 9-207. Rights and duties when collateral is in secured party's possession.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties, unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) The secured party may repledge the collateral upon terms which do not impair the debtor's sight to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Sec. 9-208. Request for statement of account or list of collateral.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply, he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received, he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

Part 3. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority.

Sec. 9-301. Persons who take priority over unperfected security interests; "lien creditor."

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) Persons entitled to priority under section 9-312;
 - (b) A person who becomes a lien creditor without knowledge of the security interest and before it is perfected;
 - (c) In the case of goods, instruments, documents and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
 - (d) In the case of accounts, contract rights and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.
- (2) If the secured party files with respect to a purchase money security interest before or within 10 days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.
- (3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest, such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

Sec. 9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

- (1) A financing statement must be filed to perfect all security interests except the following:
- (a) A security interest in collateral in possession of the secured party under section 9-305;
 - (b) A security interest temporarily perfected in instruments or documents without delivery under section 9-304 or in proceeds for a 10-day period under section 9-306;
 - (c) A purchase money security interest in farm equipment having a purchase price not in excess of \$500; but filing is required for a fixture under section 9-313;
 - (d) An assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

- (e) A security interest of a collecting bank (section 4-208) or arising under the article on sales (see section 9-113) or covered in subsection (3).
- (2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.
- (3) The filing provisions of this article do not apply to a security interest in property subject to a statute
 - (a) Of the United States which provides for a national registration or filing of all security interests in such property; or
 - (b) Of this State which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.
- (4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

Sec. 9-303. When security interest is perfected; continuity of perfection.

- (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.
- (2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.

Sec. 9-304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

- (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).
- (2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.
- (3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this article.

Sec. 9-305. When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (section 5-116, subsection (2), paragraph (a)), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. 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 article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.

Sec. 9-306. "Proceeds"; secured party's rights on disposition of collateral.

(1) "Proceeds" include whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money checks and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor, unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest, if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor, unless

- (a) A filed financing statement covering the original collateral also covers proceeds; or
 - (b) The security interest in the proceeds is perfected before the expiration of the 10-day period.
- (4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest
- (a) In identifiable noncash proceeds;
 - (b) In identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;
 - (c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and
 - (d) In all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph is
 - (i) Subject to any right of set-off; and
 - (ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period.
- (5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:
- (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
 - (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.
 - (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Sec. 9-307. Protection of buyers of goods.

(1) A buyer in ordinary course of business (section 1-201, subsection (9)), other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$500 (other than fixtures, see section 9-313), a buyer takes free of a security interest even though perfected, if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

Sec. 9-308. Purchase of chattel paper and nonnegotiable instruments. A purchaser of chattel paper or a nonnegotiable instrument, who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest, has priority over a security interest which is perfected under section 9-304 (permissive filing and temporary perfection). A purchaser of chattel paper, who gives new value and takes possession of it in the ordinary course of his business, has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 9-306), even though he knows that the specific paper is subject to the security interest.

Sec. 9-309. Protection of purchasers of instruments and documents. Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 3-302) or a holder to whom a negotiable document of title has been negotiated (section 7-501) or a bona fide purchaser of a security (section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

Sec. 9-310. Priority of certain liens arising by operation of law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Sec. 9-311. Alienability of debtor's rights: judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process), notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

Sec. 9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in the following sections shall govern where applicable: section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 9-301 on certain priorities; section 9-304 on goods covered by documents; section 9-306 on proceeds and repossessions; section 9-307 on buyers of goods; section 9-308 on possessory against nonpossessory interests in chattel paper or nonnegotiable instruments; section 9-309 on security interests in negotiable instruments, documents or securities; section 9-310 on priorities between perfected security interests and liens by operation of law; section 9-313 on security interests in fixtures as against interests in real estate; section 9-314 on security interests in accessions as against interests in goods; section 9-315 on conflicting security interests where goods lose their identity or become part of a product; and section 9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral, if

(a) The purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) Any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) Such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

- (a) In the order of filing, if both are perfected by filing, regardless of which security interest attached first under section 9-204, subsection (1) and whether it attached before or after filing;
 - (b) In the order of perfection, unless both are perfected by filing, regardless of which security interest attached first under section 9-204, subsection (1) and, in the case of a filed security interest, whether it attached before or after filing; and
 - (c) In the order of attachment under section 9-204, subsection (1), so long as neither is perfected.
- (6) For the purpose of the priority rules of subsection (5), a continuously perfected security interest shall be treated at all times as if perfected by filing, if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing, if it was originally perfected otherwise than by filing.

Sec. 9-313. Priority of security interests in fixtures.

- (1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this article unless the structure remains personal property under applicable law. The laws of the State other than this chapter determine whether and when other goods become fixtures and this chapter does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.
- (2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate, except as stated in subsection (4).
- (3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate, except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.
- (4) The security interests described in subsections (2) and (3) do not take priority over
 - (a) A subsequent purchaser for value of any interest in the real estate; or
 - (b) A creditor with a lien on the real estate subsequently obtained by judicial proceedings; or
 - (c) A creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances; if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without

knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Sec. 9-314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 9-315, subsection (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole, except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest on the whole to the extent that he makes subsequent advances; if the subsequent purchase is made, the lien by judicial proceedings is obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default, subject to the provisions of part 5, remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not

otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Sec. 9-315. Priority when goods are commingled or processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass, if

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Sec. 9-316. Priority subject to subordination. Nothing in this article prevents subordination by agreement by any person entitled to priority.

Sec. 9-317. Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

Sec. 9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 9-206, the rights of an assignee are subject to

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

Part 4. Filing.

Sec. 9-401. Place of filing; erroneous filing; removal of collateral.

(1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, then in the office of the clerk of the municipality in which the debtor resides, unless the debtor (I) is a corporation, or (II) is not a resident of this State or (III) resides in an unorganized place, then in the office of the Secretary of State. When the collateral is crops, then an additional filing in the office of the register of deeds in the registry district in which a mortgage on the land on which the crops are growing or are to be grown would be recorded;

(b) When the collateral is consumer goods, then in the office of the clerk of the municipality in which the debtor resides, or if the debtor (I) is not a resident of this State, or (II) resides in an unorganized place, then in the office of the Secretary of State;

(c) When the collateral is goods which, at the time the security interest attaches are or are to become fixtures, then in the office of the register of deeds in the registry district in which a mortgage on the real estate concerned would be recorded;

(d) In all other cases, in the office of the Secretary of State, and, in addition, (I) if the debtor is not a corporation and has a place of business in only one municipality of this State, in the office of the clerk of such municipality, and (II) if the debtor is not a corporation and has no place of business in this State, but resides in the State, also in the office of the clerk of the municipality in which he resides.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge or the contents of such financing statement.

(3) A filing which is made in the proper place in this State continues effective even though the debtor's residence or place of business or legal status as a corporation or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this State from another jurisdiction, the rules stated in section 9-103 determine whether filing is necessary in this State.

Sec. 9-402. Formal requisites of financing statements; amendments.

(1) A financing statement is sufficient, if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a general description of the real estate concerned and the name of the record owner thereof. A copy of the security agreement is sufficient as a financing statement, if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient, although it is signed only by the secured party when it is filed to perfect a security interest in

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this State. Such a financing statement must state that the collateral was brought into this State under such circumstances.

(b) Proceeds under section 9-306, if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

- (3) A form substantially as follows is sufficient to comply with subsection (1)

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(General description of real estate and name of record owner)

.....

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(General description of real estate and name of record owner)

.....

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of debtor (or assignor)

Signature of secured party (or assignee)

(4) The term "financing statement" as used in this article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective, even though it contains minor errors which are not seriously misleading.

Sec. 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of 5 years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such 60-day period after a stated maturity date or on the expiration of such 5-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for 5 years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within 6 months before and 60 days after a stated maturity date of 5 years or less, and (ii) otherwise within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2), unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. The filing officer may, in lieu of holding the statement itself, hold a microfilm copy of the statement for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. The index may be made up of the statements themselves, copies thereof, separate cards or otherwise.

(5) The fee for filing, indexing and furnishing filing data for an original or a continuation statement or any amendment thereof shall be \$3, unless on a form conforming to standards prescribed by the Secretary of State in which case the fee shall be \$2.

Sec. 9-404. Termination statement.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The fee for filing and indexing such an assignment or statement thereof shall be \$3, unless on a form conforming to standards prescribed by the Secretary of State in which case the fee shall be \$2. If the affected secured party fails to

send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must note it in the index. Unless the filing officer has used the optional method of using microfilm provided for in section 9-403, subsection (4), the filing officer shall remove from the files, mark "Terminated," and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the filing officer has used the optional method of using microfilm provided for in section 9-403, subsection (4) he shall make copies from his microfilm record, mark the copies "Terminated," and send or deliver to the secured party copies of the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The fee for filing and indexing a termination statement including sending or delivering the financing statement shall be \$2, unless on a form conforming to standards prescribed by the Secretary of State in which case the fee shall be \$1.

Sec. 9-405. Assignment of security interest; duties of filing officer; fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in subsection (4) of section 9-403. The uniform fee for filing, indexing and furnishing filing data for a financing statement, or any amendment thereof, so indicating an assignment shall be \$3, unless on a form conforming to standards prescribed by the Secretary of State in which case the fee shall be \$2.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$3, unless on a form conforming to standards prescribed by the Secretary of State in which case the fee shall be \$2.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Sec. 9-406. Release of collateral; duties of filing officer; fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient, if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party and the file number of the financing statement. Upon presentation of such a statement to the filing officer, he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The fee for filing and noting such a statement of release shall be \$3, unless on a form conforming to standards prescribed by the Secretary of State in which case the fee shall be \$2.

Sec. 9-407. Information from filing officer.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request the filing officer shall furnish a copy of any filed financing statement, continuation statement, termination statement, statement of assignment or statement of release for a fee of \$1, and, if such statement consists of more than 3 pages, an additional fee of 50c for the 4th and each succeeding page.

Sec. 9-408. Destruction of old records. Unless a filing officer has notice of an action pending relative thereto, he may remove from the files and destroy

(a) A lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, and any index of any of them, one year or more after lapse; and

(b) A termination statement and the index on which it is noted, one year or more after the filing of the termination statement.

Part 5. Default.

Sec. 9-501. Default: procedure when security agreement covers both real and personal property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 9-505) and with respect to redemption of collateral (section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:—

(a) Subsection (2) of section 9-502 and subsection (2) of section 9-504 in so far as they require accounting for surplus proceeds of collateral;

(b) Subsection (3) of section 9-504 and subsection (1) of section 9-505 which deal with disposition of collateral;

(c) Subsection (2) of section 9-505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9-506 which deals with redemption of collateral; and

(e) Subsection (1) of section 9-507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

Sec. 9-502. Collection rights of secured party.

(1) When so agreed and in any event on default, the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a

commercially reasonable manner, and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Sec. 9-503. Secured party's right to take possession after default. Unless otherwise agreed, a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process, if this can be done without breach of the peace, or may proceed by action. If the security agreement so provides, the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 9-504.

Sec. 9-504. Secured party's right to dispose of collateral after default; effect of disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral, if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but

every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this State or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and, if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of the collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

Sec. 9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

(1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 9-504 and, if he fails to do so within 90 days after he takes possession, the debtor at his option may recover in conversion or under section 9-507, subsection (1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral, a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this State

or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession, the secured party must dispose of the collateral under section 9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

Sec. 9-506. Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 9-504 or before the obligation has been discharged under section 9-505, subsection (2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorney's fees and legal expenses.

Sec. 9-507. Secured party's liability for failure to comply with this part.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this part, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred, the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, he has sold in a commercially reasonable manner. The principles stated in the 2 preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.'

Sec. 2. R. S., c. 10, § 22, sub-§ XXXIV, additional. Section 22 of chapter 10 of the Revised Statutes, as amended by section 2 of chapter 405 of the public laws of 1955, by section 4 of chapter 397 of the public laws of 1957, by section

4 of chapter 363 of the public laws of 1959 and by chapter 217, section 2 of chapter 303, section 3 of chapter 395 and section 7 of chapter 417, all of the public laws of 1961, is further amended by adding thereto a new subsection, to be numbered XXXIV, to read as follows:

'XXXIV. Pledge; mortgage, etc. The terms "pledge," "mortgage," "conditional sale," "lien," "assignment" and like terms, when used in referring to a security interest in personal property shall include a corresponding security interest under chapter 190, the Uniform Commercial Code.'

Sec. 3. R. S., c. 21, § 6, amended. Section 6 of chapter 21 of the Revised Statutes is amended by repealing the 8th paragraph as follows:

~~'For recording contract of conditional sale of railroad equipment, \$10; for recording written declaration of satisfaction of same, \$5; and for noting declaration of the satisfaction of such contract on the margin of the record, \$1.'~~

Sec. 4. R. S., c. 46, §§ 99-102, repealed. Sections 99 to 102 of chapter 46 of the Revised Statutes are repealed.

Sec. 5. R. S., c. 53, §§ 48 and 49, repealed. Sections 48 and 49 of chapter 53 of the Revised Statutes are repealed.

Sec. 6. R. S., c. 53, § 50, repealed and replaced. Section 50 of chapter 53 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 50. Issuance of certificates of shares. Every shareholder shall be entitled to a share certificate or certificates representing the shares owned by him. The share certificates shall be signed by such officer or officers as the bylaws of the corporation may provide and sealed with the corporate seal, which may be a facsimile, engraved or printed, but where any such certificate is signed by a transfer agent or by a transfer clerk or by a registrar, the signature of any corporate officer upon such certificate may be a facsimile, engraved or printed. In case any officer who has signed, or whose facsimile signature has been placed upon any share certificate, shall have ceased to be such officer because of death, resignation or otherwise before the certificate is issued, it may be issued by the corporation with the same effect as if the officer had not ceased to be such at the time of its issue.'

Sec. 7. R. S., c. 53, §§ 51-72, repealed. Sections 51 to 72 of chapter 53 of the Revised Statutes, as amended, are repealed.

Sec. 8. R. S., c. 53, § 72-H, sub-§ I, amended. Subsection I of section 72-H of chapter 53 of the Revised Statutes, as enacted by section 1 of chapter 244 of the public laws of 1959, is amended to read as follows:

I. Law of jurisdiction where corporation organized. The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized or, in the case of a national bank, by the laws of the state in which the bank has its principal place of business.'

Sec. 9. R. S., c. 53, § 72-J, amended. Section 72-J of chapter 53 of the Revised Statutes, as enacted by section 1 of chapter 244 of the public laws of 1959, is amended to read as follows:

'Sec. 72-J. Uniformity of interpretation. Sections 72-A to 72-K shall be so construed as to effectuate the general purpose to make uniform the law of those states which enact them. **If in any respect there is any inconsistency between sections 72-A to 72-K and the Revised Statutes, chapter 190, article 8, the provisions of sections 72-A to 72-K shall control.'**

Sec. 10. R. S., c. 59, § 19-G, sub-§ VIII, amended. Subsection VIII of section 19-G of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 380 of the public laws of 1955, is amended to read as follows:

'VIII. Payment of orders. Any bank, savings bank or trust company may pay any order drawn by any person who has funds on deposit **in its savings department** to meet the same, notwithstanding the death of the drawer in the interval of time between signing such order and its presentation for payment, when said presentation is made within 30 days after the date of such order; and at any subsequent period, provided the corporation has not received actual notice of the death of the drawer.'

Sec. 11. R. S., c. 59, § 189, repealed. Section 189 of chapter 59 of the Revised Statutes is repealed.

Sec. 12. R. S., c. 59, § 190, amended. Section 190 of chapter 59 of the Revised Statutes, as amended by section 176 of chapter 317 of the public laws of 1961, is further amended to read as follows:

'Sec. 190. Limitation of actions to recover money paid on forged signatures. No civil action to recover money by any depositor shall be maintained against any bank, savings bank or trust company, if the depositor denies the authority of the signature or the authority of an indorsement on any order drawn on any savings bank, or savings deposit or certificates of deposit in any bank or trust company, or on any receipt for payment by such bank, savings bank or trust company, unless such action is begun and service made thereon within 3 years from the date of such payment when the depositor reports the unauthorized signature or the unauthorized indorsement to the bank. In case of any conflict between this section and chapter 190, section 4-406, section 4-406 shall control.'

Sec. 13. R. S., c. 59, §§ 191-194 and 198, repealed. Sections 191 to 194 and section 198 of chapter 59 of the Revised Statutes are repealed.

Sec. 14. R. S., c. 59, § 199, amended. The last paragraph of section 199 of chapter 59 of the Revised Statutes, as repealed and replaced by chapter 201 of the public laws of 1959, is amended to read as follows:

'Nothing contained in this section shall be deemed to modify or otherwise affect chapter 190 section 56 1-201, subsection (25) or section 3-304, nor to relieve such bank from any liability imposed upon it by law to the extent of any payment or amount which such bank may receive for its benefit from any of such checks or funds represented thereby.'

Sec. 15. R. S., c. 59, § 249, amended. The 3rd paragraph of section 249 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is amended to read as follows:

“Documentary fees” means the fees for filing, recording or investigating, perfecting and releasing or satisfying a ~~retained title or a lien~~ security interest created by a retail installment contract, and shall not exceed ~~\$4~~ \$10 in the case of consumer goods as defined in chapter 190, section 9-109.’

Sec. 16. R. S., c. 59, § 249, amended. The 6th paragraph of section 249 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is repealed and the following enacted in place thereof:

“Motor vehicle” means any device propelled or drawn by any power other than muscular power upon or by which any person or property may be transported or drawn upon a highway, excepting agricultural machinery, house trailers and any such devices which do not constitute consumer goods, as defined in chapter 190, section 9-109 (1).’

Sec. 17. R. S., c. 59, § 249, amended. The 8th and 9th paragraphs of section 249 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, are amended to read as follows:

“Retail buyer” or “buyer” means a person who buys a motor vehicle from a retail seller and who executes a retail installment contract in connection therewith. **He is the debtor under the security agreement embodied in the retail installment contract.**

“Retail installment contract” or “contract” means ~~an~~ a security agreement, entered into in this State, pursuant to which ~~the title to, the property in or a lien upon~~ a purchase money security interest in the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security in order to secure, in whole or in part, for the buyer’s obligation. ~~The term includes a chattel mortgage, a conditional sales contract, a Holmes note and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.~~

Sec. 18. R. S., c. 59, § 249, amended. The 11th paragraph of section 249 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is amended to read as follows:

“Retail seller” or “seller” means a person who sells a motor vehicle to a retail buyer under or subject to a retail installment contract. **He is the secured party under the security agreement embodied in the retail installment contract.’**

Sec. 19. R. S., c. 59, § 249, amended. Section 249 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is amended by adding at the end a new paragraph as follows:

“Security agreement,” “security interest,” “purchase money security interest,” “secured party” and “debtor” shall have the same meanings as they have in chapter 190.’

Sec. 20. R. S., c. 59, § 254, sub-§ VI, amended. The 2nd sentence of subsection VI of section 254 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is amended to read as follows:

‘The instrument for recording purposes shall be the ~~contract, or a memorandum thereof~~ financing statement, as provided by the recording provisions of ~~the Revised Statutes~~ chapter 190, section 9-402.’

Sec. 21. R. S., c. 59, § 255, sub-§ IV, repealed and replaced. Subsection IV of section 255 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is repealed and the following enacted in place thereof:

IV. Purchase of contracts by sales finance companies. Nothing in this section shall be deemed to regulate the terms and conditions of any purchase, acquisition or agreement to purchase or acquire or any sales contract by any sales finance company from any seller.’

Sec. 22. R. S., c. 90-A, § 48, amended. The first paragraph of section 48 of chapter 90-A of the Revised Statutes, as enacted by section 1 of chapter 405 of the public laws of 1957, is amended to read as follows:

‘Except as provided in chapter 190, ~~the~~ The clerk shall charge for his services according to the following fee schedule:’

Sec. 23. R. S., c. 90-A, § 48, sub-§ I, ¶ F, repealed. Paragraph F of subsection I of section 48 of chapter 90-A of the Revised Statutes, as enacted by section 1 of chapter 405 of the public laws of 1957, is repealed, as follows:

~~‘F. Assignment or discharge of a mortgage or other instrument given as security, 50e.~~

~~1. When an executed assignment is attached to or made a part of the mortgage or other such instrument before it is received for recording, no extra fee is required.’~~

Sec. 24. R. S., c. 90-A, § 48, sub-§ IV, amended. Subsection IV of section 48 of chapter 90-A of the Revised Statutes, as enacted by section 1 of chapter 405 of the public laws of 1957, is amended to read as follows:

IV. Marginal release. Entering in the margin of a record the release of an attachment ~~or the discharge of a mortgage or other instrument given as security,~~ 25c.

A. The marginal release ~~or discharge~~ shall be signed by the person making it.’

Sec. 25. R. S., c. 112, § 27, amended. Section 27 of chapter 112 of the Revised Statutes, as amended by section 127 of chapter 317 of the public laws of 1959, is further amended to read as follows:

‘Sec. 27. Attachment of bulky personal property recorded. When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within 5 days thereafter file in the office of the ~~clerk of the town in which the attachment is made~~ municipal clerk or the Secretary of State or in the registry of deeds, as the case may be, where filing is required to perfect a security interest in such goods under chapter 190, section 9-401, an attested copy of so much of his return on the writ of attachment as relates to the attachment, with the value of the defendant’s property which he is thereby commanded to attach, the names of the parties, the date of the writ of attachment and the court to which it is returnable, and such attachment is as effectual and valid as if the property had remained in his possession and custody. The municipal clerk, Secretary of State or register of deeds, as the case may be, shall receive the copy, noting thereon the time, enter it in a suitable book or file and keep it on file for the inspection of those interested therein. ~~When the attachment is made in an unincorporated place, such copy shall be filed and recorded in the registry of deeds for the registry district in which said unincorporated place is located.’~~

Sec. 26. R. S., c. 113, §§ 171-173, repealed. Sections 171 to 173 of chapter 113 of the Revised Statutes are repealed.

Sec. 27. R. S., c. 119, §§ 4, 5 and 6, repealed. Sections 4, 5 and 6 of chapter 119 of the Revised Statutes are repealed.

Sec. 28. R. S., c. 119, § 8, amended. Section 8 of chapter 119 of the Revised Statutes is amended to read as follows:

‘Sec. 8. Corporation, associations, copartnerships and individuals included. Sellers and purchasers under ~~the preceding sections~~ section 7 shall include corporations, associations, copartnerships and individuals ~~but the provisions of section 6 shall not apply to sales by executors, administrators, receivers, assignees under voluntary assignments for the benefit of creditors, trustees in bankruptcy, or by any public officer under judicial process or to mortgages made in good faith for the purpose of security only, but nothing contained herein shall in any way relieve any of the aforementioned from payment of the tax as set forth in section 7.’~~

Sec. 29. R. S., c. 119, § 9, repealed. Section 9 of chapter 119 of the Revised Statutes, as amended by chapter 383 of the public laws of 1957 and by sections 1 and 2 of chapter 312 of the public laws of 1961, is repealed.

Sec. 30. R. S., c. 168, § 23, amended. The first sentence of section 23 of chapter 168 of the Revised Statutes, as amended by chapter 2 of the public laws of 1955, is further amended to read as follows:

‘Deeds and all other written instruments before recording in the registries of deeds, except those issued by a court of competent jurisdiction and duly attested

by the proper officer thereof, and excepting plans and notices of foreclosure of mortgages and certain ~~chattel mortgages~~ **financing statements** as provided in ~~section 1 of chapter 178~~ **190, section 9-401** and excepting notices of liens for internal revenue taxes and certificates discharging such liens as provided in ~~section 240 of chapter 89,~~ **section 240**, shall be acknowledged by the grantors, or by the persons executing any such written instruments, or by one of them, or by their attorney executing the same, or by the lessor in a lease or one of the lessors or his attorney executing the same, before a justice of the peace or notary public having a seal, in the State; or before any clerk of a court of record having a seal, notary public, justice of the peace or commissioner appointed by the Governor of this State for the purpose, or a commissioner authorized in the state where the acknowledgement is taken, within the United States; or before a minister or consul of the United States or notary public in any foreign country.'

Sec. 31. R. S., c. 178, §§ 1-11 and 86 and 87, repealed. Sections 1 to 11, as amended, and sections 86 and 87 of chapter 178 of the Revised Statutes are repealed.

Sec. 32. R. S., c. 178, § 76, repealed and replaced. Section 76 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 76. Enforcement by sale.** Whoever has a lien on personal property in his possession which is not covered by article 9 of chapter 190 may enforce it by a sale thereof in the manner provided for in the contract creating such lien, if in writing, or as hereinafter provided for in sections 77 to 83.'

Sec. 33. R. S., c. 181, §§ 1 - 11, repealed. Sections 1 to 11 of chapter 181 of the Revised Statutes, as amended, are repealed.

Sec. 33-A. R. S., c. 182, § 14, additional. Chapter 182 of the Revised Statutes is amended by adding a new section 14 to read as follows:

'**Sec. 14. Limitation.** Nothing contained in this chapter shall control the manner of obtaining a security interest in a trademark or the necessity for filing or recording to protect or perfect any such security interest, whether it is obtained by an assignment or otherwise.'

Sec. 34. R. S., c. 185, repealed. Chapter 185 of the Revised Statutes is repealed.

Sec. 35. R. S., c. 186, §§ 1 - 43, 51 - 54, repealed. Sections 1 to 43 and 51 to 54 of chapter 186 of the Revised Statutes are repealed.

Sec. 36. R. S., c. 187, §§ 1 - 49, 56 - 59, repealed. Sections 1 to 49 and 56 to 59 of chapter 187 of the Revised Statutes are repealed.

Sec. 37. R. S., c. 188, repealed. Chapter 188 of the Revised Statutes, as amended, is repealed.

Sec. 38. R. S., c. 189, repealed. Chapter 189 of the Revised Statutes, as enacted by chapter 461 of the public laws of 1955, is repealed.

Sec. 39. General repealer. Except as provided in the following section, all acts or parts of acts inconsistent with the provisions of this act are repealed.

Sec. 40. Laws not repealed.

I. The Revised Statutes, chapter 190, article 7, as enacted by section 1 of this act, on documents of title, does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with in this act; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title, as appearing in the Revised Statutes, chapter 190, section 1-201, as enacted by section 1 of this act.

II. This act does not repeal the Revised Statutes, chapter 53, sections 72-A to 72-K, as enacted by section 1 of chapter 244 of the public laws of 1959, cited as the Uniform Act for the Simplification of Fiduciary Security Transfers, and if in any respect there is any inconsistency between that act, as amended by this act, and the article of this act on investment securities (article 8), the provisions of the former act shall control.

Sec. 41. Provision for transition. Transactions validly entered into before the effective date of this act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such amendment or repeal had not occurred.

Sec. 42. Appropriation. There is appropriated from the Unappropriated Surplus of the General Fund to the Secretary of State the sum of \$10,500 for the fiscal year ending June 30, 1965 to carry out the purposes of this act. The breakdown shall be as follows:

	1963-64		1964-65
SECRETARY OF STATE			
Personal Services	---	(2)	\$ 4,000
All Other	---		1,500
Capital Expenditures	---		5,000

			\$10,500

Sec. 43. Effective date. This act shall become effective December 31, 1964.

Effective December 31, 1964

Chapter 363

AN ACT Providing for a Full-time Chairman of the Liquor Commission and Increasing the Compensation.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 61, § 3, amended. Section 3 of chapter 61 of the Revised Statutes is amended to read as follows: