

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1405

S.P. 508

In Senate, April 2, 2009

**An Act To Implement the Updates to Article 7 of the Uniform
Commercial Code Suggested by the National Conference of
Commissioners on Uniform State Laws**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 ***PREFATORY NOTE***

4
5 Article 7 is the last of the articles of the Uniform Commercial Code to be revised.
6 The genesis of this project is twofold: to provide a framework for the further
7 development of electronic documents of title and to update the article for modern times in
8 light of state, federal and international developments. Each section has been reviewed to
9 determine its suitability given modern practice, the need for medium and gender
10 neutrality, and modern statutory drafting.

11
12 To provide for electronic documents of title, several definitions in Article 1 were
13 revised including "bearer," "bill of lading," "delivery," "document of title," "holder," and
14 "warehouse receipt." The concept of an electronic document of title allows for
15 commercial practice to determine whether records issued by bailees are "in the regular
16 course of business or financing" and are "treated as adequately evidencing that the person
17 in possession or control of the record is entitled to receive, control, hold, and dispose of
18 the record and the goods the record covers." Rev. Section 1-201(b)(16). Such records in
19 electronic form are electronic documents of title and in tangible form are tangible
20 documents of title. Conforming amendments to other Articles of the UCC are also
21 necessary to fully integrate electronic documents of title into the UCC. Conforming
22 amendments to other Articles of the UCC are contained in Appendix I.

23
24 Key to the integration of the electronic document of title scheme is the concept of
25 "control" defined in Section 7-106. This definition is adapted from the Uniform
26 Electronic Transactions Act § 16 on Transferrable Records and from Uniform
27 Commercial Code § 9-105 concerning control of electronic chattel paper. Control of an
28 electronic document of title is the conceptual equivalent to possession and indorsement of
29 a tangible document of title. Of equal importance is the acknowledgment that parties
30 may desire to substitute an electronic document of title for an already-issued paper
31 document and vice versa. Section 7-105 sets forth the minimum requirements that need
32 to be fulfilled in order to give effect to the substitute document issued in the alternate
33 medium. To the extent possible, the rules for electronic documents of title are the same
34 or as similar as possible to the rules for tangible documents of title. If a rule is meant to
35 be limited to one medium or the other, that is clearly stated. Rules that reference
36 documents of title, warehouse receipts, or bills of lading without a designation to
37 "electronic" or "tangible" apply to documents of title in either medium. As with tangible
38 negotiable documents of title, electronic negotiable documents of title may be negotiated
39 and duly negotiated. Section 7-501.

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41 Other changes that have been made are:

42
43 1. New definitions of "carrier," "good faith," "record", "sign" and "shipper" in
44 Section 7-102.

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2. Deletion of references to tariffs or filed classifications given the deregulation of the affected industries. See e.g. section 7-103 and 7-309.

3. Clarifying the rules regarding when a document is nonnegotiable. Section 7-104.

4. Making clear when rules apply just to warehouse receipts or bills of lading, thus eliminating the need for former section 7-105.

5. Clarifying that particular terms need not be included in order to have a valid warehouse receipt. Section 7-202.

6. Broadening the ability of the warehouse to make an effective limitation of liability in its warehouse receipt or storage agreement in accord with commercial practice. Section 7-204.

7. Allowing a warehouse to have a lien on goods covered by a storage agreement and clarifying the priority rules regarding the claim of a warehouse lien as against other interests. Section 7-209.

8. Conforming language usage to modern shipping practice. Sections 7-301 and 7-302.

9. Clarifying the extent of the carrier's lien. Section 7-307.

10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504, 7-509.

11. Clarifying that the warranty made by negotiation or delivery of a document of title should apply only in the case of a voluntary transfer of possession or control of the document. Section 7-507.

12. Providing greater flexibility to a court regarding adequate protection against loss when ordering delivery of the goods or issuance of a substitute document. Section 7-601.

13. Providing conforming amendments to the other Articles of the Uniform Commercial Code to accommodate electronic documents of title.

Legislative Note: All cross-references in this draft to Article 1 are to Revised Article 1 (2001). In the event a state has not enacted Revised Article 1, the cross-references should be changed to refer to the relevant sections in former Article 1.

Sec. A-1. 11 MRSA art. 7, as amended, is repealed.

Sec. A-2. 11 MRSA art. 7-A is enacted to read:

ARTICLE 7-A

1 DOCUMENTS OF TITLE

2 PART 1

3 GENERAL

4 §7-1101. Short title

5 This Article may be known and cited as "the Uniform Commercial Code -
6 Documents of Title."

7 UNIFORM COMMENT

8
9 (This is section 7-101 of the Uniform Commercial Code - Article 7 (2004).)

10
11 **Prior Uniform Statutory Provision:** Former Section 7-101.

12
13 **Changes:** Revised for style only.

14
15 This Article is a revision of the 1962 Official Text with Comments as amended since
16 1962. The 1962 Official Text was a consolidation and revision of the Uniform
17 Warehouse Receipts Act and the Uniform Bills of Lading Act, and embraced the
18 provisions of the Uniform Sales Act relating to negotiation of documents of title.

19
20 This Article does not contain the substantive criminal provisions found in the
21 Uniform Warehouse Receipts and Bills of Lading Acts. These criminal provisions are
22 inappropriate to a Commercial Code, and for the most part duplicate portions of the
23 ordinary criminal law relating to frauds. This revision deletes the former Section 7-105
24 that provided that courts could apply a rule from Parts 2 and 3 by analogy to a situation
25 not explicitly covered in the provisions on warehouse receipts or bills of lading when it
26 was appropriate. This is, of course, an unexceptional proposition and need not be stated
27 explicitly in the statute. Thus former Section 7-105 has been deleted. Whether applying
28 a rule by analogy to a situation is appropriate depends upon the facts of each case.

29
30 The Article does not attempt to define the tort liability of bailees, except to hold
31 certain classes of bailees to a minimum standard of reasonable care. For important classes
32 of bailees, liabilities in case of loss, damages or destruction, as well as other legal
33 questions associated with particular documents of title, are governed by federal statutes,
34 international treaties, and in some cases regulatory state laws, which supersede the
35 provisions of this Article in case of inconsistency. See Section 7-103.

36 §7-1102. Definitions and index of definitions

37 (1). In this Article, unless the context otherwise requires, the following terms have
38 the following meanings.

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

- 1 (b). "Carrier" means a person that issues a bill of lading.
- 2 (c). "Consignee" means a person named in a bill of lading to which or to whose order
3 the bill promises delivery.
- 4 (d). "Consignor" means a person named in a bill of lading as the person from which
5 the goods have been received for shipment.
- 6 (e). "Delivery order" means a record that contains an order to deliver goods directed
7 to a warehouse, carrier or other person that in the ordinary course of business issues
8 warehouse receipts or bills of lading.
- 9 (f). "Good faith" means honesty in fact and the observance of reasonable commercial
10 standards of fair dealing.
- 11 (g). "Goods" means all things that are treated as movable for the purposes of a
12 contract for storage or transportation.
- 13 (h). "Issuer" means a bailee that issues a document of title or, in the case of an
14 unaccepted delivery order, the person that orders the possessor of goods to deliver.
15 The term includes a person for which an agent or employee purports to act in issuing
16 a document if the agent or employee has real or apparent authority to issue
17 documents, even if the issuer did not receive any goods, the goods were misdescribed
18 or in any other respect the agent or employee violated the issuer's instructions.
- 19 (i). "Person entitled under the document" means the holder, in the case of a
20 negotiable document of title, or the person to which delivery of the goods is to be
21 made by the terms of, or pursuant to instructions in a record under, a nonnegotiable
22 document of title.
- 23 (j). "Record" means information that is inscribed on a tangible medium or that is
24 stored in an electronic or other medium and is retrievable in perceivable form.
- 25 (k). "Sign" means, with present intent to authenticate or adopt a record:
- 26 (i) To execute or adopt a tangible symbol; or
- 27 (ii) To attach to or logically associate with the record an electronic sound,
28 symbol, or process.
- 29 (l). "Shipper" means a person that enters into a contract of transportation with a
30 carrier.
- 31 (m). "Warehouse" means a person engaged in the business of storing goods for hire.
- 32 (2). Definitions in other Articles applying to this Article and the sections in which
33 they appear are:
- 34 (a). "Contract for sale," section 2-106;
- 35 (b). "Lessee in the ordinary course of business," section 2-1103; and
- 36 (c). "Receipt" of goods, section 2-103.
- 37 (3). In addition, Article 1 contains general definitions and principles of construction
38 and interpretation applicable throughout this Article.

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UNIFORM COMMENT

(This is section 7-102 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-102.

Changes: New definitions of "carrier," "good faith," "record," "sign," and "shipper."
Other definitions revised to accommodate electronic mediums.

Purposes:

1. "Bailee" is used in this Article as a blanket term to designate carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when it does not have possession, the bailee is bound by sections of this Article which declare the "bailee's" obligations. (See definition of "Issuer" in this section and Sections 7-203 and 7-301 on liability in case of non-receipt.) A "carrier" is one type of bailee and is defined as a person that issues a bill of lading. A "shipper" is a person who enters into the contract of transportation with the carrier. The definitions of "bailee," "consignee," "consignor," "goods", and "issuer", are unchanged in substance from prior law. "Document of title" is defined in Article 1, and may be in either tangible or electronic form.

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1-201) does not require that the issuing warehouse be "lawfully engaged" in business or for profit. The warehouse's compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this Article. Certainly the issuer's violations of law should not diminish its responsibility on documents the issuer has put in commercial circulation. But it is still essential that the business be storing goods "for hire" (Section 1-201 and this section). A person does not become a warehouse by storing its own goods.

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of "document of title" in Section 1-201.

4. The obligation of good faith imposed by this Article and by Article 1, Section 1-304 includes the observance of reasonable commercial standards of fair dealing.

5. The definitions of "record" and "sign" are included to facilitate electronic mediums. See comment 9 to Section 9-102 discussing "record" and the comment to amended Section 2-103 discussing "sign."

6. "Person entitled under the document" is moved from former Section 7-403.

1 7. These definitions apply in this Article unless the context otherwise requires. The
2 "context" is intended to refer to the context in which the defined term is used in the
3 Uniform Commercial Code. The definition applies whenever the defined term is used
4 unless the context in which the defined term is used in the statute indicates that the term
5 was not used in its defined sense. See comment to Section 1-201.
6

7 **Cross References:**

8 Point 1: Sections 1-201, 7-203 and 7-301.

9 Point 2: Sections 1-201 and 7-203.

10 Point 3: Section 1-201.

11 Point 4: Section 1-304.

12 Point 5: Section 9-102 and 2-103.

13 See general comment to document of title in Section 1-201.
14

15 **Definitional Cross References:**

16 "Bill of lading". Section 1-201.

17 "Contract". Section 1-201.

18 "Contract for sale". Section 2-106.

19 "Delivery". Section 1-201.

20 "Document of title". Section 1-201.

21 "Person". Section 1-201.

22 "Purchase". Section 1-201.

23 "Receipt of goods". Section 2-103.

24 "Right". Section 1-201.

25 "Warehouse receipt". Section 1-201.
26

§7-1103. Relation of Article to treaty or statute

27 (1). This Article is subject to any treaty or statute of the United States or regulatory
28 statute of this State to the extent the treaty, statute or regulatory statute is applicable.

29 (2). This Article does not modify or repeal any law prescribing the form or content of
30 a document of title or the services or facilities to be afforded by a bailee or otherwise
31 regulating a bailee's business in respects not specifically treated in this Article. However,
32 violation of such a law does not affect the status of a document of title that otherwise is
33 within the definition of a document of title.

34 (3). This Article modifies, limits and supersedes the federal Electronic Signatures in
35 Global and National Commerce Act, 15 United States Code, Section 7001, et seq., but
36 does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code,
37 Section 7001(c), or authorize electronic delivery of any of the notices described in
38 Section 103(b) of that Act, 15 United States Code, Section 7003(b).

39 (4). To the extent there is a conflict between the Uniform Electronic Transactions
40 Act and this Article, this Article governs.

41 **UNIFORM COMMENT**

42 (This is section 7-103 of the Uniform Commercial Code - Article 7 (2004).)
43
44

1 **Prior Uniform Statutory Provision:** Former Sections 7-103 and 10-104.
2

3 **Changes:** Deletion of references to tariffs and classifications; incorporation of former
4 Section 10-104 into subsection (b), provide for intersection with federal and state law
5 governing electronic transactions.
6

7 **Purposes:**
8

9 1. To make clear what would of course be true without the Section, that applicable
10 Federal law is paramount.
11

12 2. To make clear also that regulatory state statutes (such as those fixing or authorizing
13 a commission to fix rates and prescribe services, authorizing different charges for goods
14 of different values, and limiting liability for loss to the declared value on which the
15 charge was based) are not affected by the Article and are controlling on the matters which
16 they cover unless preempted by federal law. The reference in former Section 7-103 to
17 tariffs, classifications, and regulations filed or issued pursuant to regulatory state statutes
18 has been deleted as inappropriate in the modern era of diminished regulation of carriers
19 and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or
20 classification, that tariff or classification would be given effect via the state regulatory
21 scheme that this Article recognizes as controlling. Permissive tariffs or classifications
22 would not displace the provisions of this act, pursuant to this section, but may be given
23 effect through the ability of parties to incorporate those terms by reference into their
24 agreement.
25

26 3. The document of title provisions of this act supplement the federal law and
27 regulatory state law governing bailees. This Article focuses on the commercial
28 importance and usage of documents of title. State ex. rel Public Service Commission v.
29 Gunkelman & Sons, Inc., 219 N.W.2d 853 (N.D. 1974).
30

31 4. Subsection (c) is included to make clear the interrelationship between the federal
32 Electronic Signatures in Global and National Commerce Act and this article and the
33 conforming amendments to other articles of the Uniform Commercial Code promulgated
34 as part of the revision of this article. Section 102 of the federal act allows a State statute
35 to modify, limit, or supersede the provisions of Section 101 of the federal act. See the
36 comments to Revised Article 1, Section 1-108.
37

38 5. Subsection (d) makes clear that once this article is in effect, its provisions
39 regarding electronic commerce and regarding electronic documents of title control in the
40 event there is a conflict with the provisions of the Uniform Electronic Transactions Act or
41 other applicable state law governing electronic transactions.
42

43 **Cross References:**

44 Sections 1-108, 7-201, 7-202, 7-204, 7-206, 7-309, 7-401, 7-403.
45

46 **Definitional Cross Reference:**

47 "Bill of lading". Section 1-201.
48

1 nonnegotiable even if the document would otherwise comply with the requirement of
2 subsection (a). Once issued as a negotiable document of title, the document cannot be
3 changed from a negotiable document to a nonnegotiable document. A document of title
4 that is nonnegotiable cannot be made negotiable by stamping or providing a notation that
5 the document is negotiable. The only way to make a document of title negotiable is to
6 comply with subsection (a). A negotiable document of title may fail to be duly negotiated
7 if the negotiation does not comply with the requirements for "due negotiation" stated in
8 Section 7-501.
9

10 **Cross Reference:** Sections 7-501 and 7-502.

11
12 **Definitional Cross References:**

13 "Bearer". Section 1-201.

14 "Bill of lading". Section 1-201.

15 "Delivery". Section 1-201.

16 "Document of title". Section 1-201.

17 "Person". Section 1-201.

18 "Sign". Section 7-102

19 "Warehouse receipt". Section 1-201.
20

21 **§7-1105. Reissuance in alternative medium**

22 (1). Upon request of a person entitled under an electronic document of title, the
23 issuer of the electronic document may issue a tangible document of title as a substitute for
24 the electronic document if:

25 (a). The person entitled under the electronic document surrenders control of the
26 document to the issuer; and

27 (b). The tangible document when issued contains a statement that it is issued in
28 substitution for the electronic document.

29 (2). Upon issuance of a tangible document of title in substitution for an electronic
30 document of title in accordance with subsection (1):

31 (a). The electronic document ceases to have any effect or validity; and

32 (b). The person that procured issuance of the tangible document warrants to all
33 subsequent persons entitled under the tangible document that the warrantor was a
34 person entitled under the electronic document when the warrantor surrendered control
35 of the electronic document to the issuer.

36 (3). Upon request of a person entitled under a tangible document of title, the issuer of
37 the tangible document may issue an electronic document of title as a substitute for the
38 tangible document if:

39 (a). The person entitled under the tangible document surrenders possession of the
40 document to the issuer; and

41 (b). The electronic document when issued contains a statement that it is issued in
42 substitution for the tangible document.

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§7-1106. Control of electronic document of title

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

(2). A system satisfies subsection (1), and a person is deemed to have control of an electronic document of title, if the document is created, stored and assigned in such a manner that:

(a). A single authoritative copy of the document exists that is unique, identifiable and, except as otherwise provided in paragraphs (d), (e) and (f), unalterable;

(b). The authoritative copy identifies the person asserting control as:

(i) The person to which the document was issued; or

(ii) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(c). The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d). Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e). Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f). Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

UNIFORM COMMENT

(This is section 7-106 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Uniform Electronic Transactions Act Section 16.

Purpose:

1. The section defines "control" for electronic documents of title and derives its rules from the Uniform Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16, however, a document of title may be reissued in an alternative medium pursuant to Section 7-105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA § 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

2. Control of an electronic document of title substitutes for the concept of indorsement and possession in the tangible document of title context. See Section 7-501.

1 A person with a tangible document of title delivers the document by voluntarily
2 transferring possession and a person with an electronic document of title delivers the
3 document by voluntarily transferring control. (Delivery is defined in Section 1-201).
4

5 3. Subsection (a) sets forth the general rule that the "system employed for evidencing
6 the transfer of interests in the electronic document reliably establishes that person as the
7 person to which the electronic document was issued or transferred." The key to having a
8 system that satisfies this test is that identity of *the* person to which the document was
9 issued or transferred must be reliably established. Of great importance to the functioning
10 of the control concept is to be able to demonstrate, at any point in time, *the person*
11 entitled under the electronic document. For example, a carrier may issue an electronic
12 bill of lading by having the required information in a database that is encrypted and
13 accessible by virtue of a password. If the computer system in which the required
14 information is maintained identifies the person as *the* person to which the electronic bill
15 of lading was issued or transferred, that person has control of the electronic document of
16 title. That identification may be by virtue of passwords or other encryption methods.
17 Registry systems may satisfy this test. For example, see the electronic warehouse receipt
18 system established pursuant to 7 C.F.R. Part 735. This Article leaves to the market place
19 the development of sufficient technologies and business practices that will meet the test.
20

21 An electronic document of title is evidenced by a record consisting of information
22 stored in an electronic medium. Section 1-201. For example, a record in a computer
23 database could be an electronic document of title assuming that it otherwise meets the
24 definition of document of title. To the extent that third parties wish to deal in paper
25 mediums, Section 7-105 provides a mechanism for exiting the electronic environment by
26 having the issuer reissue the document of title in a tangible medium. Thus if a person
27 entitled to enforce an electronic document of title causes the information in the record to
28 be printed onto paper without the issuer's involvement in issuing the document of title
29 pursuant to Section 7-105, that paper is not a document of title.
30

31 4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a
32 safe harbor test that if satisfied, results in control under the general test in subsection (a).
33 The test in subsection (b) is also used in Section 9-105 although Section 9-105 does not
34 include the general test of subsection (a). Under subsection (b), at any point in time, a
35 party should be able to identify the single authoritative copy which is unique and
36 identifiable as the authoritative copy. This does not mean that once created that the
37 authoritative copy need be static and never moved or copied from its original location.
38 To the extent that backup systems exist which result in multiple copies, the key to this
39 idea is that at any point in time, the one authoritative copy needs to be unique and
40 identifiable.
41

42 Parties may not by contract provide that control exists. The test for control is a
43 factual test that depends upon whether the general test in subsection (a) or the safe harbor
44 in subsection (b) is satisfied.
45

46 5. Article 7 has historically provided for rights under documents of title and rights of
47 transferees of documents of title as those rights relate to the goods covered by the
48 document. Third parties may possess or have control of documents of title. While

1 misfeasance or negligence in failure to transfer or misdelivery of the document by those
2 third parties may create serious issues, this Article has never dealt with those issues as it
3 relates to tangible documents of title, preferring to leave those issues to the law of
4 contracts, agency and tort law. In the electronic document of title regime, third party
5 registry systems are just beginning to develop. It is very difficult to write rules regulating
6 those third parties without some definitive sense of how the third party registry systems
7 will be structured. Systems that are evolving to date tend to be "closed" systems in which
8 all participants must sign on to the master agreement which provides for rights as against
9 the registry system as well as rights among the members. In those closed systems, the
10 document of title never leaves the system so the parties rely upon the master agreement as
11 to rights against the registry for its failures in dealing with the document. This article
12 contemplates that those "closed" systems will continue to evolve and that the control
13 mechanism in this statute provides a method for the participants in the closed system to
14 achieve the benefits of obtaining control allowed by this article.
15

16 This article also contemplates that parties will evolve open systems where parties
17 need not be subject to a master agreement. In an open system a party that is expecting to
18 obtain rights through an electronic document may not be a party to the master agreement.
19 To the extent that open systems evolve by use of the control concept contained in this
20 section, the law of contracts, agency, and torts as it applies to the registry's misfeasance or
21 negligence concerning the transfer of control of the electronic document will allocate the
22 risks and liabilities of the parties as that other law now does so for third parties who hold
23 tangible documents and fail to deliver the documents.
24

25 **Cross Reference:** Sections 7-105 and 7-501.

26 **Definitional Cross-References:**

27 "Delivery", 1-201.

28 "Document of title", 1-201.
29

30 **PART 2**

31 **WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

32 **§7-1201. Person that may issue a warehouse receipt; storage under bond**

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

34 **(2). If goods, including distilled spirits and agricultural commodities, are stored**
35 **under a statute requiring a bond against withdrawal or a license for the issuance of**
36 **receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be**
37 **a warehouse receipt even if issued by a person that is the owner of the goods and is not a**
38 **warehouse.**

39 **UNIFORM COMMENT**

40
41 (This is section 7-201 of the Uniform Commercial Code - Article 7 (2004).)
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Prior Uniform Statutory Provision: Former Section 7-201.

Changes: Update for style only.

Purposes:

It is not intended by re-enactment of subsection (a) to repeal any provisions of special licensing or other statutes regulating who may become a warehouse. Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. Section 7-103. Compare Section 7-401(4) on the liability of the issuer in such cases. Subsection (b) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. Chapter 51.

Cross References: Sections 7-103, 7-401.

Definitional Cross References:

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§7-1202. Form of warehouse receipt; effect of omission

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

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

(a). A statement of the location of the warehouse facility where the goods are stored;

(b). The date of issue of the receipt;

(c). The unique identification code of the receipt;

(d). A statement whether the goods received will be delivered to the bearer, to a named person or to a named person or its order;

(e). The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(f). A description of the goods or the packages containing them;

(g). The signature of the warehouse or its agent;

(h). If the receipt is issued for goods that the warehouse owns, either solely, jointly or in common with others, a statement of the fact of that ownership; and

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

1 exercise under similar circumstances. Unless otherwise agreed, the warehouse is not
2 liable for damages that could not have been avoided by the exercise of that care.

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

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

14 UNIFORM COMMENT

15 (This is section 7-204 of the Uniform Commercial Code - Article 7 (2004).)

16 **Prior Uniform Statutory Provision:** Former Section 7-204.

17 **Changes:** Updated to reflect modern, standard commercial practices.

18 **Purposes of Changes:**

19 1. Subsection (a) continues the rule without change from former Section 7-204 on
20 the warehouse's obligation to exercise reasonable care.

21 2. Former Section 7-204(2) required that the term limiting damages do so by setting
22 forth a specific liability per article or item or of a value per unit of weight. This
23 requirement has been deleted as out of step with modern industry practice. Under
24 subsection (b) a warehouse may limit its liability for damages for loss of or damage to the
25 goods by a term in the warehouse receipt or storage agreement without the term
26 constituting an impermissible disclaimer of the obligation of reasonable care. The parties
27 cannot disclaim by contract the warehouse's obligation of care. Section 1-302. For
28 example, limitations based upon per unit of weight, per package, per occurrence, or per
29 receipt as well as limitations based upon a multiple of the storage rate may be
30 commercially appropriate. As subsection (d) makes clear, the states or the federal
31 government may supplement this section with more rigid standards of responsibility for
32 some or all bailees.

33 3. Former Section 7-204(2) also provided that an increased rate can not be charged if
34 contrary to a tariff. That language has been deleted. If a tariff is required under state or
35 federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this
36 section allowing an increased rate. The provisions of a non-mandatory tariff may be
37 incorporated by reference in the parties' agreement. See Comment 2 to Section 7-103.
38 Subsection (c) deletes the reference to tariffs for the same reason that the reference has
39 been omitted in subsection (b).

1
2 4. As under former Section 7-204(2), subsection (b) provides that a limitation of
3 damages is ineffective if the warehouse has converted the goods to its own use. A mere
4 failure to redeliver the goods is not conversion to the warehouse's own use. See Adams v.
5 Ryan & Christie Storage, Inc., 563 F. Supp. 409 (E.D. Pa. 1983) aff'd 725 F.2d 666 (3rd
6 Cir. 1983). Cases such as I.C.C. Metals Inc. v. Municipal Warehouse Co., 409 N.E. 2d
7 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a presumption
8 of conversion to the warehouse's own use are disapproved. "Conversion to its own use"
9 is narrower than the idea of conversion generally. Cases such as Lipman v. Peterson, 575
10 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.
11

12 5. Storage agreements commonly establish the contractual relationship between
13 warehouses and depositors who have an on-going relationship. The storage agreement
14 may allow for the movement of goods into and out of a warehouse without the necessity
15 of issuing or amending a warehouse receipt upon each entry or exit of goods from the
16 warehouse.
17

18 **Cross References:** Sections 1-302, 7-103, 7-309 and 7-403.
19

20 **Definitional Cross References:**

21 "Goods". Section 7-102.
22 "Reasonable time". Section 1-204.
23 "Sign". Section 7-102.
24 "Term". Section 1-201.
25 "Value". Section 1-204.
26 "Warehouse receipt". Section 1-201.
27 "Warehouse". Section 7-102.

28 **§7-1205. Title under warehouse receipt defeated in certain cases**

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

33 **UNIFORM COMMENT**

34
35 (This is section 7-205 of the Uniform Commercial Code - Article 7 (2004).)

36
37 **Prior Uniform Statutory Provision:** Former Section 7-205.

38
39 **Changes:** Changes for style only.

40
41 **Purposes:**

42
43 1. The typical case covered by this section is that of the warehouse-dealer in grain,
44 and the substantive question at issue is whether in case the warehouse becomes insolvent
45 the receipt holders shall be able to trace and recover grain shipped to farmers and other
46 purchasers from the elevator. This was possible under the old acts, although courts were

1 eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain
2 means that the preservation of this theoretical right adds little to the commercial
3 acceptability of negotiable grain receipts, which really circulate on the credit of the
4 warehouse. Moreover, on default of the warehouse, the receipt holders at least share in
5 what grain remains, whereas retaking the grain from a good faith cash purchaser reduces
6 the purchaser completely to the status of general creditor in a situation where there was
7 very little the purchaser could do to guard against the loss. Compare 15 U.S.C. Section
8 714p enacted in 1955.
9

10 2. This provision applies to both negotiable and nonnegotiable warehouse receipts.
11 The concept of due negotiation is provided for in 7-501. The definition of "buyer in
12 ordinary course" is in Article 1 and provides, among other things, that a buyer must either
13 have possession or a right to obtain the goods under Article 2 in order to be a buyer in
14 ordinary course. This section requires actual delivery of the fungible goods to the buyer
15 in ordinary course. Delivery requires voluntary transfer of possession of the fungible
16 goods to the buyer. See amended Section 2-103. This section is not satisfied by the
17 delivery of the document of title to the buyer in ordinary course.
18

19 **Cross References:** Sections 2-403 and 9-320.
20

21 **Definitional Cross References:**

22 "Buyer in ordinary course of business". Section 1-201.

23 "Delivery". Section 1-201.

24 "Duly negotiate". Section 7-501.

25 "Fungible" goods. Section 1-201.

26 "Goods". Section 7-102.

27 "Value". Section 1-204.

28 "Warehouse receipt". Section 1-201.

29 "Warehouse". Section 7-102.
30

31 **§7-1206. Termination of storage at warehouse's option**

32 (1). A warehouse, by giving notice to the person on whose account the goods are
33 held and any other person known to claim an interest in the goods, may require payment
34 of any charges and removal of the goods from the warehouse at the termination of the
35 period of storage fixed by the document of title or, if a period is not fixed, within a stated
36 period not less than 30 days after the warehouse gives notice. If the goods are not
37 removed before the date specified in the notice, the warehouse may sell them pursuant to
38 section 7-1210.

39 (2). If a warehouse in good faith believes that goods are about to deteriorate or
40 decline in value to less than the amount of its lien within the time provided in subsection
41 (1) and section 7-1210, the warehouse may specify in the notice given under subsection
42 (1) any reasonable shorter time for removal of the goods and, if the goods are not
43 removed, may sell them at public sale held not less than one week after a single
44 advertisement or posting.

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

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

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

UNIFORM COMMENT

14
15
16 (This is section 7-206 of the Uniform Commercial Code - Article 7 (2004).)

17
18 **Prior Uniform Statutory Provision:** Former Section 7-206.

19
20 **Changes:** Changes for style.

Purposes:

21
22
23 1. This section provides for three situations in which the warehouse may terminate
24 storage for reasons other than enforcement of its lien as permitted by Section 7-210. Most
25 warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable
26 demand. It is necessary to define the warehouse's power to terminate the bailment, since
27 it would be commercially intolerable to allow warehouses to order removal of the goods
28 on short notice. The thirty day period provided where the document does not carry its
29 own period of termination corresponds to commercial practice of computing rates on a
30 monthly basis. The right to terminate under subsection (a) includes a right to require
31 payment of "any charges", but does not depend on the existence of unpaid charges.

32
33 2. In permitting expeditious disposition of perishable and hazardous goods the pre-
34 Code Uniform Warehouse Receipts Act, Section 34, made no distinction between cases
35 where the warehouse knowingly undertook to store such goods and cases where the
36 goods were discovered to be of that character subsequent to storage. The former situation
37 presents no such emergency as justifies the summary power of removal and sale.
38 Subsections (b) and (c) distinguish between the two situations. The reason of this section
39 should apply if the goods become hazardous during the course of storage. The process for
40 selling the goods described in Section 7-210 governs the sale of goods under this section
41 except as provided in subsections (b) and (c) for the situations described in those
42 subsections respectively.

43
44 3. Protection of its lien is the only interest which the warehouse has to justify
45 summary sale of perishable goods which are not hazardous. This same interest must be

1 recognized when the stored goods, although not perishable, decline in market value to a
2 point which threatens the warehouse's security.

3
4 4. The right to order removal of stored goods is subject to provisions of the public
5 warehousing laws of some states forbidding warehouses from discriminating among
6 customers. Nor does the section relieve the warehouse of any obligation under the state
7 laws to secure the approval of a public official before disposing of deteriorating goods.
8 Such regulatory statutes and the regulations under them remain in force and operative.
9 Section 7-103.

10
11 **Cross References:** Sections 7-103 and 7-403.

12
13 **Definitional Cross References:**

14 "Delivery". Section 1-201.
15 "Document of title". Section 1-102.
16 "Good faith". Section 1-201 [7-102].
17 "Goods". Section 7-102.
18 "Notice". Section 1-202.
19 "Notification". Section 1-202.
20 "Person". Section 1-201.
21 "Reasonable time". Section 1-205.
22 "Value". Section 1-204.
23 "Warehouse". Section 7-102.
24

25 **§7-1207. Goods must be kept separate; fungible goods**

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

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

34 **UNIFORM COMMENT**

35
36 (This is section 7-207 of the Uniform Commercial Code - Article 7 (2004).)

37
38 **Prior Uniform Statutory Provision:** Former Section 7-207.

39
40 **Changes:** Changes for style only.

41
42 **Purposes:**

43
44 No change of substance is made from former Section 7-207. Holders to whom
45 overissued receipts have been duly negotiated shall share in a mass of fungible goods.

1 Where individual ownership interests are merged into claims on a common fund, as is
2 necessarily the case with fungible goods, there is no policy reason for discriminating
3 between successive purchasers of similar claims.
4

5 **Definitional Cross References:**

6 "Delivery". Section 1-201.
7 "Duly negotiate". Section 7-501.
8 "Fungible goods". Section 1-201.
9 "Goods". Section 7-102.
10 "Holder". Section 1-201.
11 "Person". Section 1-201.
12 "Warehouse receipt". Section 1-201.
13 "Warehouse". Section 7-102.
14

15 **§7-1208. Altered warehouse receipts**

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

20 **UNIFORM COMMENT**

21
22 (This is section 7-208 of the Uniform Commercial Code - Article 7 (2004).)
23

24 **Prior Uniform Statutory Provision:** Former Section 7-208.
25

26 **Changes:** To accommodate electronic documents of title.
27

28 **Purpose:**

29
30 1. The execution of tangible warehouse receipts in blank is a dangerous practice. As
31 between the issuer and an innocent purchaser the risks should clearly fall on the former.
32 The purchaser must have purchased the tangible negotiable warehouse receipt in good
33 faith and for value to be protected under the rule of the first sentence which is a limited
34 exception to the general rule in the second sentence. Electronic document of title systems
35 should have protection against unauthorized access and unauthorized changes. See 7-
36 106. Thus the protection for good faith purchasers found in the first sentence is not
37 necessary in the context of electronic documents.
38

39 2. Under the second sentence of this section, an unauthorized alteration whether
40 made with or without fraudulent intent does not relieve the issuer of its liability on the
41 warehouse receipt as originally executed. The unauthorized alteration itself is of course
42 ineffective against the warehouse. The rule stated in the second sentence applies to both
43 tangible and electronic warehouse receipts.
44

45 **Definitional Cross References:**

46 "Good faith". Section 1-201 [7-102].

1 "Issuer". Section 7-102.
2 "Notice". Section 1-202.
3 "Purchaser". Section 1-201.
4 "Value". Section 1-204.
5 "Warehouse receipt". Section 1-201.
6

7 **§7-1209. Lien of warehouse**

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

23 (2). A warehouse may also reserve a security interest against the bailor for the
24 maximum amount specified on the receipt for charges other than those specified in
25 subsection (1), such as for money advanced and interest. The security interest is
26 governed by Article 9-A.

27 (3). A warehouse's lien for charges and expenses under subsection (1) or a security
28 interest under subsection (2) is also effective against any person that so entrusted the
29 bailor with possession of the goods that a pledge of them by the bailor to a good faith
30 purchaser for value would have been valid. However, the lien or security interest is not
31 effective against a person that before issuance of a document of title had a legal interest
32 or a perfected security interest in the goods and that did not:

33 (a). Deliver or entrust the goods or any document of title covering the goods to the
34 bailor or the bailor's nominee with:

35 (i) Actual or apparent authority to ship, store or sell;

36 (ii) Power to obtain delivery under section 7-1403; or

37 (iii) Power of disposition under section 2-403; section 2-1304, subsection (2);
38 section 2-1305, subsection (2); section 9-1320; or section 9-1321, subsection (3)
39 or other statute or rule of law; or

40 (b). Acquiesce in the procurement by the bailor or its nominee of any document.

41 (4). A warehouse's lien on household goods for charges and expenses in relation to
42 the goods under subsection (1) is also effective against all persons if the depositor was the

1 legal possessor of the goods at the time of deposit. In this subsection, "household goods"
2 means furniture, furnishings or personal effects used by the depositor in a dwelling.

3 (5). A warehouse loses its lien on any goods that it voluntarily delivers or
4 unjustifiably refuses to deliver.

5 **UNIFORM COMMENT**

6
7 (This is section 7-209 of the Uniform Commercial Code - Article 7 (2004).)

8
9 **Prior Uniform Statutory Provision:** Former Sections 7-209 and 7-503.

10
11 **Changes:** Expanded to recognize warehouse lien when a warehouse receipt is not
12 issued but goods are covered by a storage agreement.

13
14 **Purposes:**

15
16 1. Subsection (a) defines the warehouse's statutory lien. Other than allowing a
17 warehouse to claim a lien under this section when there is a storage agreement and not a
18 warehouse receipt, this section remains unchanged in substance from former Section 7-
19 209(1). Under the first sentence, a specific lien attaches automatically without express
20 notation on the receipt or storage agreement with regard to goods stored under the
21 receipt or the storage agreement. That lien is limited to the usual charges arising out of a
22 storage transaction.

23
24 Example 1: Bailor stored goods with a warehouse and the warehouse issued a
25 warehouse receipt. A lien against those goods arose as set forth in subsection (a), the first
26 sentence, for the charges for storage and the other expenses of those goods. The
27 warehouse may enforce its lien under Section 7-210 as against the bailor. Whether the
28 warehouse receipt is negotiable or nonnegotiable is not important to the warehouse's
29 rights as against the bailor.

30
31 Under the second sentence, by notation on the receipt or storage agreement, the lien
32 can be made a general lien extending to like charges in relation to other goods. Both the
33 specific lien and general lien are as to goods in the possession of the warehouse and
34 extend to proceeds from the goods as long as the proceeds are in the possession of the
35 warehouse. The same rules apply whether the receipt is negotiable or non-negotiable.

36
37 Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a
38 warehouse receipt for those goods. In the warehouse receipt it is stated that the
39 warehouse will also have a lien on goods covered by the warehouse receipt for storage
40 charges and the other expenses for any other goods that are stored with the warehouse by
41 the bailor. The statement about the lien on other goods does not specify an amount or a
42 rate. Bailor then stored other goods (lot B) with the warehouse. Under subsection (a),
43 first sentence, the warehouse has a lien on the specific goods (lot A) covered by the
44 warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on the
45 goods in lot A for the storage charges and the other expenses arising from the goods in lot

1 B. That lien is enforceable as against the bailor regardless of whether the receipt is
2 negotiable or nonnegotiable.
3

4 Under the third sentence, if the warehouse receipt is negotiable, the lien as against a
5 holder of that receipt by due negotiation is limited to the amount or rate specified on the
6 receipt for the specific lien or the general lien, or, if none is specified, to a reasonable
7 charge for storage of the specific goods covered by the receipt for storage after the date of
8 the receipt.
9

10 Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable
11 and has been duly negotiated (Section 7-501) to a person other than the bailor. Under the
12 last sentence of subsection (a), the warehouse may enforce its lien against the bailor's
13 goods stored in the warehouse as against the person to whom the negotiable warehouse
14 receipt has been duly negotiated. Section 7-502. That lien is limited to the charges or
15 rates specified in the receipt or a reasonable charge for storage as stated in the last
16 sentence of subsection (a).
17

18 Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable
19 and has been duly negotiated (Section 7-501) to a person other than the bailor. Under the
20 last sentence of subsection (a), the lien on lot A goods for the storage charges and the
21 other expenses arising from storage of lot B goods is not enforceable as against the
22 person to whom the receipt has been duly negotiated. Without a statement of a specified
23 amount or rate for the general lien, the warehouse's general lien is not enforceable as
24 against the person to whom the negotiable document has been duly negotiated. However,
25 the warehouse lien for charges and expenses related to storage of lot A goods is still
26 enforceable as against the person to whom the receipt was duly negotiated.
27

28 Example 5. Same facts as Examples 2 and 4 except the warehouse had stated on the
29 negotiable warehouse receipt a specified amount or rate for the general lien on other
30 goods (lot B). Under the last sentence of subsection (a), the general lien on lot A goods
31 for the storage charges and the other expenses arising from storage of lot B goods is
32 enforceable as against the person to whom the receipt has been duly negotiated.
33

34 2. Subsection (b) provides for a security interest based upon agreement. Such a
35 security interest arises out of relations between the parties other than bailment for storage
36 or transportation, as where the bailee assumes the role of financier or performs a
37 manufacturing operation, extending credit in reliance upon the goods covered by the
38 receipt. Such a security interest is not a statutory lien. Compare Sections 9-109 and 9-
39 333. It is governed in all respects by Article 9, except that subsection (b) requires that the
40 receipt specify a maximum amount and limits the security interest to the amount
41 specified. A warehouse could also take a security interest to secure its charges for storage
42 and the other expenses listed in subsection (a) to protect these claims upon the loss of the
43 statutory possessory warehouse lien if the warehouse loses possession of the goods as
44 provided in subsection (e).
45

46 Example 6: Bailor stores goods with a warehouse and the warehouse issues a
47 warehouse receipt that states that the warehouse is taking a security interest in the bailed
48 goods for charges of storage, expenses, for money advanced, for manufacturing services

1 rendered, and all other obligations that the bailor may owe the warehouse. That is a
2 security interest covered in all respects by Article 9. Subsection (b). As allowed by this
3 section, a warehouse may rely upon its statutory possessory lien to protect its charges for
4 storage and the other expenses related to storage. For those storage charges covered by
5 the statutory possessory lien, the warehouse is not required to use a security interest under
6 subsection (b).

7 3. Subsections (a) and (b) validate the lien and security interest "against the bailor."
8 Under basic principles of derivative rights as provided in Section 7-504, the warehouse
9 lien is also valid as against parties who obtain their rights from the bailor except as
10 otherwise provided in subsection (a), third sentence, or subsection (c).
11

12 Example 7: Bailor stores goods with a warehouse and the warehouse issues a
13 nonnegotiable warehouse receipt that also claims a general lien in other goods stored with
14 the warehouse. A lien on the bailed goods for the charges for storage and the other
15 expenses arises under subsection (a). Bailor notifies the warehouse that the goods have
16 been sold to Buyer and the bailee acknowledges that fact to the Buyer. Section 2-503.
17 The warehouse lien for storage of those goods is effective against Buyer for both the
18 specific lien and the general lien. Section 7-504.

19 Example 8: Bailor stores goods with a warehouse and the warehouse issues a
20 nonnegotiable warehouse receipt. A lien on the bailed goods for the charges for storage
21 and the other expenses arises under subsection (a). Bailor grants a security interest in the
22 goods while the goods are in the warehouse's possession to Secured Party (SP) who
23 properly perfects a security interest in the goods. See Revised 9-312(d). The warehouse
24 lien is superior in priority over SP's security interest. See Revised 9-203(b)(2) (debtor
25 can grant a security interest to the extent of debtor's rights in the collateral).
26

27 Example 9: Bailor stores goods with a warehouse and the warehouse issues a
28 negotiable warehouse receipt. A lien on the bailed goods for the charges for storage and
29 the other expenses arises under subsection (a). Bailor grants a security interest in the
30 negotiable document to SP. SP properly perfects its interest in the negotiable document
31 by taking possession through a 'due negotiation.' Revised 9-312(c). SP's security
32 interest is subordinate to the warehouse lien. Section 7-209(a), third sentence. Given that
33 bailor's rights are subject to the warehouse lien, the bailor cannot grant to the SP greater
34 rights than the bailor has under Section 9-203(b)(2), perfection of the security interest in
35 the negotiable document and the goods covered by the document through SP's filing of a
36 financing statement should not give a different result.
37

38 As against third parties who have interests in the goods prior to the storage with the
39 warehouse, subsection (c) continues the rule under the prior uniform statutory provision
40 that to validate the lien or security interest of the warehouse, the owner must have
41 entrusted the goods to the depositor, and that the circumstances must be such that a
42 pledge by the depositor to a good faith purchaser for value would have been valid. Thus
43 the owner's interest will not be subjected to a lien or security interest arising out of a
44 deposit of its goods by a thief. The warehouse may be protected because of the actual,
45 implied or apparent authority of the depositor, because of a Factor's Act, or because of
46 other circumstances which would protect a bona fide pledgee, unless those circumstances
47 are denied effect under the second sentence of subsection (c). The language of Section

1 7-503 is brought into subsection (c) for purposes of clarity. The comments to Section 7-
2 503 are helpful in interpreting delivery, entrustment or acquiescence.
3

4 Where the third party is the holder of a security interest, obtained prior to the
5 issuance of a negotiable warehouse receipt, the rights of the warehouse depend on the
6 priority given to a hypothetical bona fide pledgee by Article 9, particularly Section 9-322.
7 Thus the special priority granted to statutory liens by Section 9-333 does not apply to
8 liens under subsection (a) of this section, since subsection (c), second sentence,
9 "expressly provides otherwise" within the meaning of Section 9-333.
10

11 As to household goods, however, subsection (d) makes the warehouse's lien "for
12 charges and expenses in relation to the goods" effective against all persons if the
13 depositor was the legal possessor. The purpose of the exception is to permit the
14 warehouse to accept household goods for storage in sole reliance on the value of the
15 goods themselves, especially in situations of family emergency.
16

17 Example 10: Bailor grants a perfected security interest in the goods to SP prior to
18 storage of the goods with the warehouse. Bailor then stores goods with the warehouse
19 and the warehouse issues a warehouse receipt for the goods. A warehouse lien on the
20 bailed goods for the charges for storage or other expenses arises under subsection (a).
21 The warehouse lien is not effective as against SP unless SP entrusted the goods to the
22 bailor with actual or apparent authority to ship store, or sell the goods or with power of
23 disposition under subsection (c)(1) or acquiesced in the bailor's procurement of a
24 document of title under subsection (c)(2). This result obtains whether the receipt is
25 negotiable or nonnegotiable.
26

27 Example 11: Sheriff who had lawfully repossessed household goods in an eviction
28 action stored the goods with a warehouse. A lien on the bailed goods arises under
29 subsection (a). The lien is effective as against the owner of the goods. Subsection (d).
30

31 4. As under previous law, this section creates a statutory possessory lien in favor of
32 the warehouse on the goods stored with the warehouse or on the proceeds of the goods.
33 The warehouse loses its lien if it loses possession of the goods or the proceeds.
34 Subsection (e).
35

36 5. Where goods have been stored under a non-negotiable warehouse receipt and are
37 sold by the person to whom the receipt has been issued, frequently the goods are not
38 withdrawn by the new owner. The obligations of the seller of the goods in this situation
39 are set forth in Section 2-503(4) on tender of delivery and include procurement of an
40 acknowledgment by the bailee of the buyer's right to possession of the goods. If a new
41 receipt is requested, such an acknowledgment can be withheld until storage charges have
42 been paid or provided for. The statutory lien for charges on the goods sold, granted by
43 the first sentence of subsection (a), continues valid unless the bailee gives it up. See
44 Section 7-403. But once a new receipt is issued to the buyer, the buyer becomes "the
45 person on whose account the goods are held" under the second sentence of subsection (a);
46 unless the buyer undertakes liability for charges in relation to other goods stored by the
47 seller, there is no general lien against the buyer for such charges. Of course, the bailee

1 may preserve the general lien in such a case either by an arrangement by which the buyer
2 "is liable for" such charges, or by reserving a security interest under subsection (b).
3

4 6. A possessory warehouse lien arises as provided under subsection (a) if the parties
5 to the bailment have a storage agreement or a warehouse receipt is issued. In the modern
6 warehouse, the bailor and the bailee may enter into a master contract governing the
7 bailment with the bailee and bailor keeping track of the goods stored pursuant to the
8 master contract by notation on their respective books and records and the parties send
9 notification via electronic communication as to what goods are covered by the master
10 contract. Warehouse receipts are not issued. See Comment 4 to Section 7-204. There is
11 no particular form for a warehouse receipt and failure to contain any of the terms listed in
12 Section 7-202 does not deprive the warehouse of its lien that arises under subsection (a).
13 See the comment to Section 7-202.
14

15 **Cross References:**

16 Point 1: Sections 7-501 and 7-502.

17 Point 2: Sections 9-109 and 9-333.

18 Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312, and 9-322 .

19 Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, 9-401.

20 Point 5: Sections 2-503 and 7-403.

21 Point 6: Sections 7-202 and 7-204.
22

23 **Definitional Cross References:**

24 "Delivery". Section 1-201.

25 "Document of Title". Section 1-201

26 "Goods". Section 7-102.

27 "Money". Section 1-201.

28 "Person". Section 1-201.

29 "Purchaser". Section 1-201.

30 "Right". Section 1-201.

31 "Security interest". Section 1-201.

32 "Value". Section 1-204.

33 "Warehouse receipt". Section 1-201.

34 "Warehouse". Section 7-102.
35

36 **§7-1210. Enforcement of warehouse's lien**

37 (1). Except as otherwise provided in subsection (2), a warehouse's lien may be
38 enforced by public or private sale of the goods, in bulk or in packages, at any time or
39 place and on any terms that are commercially reasonable, after notifying all persons
40 known to claim an interest in the goods. The notification must include a statement of the
41 amount due, the nature of the proposed sale and the time and place of any public sale.
42 The fact that a better price could have been obtained by a sale at a different time or in a
43 method different from that selected by the warehouse is not of itself sufficient to establish
44 that the sale was not made in a commercially reasonable manner. The warehouse sells in
45 a commercially reasonable manner if the warehouse sells the goods in the usual manner
46 in any recognized market therefor, sells at the price current in that market at the time of

1 the sale or otherwise sells in conformity with commercially reasonable practices among
2 dealers in the type of goods sold. A sale of more goods than apparently necessary to be
3 offered to ensure satisfaction of the obligation is not commercially reasonable, except in
4 cases covered by the preceding sentence.

5 (2). A warehouse may enforce its lien on goods, other than goods stored by a
6 merchant in the course of its business, only if the following requirements are satisfied:

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

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

13 (c). The sale must conform to the terms of the notification;

14 (d). The sale must be held at the nearest suitable place to where the goods are held or
15 stored; and

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

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

28 (4). A warehouse may buy at any public sale held pursuant to this section.

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

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

35 (7). The rights provided by this section are in addition to all other rights allowed by
36 law to a creditor against a debtor.

37 (8). If a lien is on goods stored by a merchant in the course of its business, the lien
38 may be enforced in accordance with subsection (1) or (2).

- 1 "Good faith". Section 1-201 [7-102].
- 2 "Goods". Section 7-102.
- 3 "Notification". Section 1-202.
- 4 "Notifies". Section 1-202.
- 5 "Person". Section 1-201.
- 6 "Purchaser". Section 1-201.
- 7 "Rights". Section 1-201.
- 8 "Term". Section 1-201.
- 9 "Warehouse". Section 7-102.

10

PART 3

11

BILLS OF LADING: SPECIAL PROVISIONS

12

§7-1301. Liability for nonreceipt or misdescription; "said to contain;" "shipper's weight, load, and count;" improper handling

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

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(2). If goods are loaded by the issuer of a bill of lading:

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

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

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

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

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(5). A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by

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

5 **UNIFORM COMMENT**

6
7 (This is section 7-301 of the Uniform Commercial Code - Article 7 (2004).)

8
9 **Prior Uniform Statutory Provision:** Former Section 7-301.

10 **Changes:** Changes for clarity, style and to recognize deregulation in the
11 transportation industry.

12 **Purposes:**

13 1. This section continues the rules from former Section 7-301 with one substantive
14 change. The obligations of the issuer of the bill of lading under former subsections (2)
15 and (3) were limited to issuers who were common carriers. Subsections (b) and (c) apply
16 the same rules to all issuers not just common carriers. This section is compatible with the
17 policies stated in the federal Bills of Lading Act, 49 U.S.C. § 80113 (2000).

18
19 2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier
20 is ordinarily liable for damage caused by improper loading, but may relieve itself of
21 liability by disclosing on the bill that shipper actually loaded. A more accurate statement
22 of the law is that the carrier is not liable for losses caused by act or default of the shipper,
23 which would include improper loading. *D. H. Overmyer Co. v. Nelson Brantley Glass*
24 *Go.*, 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under pre-
25 Code law a carrier was liable even to a good faith purchaser of a negotiable bill for such
26 losses, if the shipper's faulty loading in fact caused the loss. Subsection (d) permits the
27 carrier to bar, by disclosure of shipper's loading, liability to a good faith purchaser. There
28 is no implication that decisions such as *Modern Tool Corp. v. Pennsylvania R. Co.*, 100
29 F.Supp. 595 (D.N.J.1951), are disapproved.

30
31 3. This section is a restatement of existing law as to the method by which a bailee
32 may avoid responsibility for the accuracy of descriptions which are made by or in
33 reliance upon information furnished by the depositor or shipper. The wording in this
34 section – "contents or condition of contents of packages unknown" or "shipper's weight,
35 load and count" – to indicate that the shipper loaded the goods or that the carrier does not
36 know the description, condition, or contents of the loaded packages continues to be
37 appropriate as commonly understood in the transportation industry. The reasons for this
38 wording are as important in 2002 as when the prior section initially was approved. The
39 issuer is liable on documents issued by an agent, contrary to instructions of his principal,
40 without receiving goods. No disclaimer of this liability is permitted since it is not a
41 matter either of the care of the goods or their description.

42
43 4. The shipper's erroneous report to the carrier concerning the goods may cause
44 damage to the carrier. Subsection (e) therefore provides appropriate indemnity.

45
46 5. The word "freight" in the former Section 7-301 has been changed to "goods" to
47 conform to international and domestic land transport usage in which "freight" means the

1 price paid for carriage of the goods and not the goods themselves. Hence, changing the
2 word "freight" to the word "goods" is a clarifying change that fits both international and
3 domestic practice.
4

5 **Cross References:** Sections 7-203, 7-309 and 7-501.
6

7 **Definitional Cross References:**

8 "Bill of lading". Section 1-201.

9 "Consignee". Section 7-102.

10 "Document of Title". Section 1-201.

11 "Duly negotiate". Section 7-501.

12 "Good faith". Section 1-201. [7-102].

13 "Goods". Section 7-102.

14 "Holder". Section 1-201.

15 "Issuer". Section 7-102.

16 "Notice". Section 1-202.

17 "Party". Section 1-201.

18 "Purchaser." Section 1-201.

19 "Receipt of Goods". Section 2-103.

20 "Value". Section 1-204.
21

22 **§7-1302. Through bills of lading and similar documents of title**

23 (1). The issuer of a through bill of lading, or other document of title embodying an
24 undertaking to be performed in part by a person acting as its agent or by a performing
25 carrier, is liable to any person entitled to recover on the bill or other document for any
26 breach by the other person or the performing carrier of its obligation under the bill or
27 other document. However, to the extent that the bill or other document covers an
28 undertaking to be performed overseas or in territory not contiguous to the continental
29 United States or an undertaking including matters other than transportation, this liability
30 for breach by the other person or the performing carrier may be varied by agreement of
31 the parties.

32 (2). If goods covered by a through bill of lading or other document of title
33 embodying an undertaking to be performed in part by a person other than the issuer are
34 received by that person, the person is subject, with respect to its own performance while
35 the goods are in its possession, to the obligation of the issuer. The person's obligation is
36 discharged by delivery of the goods to another person pursuant to the bill or other
37 document and does not include liability for breach by any other person or by the issuer.

38 (3). The issuer of a through bill of lading or other document of title described in
39 subsection (1) is entitled to recover from the performing carrier, or other person in
40 possession of the goods when the breach of the obligation under the bill or other
41 document occurred;

42 (a). The amount it may be required to pay to any person entitled to recover on the bill
43 or other document for the breach, as may be evidenced by any receipt, judgment or
44 transcript of judgment; and

- 1 "Bill of lading". Section 1-201.
- 2 "Delivery". Section 1-201.
- 3 "Document of title". Section 1-201.
- 4 "Goods". Section 7-102.
- 5 "Issuer". Section 7-102.
- 6 "Party". Section 1-201.
- 7 "Person". Section 1-201.

8

9 **§7-1303. Diversion; reconsignment; change of instructions**

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

- 13 (a). The holder of a negotiable bill;
- 14 (b). The consignor on a nonnegotiable bill, even if the consignee has given contrary
15 instructions;
- 16 (c). The consignee on a nonnegotiable bill in the absence of contrary instructions
17 from the consignor, if the goods have arrived at the billed destination or if the
18 consignee is in possession of the tangible bill or in control of the electronic bill; or
- 19 (d). The consignee on a nonnegotiable bill, if the consignee is entitled as against the
20 consignor to dispose of the goods.

21 (2). Unless instructions described in subsection (1) are included in a negotiable bill
22 of lading, a person to which the bill is duly negotiated may hold the bailee according to
23 the original terms.

24 **UNIFORM COMMENT**

25

26 (This is section 7-303 of the Uniform Commercial Code - Article 7 (2004).)

27

28 **Prior Uniform Statutory Provision: Former Section 7-303.**

29

30 **Changes: To accommodate electronic documents and for style.**

31

32 **Purposes:**

33 1. Diversion is a very common commercial practice which defeats delivery to the
34 consignee originally named in a bill of lading. This section continues former Section 7-
35 303's safe harbor rules for carriers in situations involving diversion and adapts those rules
36 to electronic documents of title. This section works compatibly with Section 2-705.
37 Carriers may as a business matter be willing to accept instructions from consignees in
38 which case the carrier will be liable for misdelivery if the consignee was not the owner or
39 otherwise empowered to dispose of the goods under subsection (a)(4). The section
40 imposes no duty on carriers to undertake diversion. The carrier is of course subject to the
41 provisions of mandatory filed tariffs as provided in Section 7-103.

1 2. It should be noted that the section provides only an immunity for carriers against
2 liability for "misdelivery." It does not, for example, defeat the title to the goods which
3 the consignee-buyer may have acquired from the consignor-seller upon delivery of the
4 goods to the carrier under a non- negotiable bill of lading. Thus if the carrier, upon
5 instructions from the consignor, returns the goods to the consignor, the consignee may
6 recover the goods from the consignor or the consignor's insolvent estate. However, under
7 certain circumstances, the consignee's title may be defeated by diversion of the goods in
8 transit to a different consignee. The rights that arise between the consignor-seller and the
9 consignee-buyer out of a contract for the sale of goods are governed by Article 2.

10
11 **Cross References:**

12 Point 1: Sections 2-705 and 7-103.

13 Point 2: Article 2, Sections 7-403 and 7-504(3).

14
15 **Definitional Cross References:**

16 "Bailee". Section 7-102.

17 "Bill of lading". Section 1-201.

18 "Carrier". Section 7-102

19 "Consignee". Section 7-102.

20 "Consignor". Section 7-102.

21 "Delivery". Section 1-201.

22 "Goods". Section 7-102.

23 "Holder". Section 1-201.

24 "Notice". Section 1-202.

25 "Person". Section 1-201.

26 "Purchaser". Section 1-201.

27 "Term". Section 1-201.

28
29 **§7-1304. Tangible bills of lading in a set**

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

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

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

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

1 "Consignor". Section 7-102.
2 "Goods". Section 7-102.
3 "Issuer". Section 7-102.
4 "Receipt of goods". Section 2-103.
5

6 **§7-1306. Altered bills of lading**

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

9 **UNIFORM COMMENT**

10
11 (This is section 7-306 of the Uniform Commercial Code - Article 7 (2004).)

12
13 **Prior Uniform Statutory Provision:** Former Section 7-306.

14 **Changes:** None

15 **Purposes:**

16 An unauthorized alteration or filling in of a blank, whether made with or without
17 fraudulent intent, does not relieve the issuer of its liability on the document as originally
18 executed. This section applies to both tangible and electronic bills of lading, applying the
19 same rule to both types of bills of lading. The control concept of Section 7-106 requires
20 that any changes to the electronic document of title be readily identifiable as authorized
21 or unauthorized. Section 7-306 should be compared to Section 7-208 where a different
22 rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.

23 **Cross Reference:** Sections 7-106 and 7-208.

24 **Definitional Cross References:**

25 "Bill of lading". Section 1-201.

26 "Issuer". Section 7-102.
27

28 **§7-1307. Lien of carrier**

29 (1). A carrier has a lien on the goods covered by a bill of lading or on the proceeds
30 thereof in its possession for charges after the date of the carrier's receipt of the goods for
31 storage or transportation, including demurrage and terminal charges, and for expenses
32 necessary for preservation of the goods incident to their transportation or reasonably
33 incurred in their sale pursuant to law. However, against a purchaser for value of a
34 negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the
35 applicable tariffs or, if no charges are stated, a reasonable charge.

36 (2). A lien for charges and expenses under subsection (1) on goods that the carrier
37 was required by law to receive for transportation is effective against the consignor or any
38 person entitled to the goods unless the carrier had notice that the consignor lacked
39 authority to subject the goods to those charges and expenses. Any other lien under
40 subsection (1) is effective against the consignor and any person that permitted the bailor
41 to have control or possession of the goods unless the carrier had notice that the bailor
42 lacked authority.

- 1 "Bill of lading". Section 1-201.
- 2 "Carrier". Section 7-102.
- 3 "Consignor". Section 7-102.
- 4 "Delivery". Section 1-201.
- 5 "Goods". Section 7-102.
- 6 "Person". Section 1-201.
- 7 "Purchaser". Section 1-201.
- 8 "Value". Section 1-204.
- 9

10 **§7-1308. Enforcement of carrier's lien**

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

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

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

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

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

36 (6). The rights provided by this section are in addition to all other rights allowed by
37 law to a creditor against a debtor.

38 (7). A carrier's lien may be enforced pursuant to either subsection (1) or the
39 procedure set forth in section 7-1210, subsection (2).

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

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UNIFORM COMMENT

(This is section 7-308 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-308.

Changes: To conform language to modern usage and for style.

Purposes:

This section is intended to give the carrier an enforcement procedure of its lien coextensive with that given the warehouse in cases other than those covering noncommercial storage by the warehouse. See Section 7-210 and comments.

Cross Reference: Section 7-210.

Definitional Cross References:

- "Bill of lading". Section 1-201.
- "Carrier". Section 7-102.
- "Creditor". Section 1-201.
- "Delivery". Section 1-201.
- "Good faith". Section 1-201. [7-102]
- "Goods". Section 7-102.
- "Notification". Section 1-202.
- "Notifies". Section 1-202.
- "Person". Section 1-201.
- "Purchaser". Section 1-201.
- "Rights". Section 1-201.
- "Term". Section 1-201.

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§7-1309. Duty of care; contractual limitation of carrier's liability

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

(2). Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not 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 commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

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UNIFORM COMMENT

(This is section 7-309 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-309.

Changes: References to tariffs eliminated because of deregulation, adding reference to transportation agreements, and for style.

Purposes:

1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The parties cannot disclaim by contract the carrier's obligation of care. Section 1-302.

Federal statutes and treaties for air, maritime and rail transport may alter the standard of care. These federal statutes and treaties preempt this section when applicable. Section 7-103. Subsection (a) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (b), however, applies to the common carrier's liability as an insurer as well as to liability based on negligence. Subsection (b) allows the term limiting damages to appear either in the bill of lading or in the parties' transportation agreement. Compare 7-204(b). Subsection (c) allows the parties to agree to provisions regarding time and manner of presenting claims or commencing actions if the provisions are either in the bill of lading or the transportation agreement. Compare 7-204(c). Transportation agreements are commonly used to establish agreed terms between carriers and shippers that have an on-going relationship.

2. References to public tariffs in former Section 7-309(2) and (3) have been deleted in light of the modern era of deregulation. See Comment 2 to Section 7-103. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section. As governed by contract law, parties may incorporate by reference the limits on the amount of damages or the reasonable provisions as to the time and manner of presenting claims set forth in applicable tariffs, e.g. a maximum unit value beyond which goods are not taken or a disclaimer of responsibility for undeclared articles of extraordinary value.

3. As under former Section 7-309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier's own use. "Conversion to its own use" is narrower than the idea of conversion generally. *Art Masters Associates, Ltd. v. United Parcel Service*, 77 N.Y.2d 200, 567 N.E.2d 226 (1990); *See, Kemper Ins. Co. v. Fed. Ex. Corp.*, 252 F.3d 509 (1st Cir), *cert. denied* 534 U.S. 1020 (2001) (opinion interpreting federal law).

4. As used in this section, damages may include damages arising from delay in delivery. Delivery dates and times are often specified in the parties' contract. See Section 7-403.

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Cross Reference: Sections 1-302, 7-103, 7-204, 7-403.

Definitional Cross References:

- "Action". Section 1-201.
- "Bill of lading". Section 1-201.
- "Carrier". Section 7-102.
- "Consignor". Section 7-102.
- "Document of Title". Section 1-102.
- "Goods". Section 7-102.
- "Value". Section 1-204.

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

§7-1401. 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 even if:

- (1). The document does not comply with the requirements of this Article or of any other statute, rule or regulation regarding its issuance, form or content;
- (2). The issuer violated laws regulating the conduct of its business;
- (3). The goods covered by the document were owned by the bailee when the document was issued; or
- (4). The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

UNIFORM COMMENT

(This is section 7-401 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-401.

Changes: Changes for style only.

Purposes:

The bailee's liability on its document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid its obligation to deliver the goods

1 (Section 7-403) or its obligation of due care with respect to them (Sections 7-204 and 7-
2 309) by taking the position that no valid "document" was issued because it failed to file a
3 statutory bond or did not pay stamp taxes or did not disclose the place of storage in the
4 document. *Tate v. Action Moving & Storage, Inc.*, 383 S.E.2d 229 (N.C. App. 1989),
5 *rev. denied* 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or
6 administrative duties with respect to documents should be limited to revocation of license
7 or other measures prescribed by the regulation imposing the duty. See Section 7-103.

8
9 **Cross References:** Sections 7-103, 7-203, 7-204, 7-301, 7-309.

10
11 **Definitional Cross References:**

12 "Bailee". Section 7-102.

13 "Document of title". Section 1-201.

14 "Goods". Section 7-102.

15 "Issuer". Section 7-102.

16 "Person". Section 1-201.

17 "Warehouse receipt". Section 1-201.

18 "Warehouse". Section 7-102.

19
20 **§7-1402. Duplicate document of title; overissue**

21 A duplicate or any other document of title purporting to cover goods already
22 represented by an outstanding document of the same issuer does not confer any right in
23 the goods, except as provided in the case of tangible bills of lading in a set of parts,
24 overissue of documents for fungible goods, substitutes for lost, stolen or destroyed
25 documents or substitute documents issued pursuant to section 7-1105. The issuer is liable
26 for damages caused by its overissue or failure to identify a duplicate document by a
27 conspicuous notation.

28 **UNIFORM COMMENT**

29
30 (This is section 7-402 of the Uniform Commercial Code - Article 7 (2004).)

31
32 **Prior Uniform Statutory Provision:** Former Section 7-402.

33
34 **Changes:** Changes to accommodate electronic documents.

35
36 **Purposes:**

37
38 1. This section treats a duplicate which is not properly identified as a duplicate like
39 any other overissue of documents: a purchaser of such a document acquires no title but
40 only a cause of action for damages against the person that made the deception possible,
41 except in the cases noted in the section. But parts of a tangible bill lawfully issued in a
42 set of parts are not "overissue" (Section 7-304). Of course, if the issuer has clearly
43 indicated that a document is a duplicate so that no one can be deceived by it, and in fact
44 the duplicate is a correct copy of the original, the issuer is not liable for preparing and
45 delivering such a duplicate copy.
46

1 Section 7-105 allows documents of title to be reissued in another medium. Re-
2 issuance of a document in an alternative medium under Section 7-105 requires that the
3 original document be surrendered to the issuer in order to make the substitute document
4 the effective document. If the substitute document is not issued in compliance with
5 section 7-105, then the document should be treated as a duplicate under this section.
6

7 2. The section applies to nonnegotiable documents to the extent of providing an
8 action for damages for one who acquires an unmarked duplicate from a transferor who
9 knew the facts and would therefore have had no cause of action against the issuer of the
10 duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights
11 of its transferor.
12

13 3. Overissue is defined so as to exclude the common situation where two valid
14 documents of different issuers are outstanding for the same goods at the same time. Thus
15 freight forwarders commonly issue bills of lading to their customers for small shipments
16 to be combined into carload shipments for which the railroad will issue a bill of lading to
17 the forwarder. So also a warehouse receipt may be outstanding against goods, and the
18 holder of the receipt may issue delivery orders against the same goods. In these cases
19 dealings with the subsequently issued documents may be effective to transfer title; e.g.
20 negotiation of a delivery order will effectively transfer title in the ordinary case where no
21 dishonesty has occurred and the goods are available to satisfy the orders. Section 7-503
22 provides for cases of conflict between documents of different issuers.
23

24 **Cross References:**

25 Point 1: Sections 7-105, 7-207, 7-304, and 7-601.

26 Point 3: Section 7-503.
27

28 **Definitional Cross References:**

29 "Bill of lading". Section 1-201.

30 "Conspicuous". Section 1-201.

31 "Document of title". Section 1-201.

32 "Fungible goods." Section 1-201.

33 "Goods". Section 7-102.

34 "Issuer". Section 7-102.

35 "Right". Section 1-201.
36

37 **§7-1403. Obligation of bailee to deliver; excuse**

38 **(1). A bailee shall deliver the goods to a person entitled under a document of title if**
39 **the person complies with subsections (2) and (3), unless and to the extent that the bailee**
40 **establishes any of the following:**

41 **(a). Delivery of the goods to a person whose receipt was rightful as against the**
42 **claimant;**

43 **(b). Damage to or delay, loss or destruction of the goods for which the bailee is not**
44 **liable;**

1 (c). Previous sale or other disposition of the goods in lawful enforcement of a lien or
2 on a warehouse's lawful termination of storage;

3 (d). The exercise by a seller of its right to stop delivery pursuant to section 2-705 or
4 by a lessor of its right to stop delivery pursuant to section 2-1526;

5 (e). A diversion, reassignment or other disposition pursuant to section 7-1303;

6 (f). Release, satisfaction or any other personal defense against the claimant; or

7 (g). Any other lawful excuse.

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

11 (3). Unless a person claiming the goods is a person against which the document of
12 title does not confer a right under section 7-1503, subsection (1):

13 (a). The person claiming under a document shall surrender possession or control of
14 any outstanding negotiable document covering the goods for cancellation or
15 indication of partial deliveries; and

16 (b). The bailee shall cancel the document or conspicuously indicate in the document
17 the partial delivery or the bailee is liable to any person to which the document is duly
18 negotiated.

19 **UNIFORM COMMENT**

20
21 (This is section 7-403 of the Uniform Commercial Code - Article 7 (2004).)

22
23 **Prior Uniform Statutory Provision:** Former Section 7-403.

24
25 **Changes:** Definition in former Section 7-403(4) moved to Section 7-102; bracketed
26 language in former Section 7-403(1)(b) deleted; added cross reference to Section 2A-526;
27 changes for style.

28
29 **Purposes:**

30
31 1. The present section, following former Section 7-403, is constructed on the basis of
32 stating what previous deliveries or other circumstances operate to excuse the bailee's
33 normal obligation on the document. Accordingly, "justified" deliveries under the pre-
34 Code uniform acts now find their place as "excuse" under subsection (a).

35
36 2. The principal case covered by subsection (a)(1) is delivery to a person whose title
37 is paramount to the rights represented by the document. For example, if a thief deposits
38 stolen goods in a warehouse facility and takes a negotiable receipt, the warehouse is not
39 liable on the receipt if it has surrendered the goods to the true owner, even though the
40 receipt is held by a good faith purchaser. See Section 7-503(a). However, if the owner
41 entrusted the goods to a person with power of disposition, and that person deposited the
42 goods and took a negotiable document, the owner receiving delivery would not be
43 rightful as against a holder to whom the negotiable document was duly negotiated, and

1 delivery to the owner would not give the bailee a defense against such a holder. See
2 Sections 7-502(a)(2), 7-503(a)(1).
3

4 3. Subsection (a)(2) amounts to a cross reference to all the tort law that determines
5 the varying responsibilities and standards of care applicable to commercial bailees. A
6 restatement of this tort law would be beyond the scope of this Act. Much of the
7 applicable law as to responsibility of bailees for the preservation of the goods and
8 limitation of liability in case of loss has been codified for particular classes of bailees in
9 interstate and foreign commerce by federal legislation and treaty and for intrastate
10 carriers and other bailees by the regulatory state laws preserved by Section 7-103. In the
11 absence of governing legislation the common law will prevail subject to the minimum
12 standard of reasonable care prescribed by Sections 7-204 and 7-309 of this Article.
13

14 The bracketed language found in former Section 7-403(1)(b) has been deleted thereby
15 leaving the allocations of the burden of going forward with the evidence and the burden
16 of proof to the procedural law of the various states.
17

18 Subsection (a)(4) contains a cross reference to both the seller's and the lessor's rights
19 to stop delivery under Article 2 and Article 2A respectively.
20

21 4. As under former Section 7-403, there is no requirement that a request for delivery
22 must be accompanied by a formal tender of the amount of the charges due. Rather, the
23 bailee must request payment of the amount of its lien when asked to deliver, and only in
24 case this request is refused is it justified in declining to deliver because of nonpayment of
25 charges. Where delivery without payment is forbidden by law, the request is treated as
26 implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by
27 failure to request payment in particular cases. Subsection (b) must be read in conjunction
28 with the priorities given to the warehouse lien and the carrier lien under Section 7-209
29 and 7-307, respectively. If the parties are in dispute about whether the request for
30 payment of the lien is legally proper, the bailee may have recourse to interpleader. See
31 Section 7-603.
32

33 5. Subsection (c) states the obvious duty of a bailee to take up a negotiable document
34 or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is
35 subject to only one exception, that stated in subsection (a)(1) of this section and in
36 Section 7-503(a). Subsection (c) is limited to cases of delivery to a claimant; it has no
37 application, for example, where goods held under a negotiable document are lawfully
38 sold to enforce the bailee's lien.
39

40 6. When courts are considering subsection (a)(7), "any other lawful excuse," among
41 others, refers to compliance with court orders under Sections 7-601, 7-602 and 7-603.
42

43 **Cross References:**

44 Point 2: Sections 7-502 and 7-503.

45 Point 3: Sections 2-705, 2A-526, 7-103, 7-204, and 7-309 and 10-103.

46 Point 4: Sections 7-209, 7-307 and 7-603.

47 Point 5: Section 7-503(1).

48 Point 6: Sections 7-601, 7-602, and 7-603.

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Definitional Cross References:

- "Bailee". Section 7-102.
- "Conspicuous". Section 1-201.
- "Delivery". Section 1-201.
- "Document of title". Section 1-201.
- "Duly negotiate". Section 7-501.
- "Goods". Section 7-102.
- "Lessor". Section 2A-103.
- "Person". Section 1-201.
- "Receipt of goods". Section 2-103.
- "Right". Section 1-201.
- "Terms". Section 1-201.
- "Warehouse". Section 7-102.

§7-1404. No liability for good faith delivery pursuant to document of title

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

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

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

UNIFORM COMMENT

(This is section 7-404 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-404.

Changes: Changes reflect the definition of good faith in Section 1-201 [7-102] and for style.

Purposes:

This section uses the test of good faith, as defined in Section 1-201 [7-102], to continue the policy of former Section 7-404. Good faith now means "honesty in fact and the observance of reasonable commercial standards of fair dealing." The section states explicitly that the common law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is inapplicable to the operations of commercial carriers and warehousemen that in good faith perform obligations that they have assumed and that generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well as to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a bailee may use interpleader or other dispute resolution process. See Section 7-603.

Cross Reference: Section 7-603.

Definitional Cross References:

1 "Bailee". Section 7-102.
2 "Delivery". Section 1-201.
3 "Document of title". Section 1-201.
4 "Good faith". Section 1-201. [7-102].
5 "Goods". Section 7-102.
6 "Person". Section 1-201.
7 "Receipt of goods". Section 2-103.
8 "Term". Section 1-201.
9

10 **PART 5**

11 **WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION**
12 **AND TRANSFER**

13 **§7-1501. Form of negotiation and requirements of due negotiation**

14 **(1). The following rules apply to a negotiable tangible document of title.**

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

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

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

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

25 (e). A document is duly negotiated if it is negotiated in the manner stated in this
26 subsection to a holder that purchases it in good faith, without notice of any defense
27 against or claim to it on the part of any person, and for value, unless it is established
28 that the negotiation is not in the regular course of business or financing or involves
29 receiving the document in settlement or payment of a monetary obligation.

30 **(2). The following rules apply to a negotiable electronic document of title.**

31 (a). If the document's original terms run to the order of a named person or to bearer,
32 the document is negotiated by delivery of the document to another person.
33 Indorsement by the named person is not required to negotiate the document.

34 (b). If the document's original terms run to the order of a named person and the
35 named person has control of the document, the effect is the same as if the document
36 had been negotiated.

37 (c). A document is duly negotiated if it is negotiated in the manner stated in this
38 subsection to a holder that purchases it in good faith, without notice of any defense
39 against or claim to it on the part of any person, and for value, unless it is established

1 that the negotiation is not in the regular course of business or financing or involves
2 taking delivery of the document in settlement or payment of a monetary obligation.

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

5 (4). The naming in a negotiable bill of lading of a person to be notified of the arrival
6 of the goods does not limit the negotiability of the bill or constitute notice to a purchaser
7 of the bill of any interest of that person in the goods.

8 UNIFORM COMMENT

9
10 (This is section 7-501 of the Uniform Commercial Code - Article 7 (2004).)

11
12 **Prior Uniform Statutory Provision:** Former Section 7-501.

13
14 **Changes:** To accommodate negotiable electronic documents of title.

15
16 **Purpose:**

17
18 1. Subsection (a) has been limited to tangible negotiable documents of title but
19 otherwise remains unchanged in substance from the rules in former Section 7-501.
20 Subsection (b) is new and applies to negotiable electronic documents of title. Delivery of
21 a negotiable electronic document is through voluntary transfer of control. Section 1-201
22 definition of "delivery." The control concept as applied to negotiable electronic
23 documents of title is the substitute for both possession and indorsement as applied to
24 negotiable tangible documents of title. Section 7-106.

25
26 Article 7 does not separately define the term "duly negotiated." However, the
27 elements of "duly negotiated" are set forth in subsection (a)(5) for tangible documents
28 and (b)(3) for electronic documents. As under former Section 7-501, in order to effect a
29 "due negotiation" the negotiation must be in the "regular course of business or financing"
30 in order to transfer greater rights than those held by the person negotiating. The
31 foundation of the mercantile doctrine of good faith purchase for value has always been, as
32 shown by the case situations, the furtherance and protection of the regular course of trade.
33 The reason for allowing a person, in bad faith or in error, to convey away rights which are
34 not its own has from the beginning been to make possible the speedy handling of that
35 great run of commercial transactions which are patently usual and normal.

36
37 There are two aspects to the usual and normal course of mercantile dealings, namely,
38 the person making the transfer and the nature of the transaction itself. The first question
39 which arises is: Is the transferor a person with whom it is reasonable to deal as having
40 full powers? In regard to documents of title the only holder whose possession or control
41 appears, commercially, to be in order is almost invariably a person in the trade. No
42 commercial purpose is served by allowing a tramp or a professor to "duly negotiate" an
43 order bill of lading for hides or cotton not their own, and since such a transfer is
44 obviously not in the regular course of business, it is excluded from the scope of the
45 protection of subsections (a)(5) or (b)(3).
46

1 The second question posed by the "regular course" qualification is: Is the transaction
2 one which is normally proper to pass full rights without inquiry, even though the
3 transferor itself may not have such rights to pass, and even though the transferor may be
4 acting in breach of duty? In raising this question the "regular course" criterion has the
5 further advantage of limiting, the effective wrongful disposition to transactions whose
6 protection will really further trade. Obviously, the snapping up of goods for quick resale
7 at a price suspiciously below the market deserves no protection as a matter of policy: it is
8 also clearly outside the range of regular course.
9

10 Any notice on the document sufficient to put a merchant on inquiry as to the "regular
11 course" quality of the transaction will frustrate a "due negotiation". Thus irregularity of
12 the document or unexplained staleness of a bill of lading may appropriately be recognized
13 as negating a negotiation in "regular" course.
14

15 A pre-existing claim constitutes value, and "due negotiation" does not require "new
16 value." A usual and ordinary transaction in which documents are received as security for
17 credit previously extended may be in "regular" course, even though there is a demand for
18 additional collateral because the creditor "deems himself insecure." But the matter has
19 moved out of the regular course of financing if the debtor is thought to be insolvent, the
20 credit previously extended is in effect cancelled, and the creditor snatches a plank in the
21 shipwreck under the guise of a demand for additional collateral. Where a money debt is
22 "paid" in commodity paper, any question of "regular" course disappears, as the case is
23 explicitly excepted from "due negotiation".
24

25 2. Negotiation under this section may be made by any holder no matter how the
26 holder acquired possession or control of the document.
27

28 3. Subsections (a)(3) and (b)(2) make explicit a matter upon which the intent of the
29 pre-Code law was clear but the language somewhat obscure: a negotiation results from a
30 delivery to a banker or buyer to whose order the document has been taken by the person
31 making the bailment. There is no presumption of irregularity in such a negotiation; it
32 may very well be in "regular course."
33

34 4. This Article does not contain any provision creating a presumption of due
35 negotiation to, and full rights in, a holder of a document of title akin to that created by
36 Uniform Commercial Code Article 3. But the reason of the provisions of this Act
37 (Section 1-307) on the prima facie authenticity and accuracy of third party documents,
38 joins with the reason of the present section to work such a presumption in favor of any
39 person who has power to make a due negotiation. It would not make sense for this Act to
40 authorize a purchaser to indulge the presumption of regularity if the courts were not also
41 called upon to do so. Allocations of the burden of going forward with the evidence and
42 the burden of proof are left to the procedural law of the various states.
43

44 5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible
45 and electronic documents of title.
46

47 **Cross References:** Sections 1-307, 7-502 and 7-503.
48

1 **Definitional Cross References:**

- 2 "Bearer". Section 1-201.
3 "Control". Section 7-106.
4 "Delivery". Section 1-201.
5 "Document of title". Section 1-201.
6 "Good faith". Section 1-201 [7-102].
7 "Holder". Section 1-201.
8 "Notice". Section 1-202.
9 "Person". Section 1-201.
10 "Purchase". Section 1-201.
11 "Rights". Section 1-201.
12 "Term". Section 1-201.
13 "Value". Section 1-204.
14

15 **§7-1502. Rights acquired by due negotiation**

16 **(1). Subject to sections 7-1205 and 7-1503, a holder to which a negotiable document**
17 **of title has been duly negotiated acquires thereby:**

18 **(a). Title to the document;**

19 **(b). Title to the goods;**

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

22 **(d). The direct obligation of the issuer to hold or deliver the goods according to the**
23 **terms of the document free of any defense or claim by the issuer except those arising**
24 **under the terms of the document or under this Article, but in the case of a delivery**
25 **order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery**
26 **order and the obligation acquired by the holder is that the issuer and any indorser will**
27 **procure the acceptance of the bailee.**

28 **(2). Subject to section 7-1503, title and rights acquired by due negotiation are not**
29 **defeated by any stoppage of the goods represented by the document of title or by**
30 **surrender of the goods by the bailee and are not impaired even if:**

31 **(a). The due negotiation or any prior due negotiation constituted a breach of duty;**

32 **(b). Any person has been deprived of possession of a negotiable tangible document**
33 **or control of a negotiable electronic document by misrepresentation, fraud, accident,**
34 **mistake, duress, loss, theft or conversion; or**

35 **(c). A previous sale or other transfer of the goods or document has been made to a**
36 **3rd person.**

37 **UNIFORM COMMENT**

38
39 (This is section 7-502 of the Uniform Commercial Code - Article 7 (2004).)

40
41 **Prior Uniform Statutory Provision: Former Section 7-502.**
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Changes: To accommodate electronic documents of title and for style.

Purpose:

1. This section applies to both tangible and electronic documents of title. The elements of duly negotiated, which constitutes a due negotiation, are set forth in Section 7-501. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section (Section 7-503).

2. Subsection (a)(3) covers the case of "feeding" of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection (a)(4) of the bailee's direct obligation to the holder precludes the defense that the document in question was "spent" after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as non-negligent destruction even though not apparent on the document. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 7-503(b) and Comment.

4. Subsection (b) continues the law which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in subsection (a), but it has been included since such explicit reference was provided under former Section 7-502 to preserve the right of a purchaser by due negotiation. The listing is not exhaustive. The language "any stoppage" is included lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser's rights.

Cross References: Sections 7-103, 7-205, 7-403, 7-501, and 7-503.

Definitional Cross References:

- "Bailee". Section 7-102.
- "Control". Section 7-106.
- "Delivery". Section 1-201.
- "Delivery order". Section 7-102.
- "Document of title". Section 1-201.
- "Duly negotiate". Section 7-501.
- "Fungible". Section 1-201.
- "Goods". Section 7-102.
- "Holder". Section 1-201.
- "Issuer". Section 7-102.
- "Person". Section 1-201.
- "Rights". Section 1-201.
- "Term". Section 1-201.
- "Warehouse receipt". Section 1-201.

1 **§7-1503. Document of title to goods defeated in certain cases**

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

5 (a). Deliver or entrust the goods or any document of title covering the goods to the
6 bailor or the bailor's nominee with:

7 (i) Actual or apparent authority to ship, store or sell;

8 (ii) Power to obtain delivery under section 7-1403; or

9 (iii) Power of disposition under section 2-403; section 2-1304, subsection (2);
10 section 2-1305, subsection (2); section 9-1320; or section 9-1321, subsection (3)
11 or other statute or rule of law; or

12 (b). Acquiesce in the procurement by the bailor or its nominee of any document.

13 (2). Title to goods based upon an unaccepted delivery order is subject to the rights of
14 any person to which a negotiable warehouse receipt or bill of lading covering the goods
15 has been duly negotiated. That title may be defeated under section 7-1504 to the same
16 extent as the rights of the issuer or a transferee from the issuer.

17 (3). Title to goods based upon a bill of lading issued to a freight forwarder is subject
18 to the rights of any person to which a bill issued by the freight forwarder is duly
19 negotiated. However, delivery by the carrier in accordance with Part 4 pursuant to its
20 own bill of lading discharges the carrier's obligation to deliver.

21 **UNIFORM COMMENT**

22
23 (This is section 7-503 of the Uniform Commercial Code - Article 7 (2004).)

24
25 **Prior Uniform Statutory Provision:** Former Section 7-503.

26 **Changes:** Changes to cross-reference to Article 2A and for style.

27
28 **Purposes:**

29
30 1. In general it may be said that the title of a purchaser by due negotiation prevails
31 over almost any interest in the goods which existed prior to the procurement of the
32 document of title if the possession of the goods by the person obtaining the document
33 derived from any action by the prior claimant which introduced the goods into the stream
34 of commerce or carried them along that stream. A thief of the goods cannot indeed by
35 shipping or storing them to the thief's own order acquire power to transfer them to a good
36 faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or
37 mortgagee which have been perfected under the local law merely by wrongfully shipping
38 or storing a portion of the crop or other goods. However, "acquiescence" by the landlord
39 or mortgagee does not require active consent under subsection (a)(2) and knowledge of
40 the likelihood of storage or shipment with no objection or effort to control it is sufficient
41 to defeat the landlord's or the mortgagee's rights as against one who takes by due
42 negotiation of a negotiable document. In re Sharon Steel, 176 B.R. 384 (Bankr. W.D. Pa.

1 1995); In re R.V. Segars Co, 54 B.R. 170 (Bankr. S.C. 1985); In re Jamestown Elevators,
2 Inc., 49 B.R. 661 (Bankr. N.D. 1985).
3

4 On the other hand, where goods are delivered to a factor for sale, even though the
5 factor has made no advances and is limited in its duty to sell for cash, the goods are
6 "entrusted" to the factor "with actual . . . authority . . . to sell" under subsection (a)(1), and
7 if the factor procures a negotiable document of title it can transfer the owner's interest to a
8 purchaser by due negotiation. Further, where the factor is in the business of selling,
9 goods entrusted to it simply for safekeeping or storage may be entrusted under
10 circumstances which give the factor "apparent authority to ship, store or sell" under
11 subsection (a)(1), or power of disposition under Section 2-403, 2A-304(2), 2A-305(2), 7-
12 205, 9-320, or 9-321(c) or under a statute such as the earlier Factors Acts, or under a rule
13 of law giving effect to apparent ownership. See Section 1-103.
14

15 Persons having an interest in goods also frequently deliver or entrust them to agents
16 or servants other than factors for the purpose of shipping or warehousing or under
17 circumstances reasonably contemplating such action. This Act is clear that such persons
18 assume full risk that the agent to whom the goods are so delivered may ship or store in
19 breach of duty, take a document to the agent's own order and then proceed to
20 misappropriate the negotiable document of title that embodies the goods. This Act makes
21 no distinction between possession or mere custody in such situations and finds no
22 exception in the case of larceny by a bailee or the like. The safeguard in such situations
23 lies in the requirement that a due negotiation can occur only "in the regular course of
24 business or financing" and that the purchase be in good faith and without notice. See
25 Section 7-501. Documents of title have no market among the commercially
26 inexperienced and the commercially experienced do not take them without inquiry from
27 persons known to be truck drivers or petty clerks even though such persons purport to be
28 operating in their own names.
29

30 Again, where the seller allows a buyer to receive goods under a contract for sale,
31 though as a "conditional delivery" or under "cash sale" terms and on explicit agreement
32 for immediate payment, the buyer thereby acquires power to defeat the seller's interest by
33 transfer of the goods to certain good faith purchasers. See Section 2-403. Both in policy
34 and under the language of subsection (a)(1) that same power must be extended to
35 accomplish the same result if the buyer procures a negotiable document of title to the
36 goods and duly negotiates it.
37

38 This comment 1 should be considered in interpreting delivery, entrustment or
39 acquiescence in application of Section 7-209(c).
40

41 2. Under subsection (a) a delivery order issued by a person having no right in or
42 power over the goods is ineffective unless the owner acts as provided in subsection (a)(1)
43 or (2). Thus the rights of a transferee of a non-negotiable warehouse receipt can be
44 defeated by a delivery order subsequently issued by the transferor only if the transferee
45 "delivers or entrusts" to the "person procuring" the delivery order or "acquiesces" in that
46 person's procurement. Similarly, a second delivery order issued by the same issuer for
47 the same goods will ordinarily be subject to the first, both under this section and under
48 Section 7-402. After a delivery order is validly issued but before it is accepted, it may

1 nevertheless be defeated under subsection (b) in much the same way that the rights of a
2 transferee may be defeated under Section 7-504. For example, a buyer in ordinary course
3 from the issuer may defeat the rights of the holder of a prior delivery order if the bailee
4 receives notification of the buyer's rights before notification of the holder's rights.
5 Section 7-504(b)(2). But an accepted delivery order has the same effect as a document
6 issued by the bailee.
7

8 3. Under subsection (c) a bill of lading issued to a freight forwarder is subordinated to
9 the freight forwarder's document of title, since the bill on its face gives notice of the fact
10 that a freight forwarder is in the picture and the freight forwarder has in all probability
11 issued a document of title. But the carrier is protected in following the terms of its own
12 bill of lading.
13

14 **Cross References:**

15 Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-209, 7-501, 9-320,
16 9-321(c), and 9-331.

17 Point 2: Sections 7-402 and 7-504.

18 Point 3: Sections 7-402, 7-403 and 7-404.
19

20 **Definitional Cross References:**

21 "Bill of lading". Section 1-201.

22 "Contract for sale". Section 2-106.

23 "Delivery". Section 1-201.

24 "Delivery order". Section 7-102.

25 "Document of title". Section 1-201.

26 "Duly negotiate". Section 7-501.

27 "Goods". Section 7-102.

28 "Person". Section 1-201.

29 "Right". Section 1-201.

30 "Warehouse receipt". Section 1-201.
31

32 **§7-1504. Rights acquired in absence of due negotiation; effect of diversion; stoppage**
33 **of delivery**

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

37 **(2). In the case of a transfer of a nonnegotiable document of title, until but not after**
38 **the bailee receives notice of the transfer, the rights of the transferee may be defeated:**

39 **(a). By those creditors of the transferor that could treat the transfer as void under**
40 **section 2-402 or 2-1308;**

41 **(b). By a buyer from the transferor in ordinary course of business if the bailee has**
42 **delivered the goods to the buyer or received notification of the buyer's rights;**

43 **(c). By a lessee from the transferor in ordinary course of business if the bailee has**
44 **delivered the goods to the lessee or received notification of the lessee's rights; or**

1 (d). As against the bailee, by good faith dealings of the bailee with the transferor.

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

7 (4). Delivery of the goods pursuant to a nonnegotiable document of title may be
8 stopped by a seller under section 2-705 or a lessor under section 2-1526, subject to the
9 requirements of due notification in those sections. A bailee that honors the seller's or
10 lessor's instructions is entitled to be indemnified by the seller or lessor against any
11 resulting loss or expense.

UNIFORM COMMENT

12
13
14 (This is section 7-504 of the Uniform Commercial Code - Article 7 (2004).)

15
16 **Prior Uniform Statutory Provision:** Former Section 7-504.

17 **Changes:** To include cross-references to Article 2A and for style.

18 **Purposes:**

19 1. Under the general principles controlling negotiable documents, it is clear that in the
20 absence of due negotiation a transferor cannot convey greater rights than the transferor
21 has, even when the negotiation is formally perfect. This section recognizes the transferor's
22 power to transfer rights which the transferor has or has "actual authority to convey."
23 Thus, where a negotiable document of title is being transferred the operation of the
24 principle of estoppel is not recognized, as contrasted with situations involving the transfer
25 of the goods themselves. (Compare Section 2-403 on good faith purchase of goods.)
26 This section applies to both tangible and electronic documents of title.
27

28 A necessary part of the price for the protection of regular dealings with negotiable
29 documents of title is an insistence that no dealing which is in any way irregular shall be
30 recognized as a good faith purchase of the document or of any rights pertaining to it. So,
31 where the transfer of a negotiable document fails as a negotiation because a requisite
32 indorsement is forged or otherwise missing, the purchaser in good faith and for value may
33 be in the anomalous position of having less rights, in part, than if the purchaser had
34 purchased the goods themselves. True, the purchaser's rights are not subject to defeat by
35 attachment of the goods or surrender of them to the purchaser's transferor (contrast
36 subsection (b)); but on the other hand, the purchaser cannot acquire enforceable rights to
37 control or receive the goods over the bailee's objection merely by giving notice to the
38 bailee. Similarly, a consignee who makes payment to its consignor against a straight bill
39 of lading can thereby acquire the position of a good faith purchaser of goods under
40 provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment
41 made in good faith against an unendorsed order bill would not have such effect. The
42 appropriate remedy of a purchaser in such a situation is to regularize its status by
43 compelling indorsement of the document (see Section 7-506).
44

45 2. As in the case of transfer--as opposed to "due negotiation"--of negotiable
46 documents, subsection (a) empowers the transferor of a nonnegotiable document to

1 transfer only such rights as the transferor has or has "actual authority" to convey. In
2 contrast to situations involving the goods themselves the operation of estoppel or agency
3 principles is not here recognized to enable the transferor to convey greater rights than the
4 transferor actually has. Subsection (b) makes it clear, however, that the transferee of a
5 nonnegotiable document may acquire rights greater in some respects than those of his
6 transferor by giving notice of the transfer to the bailee. New subsection (b)(3) provides
7 for the rights of a lessee in the ordinary course.
8

9 Subsection (b)(2)&(3) require delivery of the goods. Delivery of the goods means
10 the voluntary transfer of physical possession of the goods. See amended 2-103.
11

12 3. Subsection (c) is in part a reiteration of the carrier's immunity from liability if it
13 honors instructions of the consignor to divert, but there is added a provision protecting
14 the title of the substituted consignee if the latter is a buyer in ordinary course of business.
15 A typical situation would be where a manufacturer, having shipped a lot of standardized
16 goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for
17 them. Under pre-Code passage-of-title-by-appropriation doctrine A might reclaim the
18 goods from B. However, no consideration of commercial policy supports this
19 involvement of an innocent third party in the default of the manufacturer on his contract
20 to A; and the common commercial practice of diverting goods in transit suggests a trade
21 understanding in accordance with this subsection. The same result should obtain if the
22 substituted consignee is a lessee in ordinary course. The extent of the lessee's interest in
23 the goods is less than a buyer's interest in the goods. However, as against the first
24 consignee and the lessee in ordinary course as the substituted consignee, the lessee's
25 rights in the goods as granted under the lease are superior to the first consignee's rights.
26

27 4. Subsection (d) gives the carrier an express right to indemnity where the carrier
28 honors a seller's request to stop delivery.
29

30 5. Section 1-202 gives the bailee protection, if due diligence is exercised where the
31 bailee's organization has not had time to act on a notification.
32

33 **Cross References:**

- 34
35 Point 1: Sections 2-403 and 7-506.
36 Point 2: Sections 2-403 and 2A-304.
37 Point 3: Sections 7-303, 7-403(a)(5) and 7-404.
38 Point 4: Sections 2-705 and 7-403(a)(4).
39 Point 5: Section 1-202.
40

41 **Definitional Cross References:**

- 42 "Bailee". Section 7-102.
43 "Bill of lading". Section 1-201.
44 "Buyer in ordinary course of business". Section 1-201.
45 "Consignee". Section 7-102.
46 "Consignor". Section 7-102.
47 "Creditor". Section 1-201.
48 "Delivery". Section 1-201.

- 1 "Document of Title". Section 1-201.
- 2 "Duly negotiate". Section 7-501.
- 3 "Good faith". Section 1-201. [7-102].
- 4 "Goods". Section 7-102.
- 5 "Honor". Section 1-201.
- 6 "Lessee in ordinary course". Section 2A-103.
- 7 "Notification" Section 1-202.
- 8 "Purchaser". Section 1-201.
- 9 "Rights". Section 1-201.

10

11 **§7-1505. Indorser not guarantor for other parties**

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

14

UNIFORM COMMENT

15

(This is section 7-505 of the Uniform Commercial Code - Article 7 (2004).)

16

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Prior Uniform Statutory Provision: Former Section 7-505.

19

20

Changes: Limited to tangible documents of title.

21

22

Purposes:

23

24

This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. The indorsement of a tangible document of title is generally understood to be directed towards perfecting the transferee's rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an indorsement given for value guarantees future action, namely, that in which the bailee has not yet become liable upon the document at the time of the indorsement. Under such circumstances the indorser, of course, engages that appropriate honor of the document by the bailee will occur. See Section 7-502(a)(4) as to negotiable delivery orders. However, even in such a case, once the bailee attorns to the transferee, the indorser's obligation has been fulfilled and the policy of this section excludes any continuing obligation on the part of the indorser for the bailee's ultimate actual performance.

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Cross Reference: Sections 7-106 and 7-502.

38

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Definitional Cross References:

41

"Bailee". Section 7-102.

42

"Document of title". Section 1-201.

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"Party". Section 1-201.

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§7-1506. Delivery without indorsement; right to compel indorsement

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

UNIFORM COMMENT

(This is section 7-506 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-506.

Changes: Limited to tangible documents of title.

Purposes:

1. This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized its position until such indorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this Article (Section 7-501(a)(5)) on "due negotiation". Similarly, despite the transfer to the transferee of the transferor's title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See Section 7-403(c).

Cross References:

Point 1: Sections 7-106 and 7-505.

Point 2: Sections 7-501(a)(5) and 7-403(c).

Definitional Cross References:

"Document of title". Section 1-201.

"Rights". Section 1-201.

§7-1507. Warranties on negotiation or delivery of document of title

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7-1508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

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(1). The document is genuine;

(2). The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3). The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

UNIFORM COMMENT

(This is section 7-507 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-507.

Changes: Substitution of the word "delivery" for the word "transfer," reference leasing transactions and style.

Purposes:

1. Delivery of goods by use of a document of title does not limit or displace the ordinary obligations of a seller or lessor as to any warranties regarding the goods that arises under other law. If the transfer of documents attends or follows the making of a contract for the sale or lease of goods, the general obligations on warranties as to the goods (Sections 2-312 through 2-318 and Sections 2A-210 through 2A-316) are brought to bear as well as the special warranties under this section.

2. The limited warranties of a delivering or collecting intermediary, including a collecting bank, are stated in Section 7-508.

Cross References:

Point 1: Sections 2-312 through 2-318 and 2A-310-through 2A-316.

Point 2: Section 7-508.

Definitional Cross References:

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Genuine". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-204.

§7-1508. Warranties of collecting bank as to documents of title

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

UNIFORM COMMENT

(This is section 7-508 of the Uniform Commercial Code - Article 7 (2004).)

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Prior Uniform Statutory Provision: Former Section 7-508.

Changes: Changes for style only.

Purposes:

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See Section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7-507.

3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5. On the meaning of draft, see Section 4-104 and Section 5-102, comment 11.

Cross References:

Sections 4-104, 4-203, 4-501 through 4-504, 5-102, and 7-507.

Definitional Cross References:

"Collecting bank". Section 4-105.

"Delivery". Section 1-201.

"Document of title". Section 1-102.

"Documentary draft". Section 4-104.

"Intermediary bank". Section 4-105.

"Good faith". Section 1-201 [7-102.]

§7-1509. Adequate compliance with commercial contract

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease or the conditions of a letter of credit is determined by Article 2, 2-A or 5.

UNIFORM COMMENT

(This is section 7-509 of the Uniform Commercial Code - Article 7 (2004).)

Prior Uniform Statutory Provision: Former Section 7-509.

Changes: To reference Article 2A.

Purposes:

To cross-refer to the Articles of this Act which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

Cross References: Articles 2, 2A and 5.

Definitional Cross References:

"Contract for sale". Section 2-106.

"Document of title". Section 1-201.

"Lease". Section 2A-103.

1 PART 6

2 WAREHOUSE RECEIPTS AND BILLS OF LADING:
3 MISCELLANEOUS PROVISIONS

4 §7-1601. Lost, stolen or destroyed documents of title

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

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

20 **UNIFORM COMMENT**

21
22 (This is section 7-601 of the Uniform Commercial Code - Article 7 (2004).)

23
24 **Prior Uniform Statutory Provision:** Former Section 7-601.

25
26 **Changes:** To accommodate electronic documents; to provide flexibility to courts
27 similar to the flexibility in Section 3-309; to update to the modern era of deregulation;
28 and for style.

29
30 **Purposes:**

31
32 1. Subsection (a) authorizes courts to order compulsory delivery of the goods or
33 compulsory issuance of a substitute document. Compare Section 7-402. Using language
34 similar to that found in Section 3-309, courts are given discretion as to what is adequate
35 protection when the lost, stolen or destroyed document was negotiable or whether
36 security should be required when the lost, stolen or destroyed document was
37 nonnegotiable. In determining whether a party is adequately protected against loss in the
38 case of a negotiable document, the court should consider the likelihood that the party will
39 suffer a loss. The court is also given discretion as to the bailee's costs and attorney fees.
40 The rights and obligations of a bailee under this section depend upon whether the
41 document of title is lost, stolen or destroyed and is in addition to the ability of the bailee
42 to bring an action for interpleader. See Section 7-603.
43

1 2. Courts have the authority under this section to order a substitute document for
2 either tangible or electronic documents. If the substitute document will be in a different
3 medium than the original document, the court should fashion its order in light of the
4 requirements of Section 7-105.
5

6 3. Subsection (b) follows prior Section 7-601 in recognizing the legality of the well
7 established commercial practice of bailees making delivery in good faith when they are
8 satisfied that the claimant is the person entitled under a missing (i.e. lost, stolen, or
9 destroyed) negotiable document. Acting without a court order, the bailee remains liable
10 on the original negotiable document and, to avoid conversion liability, the bailee may
11 insist that the claimant provide an indemnity bond. Cf. Section 7-403.
12

13 4. Claimants on non-negotiable instruments are permitted to avail themselves of the
14 subsection (a) procedure because straight (non-negotiable) bills of lading sometimes
15 contain provisions that the goods shall not be delivered except upon production of the
16 bill. If the carrier should choose to insist upon production of the bill, the consignee
17 should have some means of compelling delivery on satisfactory proof of entitlement.
18 Without a court order, a bailee may deliver, subject to Section 7-403, to a person
19 claiming goods under a non-negotiable document that the same person claims is lost,
20 stolen, or destroyed.
21

22 5. The bailee's lien should be protected when a court orders delivery of the goods
23 pursuant to this section.
24

25 **Cross References:**

- 26 Point 1: Sections 3-309, 7-402 and 7-603.
27 Point 2: Section 7-105.
28 Point 3: Section 7-403.
29 Point 4: Section 7-403.
30 Point 5: Sections 7-209 and 7-307.
31

32 **Definitional Cross References:**

- 33 "Bailee". Section 7-102.
34 "Delivery". Section 1-201.
35 "Document of title". Section 1-201.
36 "Good faith". Section 1-201 [7-102].
37 "Goods". Section 7-102.
38 "Person". Section 1-201.
39

40 **§7-1602. Judicial process against goods covered by negotiable document of title**

41 Unless a document of title was originally issued upon delivery of the goods by a
42 person that did not have power to dispose of them, a lien does not attach by virtue of any
43 judicial process to goods in the possession of a bailee for which a negotiable document of
44 title is outstanding unless possession or control of the document is first surrendered to the
45 bailee or the document's negotiation is enjoined. The bailee may not be compelled to
46 deliver the goods pursuant to process until possession or control of the document is

1 surrendered to the bailee or to the court. A purchaser of the document for value without
2 notice of the process or injunction takes free of the lien imposed by judicial process.

3 **UNIFORM COMMENT**

4
5 (This is section 7-602 of the Uniform Commercial Code - Article 7 (2004).)

6
7 **Prior Uniform Statutory Provisions:** Former Section 7-602.

8 **Changes:** Changes to accommodate electronic documents of title and for style.

9 **Purposes:**

10 1. The purpose of the section is to protect the bailee from conflicting claims of the
11 document of title holder and the judgment creditors of the person who deposited the
12 goods. The rights of the former prevail unless, in effect, the judgment creditors
13 immobilize the negotiable document of title through the surrender of possession of a
14 tangible document or control of an electronic document. However, if the document of
15 title was issued upon deposit of the goods by a person who had no power to dispose of the
16 goods so that the document is ineffective to pass title, judgment liens are valid to the
17 extent of the debtor's interest in the goods.

18
19 2. The last sentence covers the possibility that the holder of a document who has been
20 enjoined from negotiating it will violate the injunction by negotiating to an innocent
21 purchaser for value. In such case the lien will be defeated.

22 **Cross Reference:**

23 Sections 7-106 and 7-501 through 7-503.

24 **Definitional Cross References:**

25 "Bailee". Section 7-102.

26 "Delivery". Section 1-201.

27 "Document of title". Section 1-201.

28 "Goods". Section 7-102.

29 "Notice". Section 1-202.

30 "Person". Section 1-201.

31 "Purchase". Section 1-201.

32 "Value". Section 1-204.

33
34 **§7-1603. Conflicting claims; interpleader**

35 If more than one person claims title to or possession of the goods, the bailee is
36 excused from delivery until the bailee has a reasonable time to ascertain the validity of
37 the adverse claims or to commence an action for interpleader. The bailee may assert an
38 interpleader either in defending an action for nondelivery of the goods or by original
39 action.

40 **UNIFORM COMMENT**

41
42 (This is section 7-603 of the Uniform Commercial Code - Article 7 (2004).)

43
44 **Prior Uniform Statutory Provisions:** Former Section 7-603.

45 **Changes:** Changes for style only.

46 **Purposes:**

1 1. The section enables a bailee faced with conflicting claims to the goods to compel
 2 the claimants to litigate their claims with each other rather than with the bailee. The
 3 bailee is protected from legal liability when the bailee complies with court orders from
 4 the interpleader. See e.g. Northwestern National Sales, Inc. v. Commercial Cold Storage,
 5 Inc., 162 Ga. App. 741, 293 S.E.2d. 30 (1982).
 6

7 2. This section allows the bailee to bring an interpleader action but does not provide
 8 an exclusive basis for allowing interpleader. If either state or federal procedural rules
 9 allow an interpleader in other situations, the bailee may commence an interpleader under
 10 those rules. Even in an interpleader to which this section applies, the state or federal
 11 process of interpleader applies to the bailee's action for interpleader. For example, state
 12 or federal interpleader statutes or rules may permit a bailee to protect its lien or to seek
 13 attorney's fees and costs in the interpleader action.

14 **Cross reference:**

15 Point 1: Section 7-403.

16 **Definitional Cross References:**

17 "Action". Section 1-201.

18 "Bailee". Section 7-102.

19 "Delivery". Section 1-201.

20 "Goods". Section 7-102.

21 "Person". Section 1-201.

22 "Reasonable time". Section 1-205.
 23

24 **PART 7**

25 **MISCELLANEOUS PROVISIONS**

26 **§7-1701. Effective date**

27 This Article takes effect January 1, 2010.

28 **§7-1702. Applicability**

29 This Article applies to a document of title that is issued or a bailment that arises on or
 30 after the effective date of this Article. This Article does not apply to a document of title
 31 that is issued or a bailment that arises before the effective date of this Article even if the
 32 document of title or bailment would be subject to this Article if the document of title had
 33 been issued or bailment had arisen on or after the effective date of this Article. This
 34 Article does not apply to a right of action that has accrued before the effective date of this
 35 Article.

36 **UNIFORM COMMENT**

37
 38 (This is section 7-703 of the Uniform Commercial Code - Article 7 (2004).)
 39

40 This Act will apply prospectively only to documents of title issued or bailments that
 41 arise after the effective date of the Act.
 42

1 **§7-1703. Savings clause**

2 A document of title issued or a bailment that arises before January 1, 2010 and the
3 rights, obligations and interests flowing from that document or bailment are governed by
4 any statute or other rule amended or repealed by this Act as if amendment or repeal had
5 not occurred and may be terminated, completed, consummated or enforced under that
6 statute or other rule.

7 **UNIFORM COMMENT**

8
9 (This is section 7-704 of the Uniform Commercial Code - Article 7 (2004).)

10
11 This Act will apply prospectively only to documents of title issued or bailments that
12 arise after the effective date of the Act. To the extent that issues arise based upon
13 documents of title or rights or obligations that arise prior to the effective date of this Act,
14 prior law will apply to resolve those issues.
15

16 **Sec. A-3. Legislative intent.** This Act is the Maine enactment of the Uniform
17 Commercial Code, Article 7 as revised by the National Conference of Commissioners on
18 Uniform State Laws. The text of the uniform act has been changed to conform to Maine
19 statutory conventions, and the article is enacted as Article 7-A. The changes are technical
20 in nature and it is the intent of the Legislature that this Act be interpreted as substantively
21 the same as the revised Article 7 of the uniform act.

22 **Sec. A-4. Effective date.** This Part takes effect January 1, 2010.

23 **PART B**

24 **Sec. B-1. 10 MRSA §9416, sub-§1, ¶A,** as enacted by PL 1999, c. 762, §2, is
25 amended to read:

26 A. Would be a note under Title 11, Article 3-A or a document under Title 11, Article
27 7-7-A if the electronic record were in writing; and

28 **Sec. B-2. 10 MRSA §9416, sub-§4,** as enacted by PL 1999, c. 762, §2, is
29 amended to read:

30 **4. Holders.** Except as otherwise agreed, a person having control of a transferable
31 record is the holder, as defined in Title 11, section 1-201, subsection (20), of the
32 transferable record and has the same rights and defenses as a holder of an equivalent
33 record or writing under the Uniform Commercial Code, including, if the applicable
34 statutory requirements under Title 11, section 3-1302, subsection (1); Title 11, section
35 ~~7-501~~ 7-1501; or Title 11, section 9-308 are satisfied, the rights and defenses of a holder
36 in due course, a holder to which a negotiable document of title has been duly negotiated
37 or a purchaser, respectively. Delivery, possession and indorsement are not required to
38 obtain or exercise any of the rights under this subsection.

39 **Sec. B-3. 11 MRSA §2-103, sub-§(3),** as amended by PL 1999, c. 699, Pt. B, §5
40 and affected by §28, is further amended to read:

- 1 (3). The following definitions in other Articles apply to this Article:
2 "Check." Section 3-104.
3 "Consignee." Section ~~7-102~~ 7-1102.
4 "Consignor." Section ~~7-102~~ 7-1102.
5 "Consumer goods." Section 9-1102.
6 "Dishonor." Section 3-1502.
7 "Draft." Section 3-104.

8 Sec. B-4. 11 MRSA §2-103, sub-§(3-A) is enacted to read:

9 (3-A). "Control" as provided in section 7-1106 and the following definitions in
10 other Articles apply to this Article:

- 11 "Check." Section 3-104.
12 "Consignee." Section 7-1102.
13 "Consignor." Section 7-1102.
14 "Consumer goods." Section 9-1102.
15 "Dishonor." Section 3-502.
16 "Draft." Section 3-104.

17 UNIFORM COMMENT

18 * * * *

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21 2. "Receipt" must be distinguished from delivery particularly in regard to the
22 problems arising out of shipment of goods, whether or not the contract calls for making
23 delivery by way of documents of title, since the seller may frequently fulfill his
24 obligations to "deliver" even though the buyer may never "receive" the goods. Delivery
25 with respect to documents of title is defined in Article 1 and requires transfer of physical
26 delivery of a tangible document of title and transfer of control of an electronic document
27 of title. Otherwise the many divergent incidents of delivery are handled incident by
28 incident.
29

30 Sec. B-5. 11 MRSA §2-104, sub-§(2) is amended to read:

31 (2). **Financing agency.** "Financing agency" means a bank, finance company or
32 other person who in the ordinary course of business makes advances against goods or
33 documents of title or who by arrangement with either the seller or the buyer intervenes in
34 ordinary course to make or collect payment due or claimed under the contract for sale, as
35 by purchasing or paying the seller's draft or making advances against it or by merely
36 taking it for collection whether or not documents of title accompany or are associated
37 with the draft. "Financing agency" includes also a bank or other person who similarly
38 intervenes between persons who are in the position of seller and buyer in respect to the
39 goods (section 2-707).

40 Sec. B-6. 11 MRSA §2-310, sub-§(3) is repealed and the following enacted in its
41 place:

1 (3). If delivery is authorized and made by way of documents of title otherwise than
2 by subsection (2), then payment is due regardless of where the goods are to be received:

3 (a). At the time and place at which the buyer is to receive delivery of the tangible
4 documents; or

5 (b). At the time the buyer is to receive delivery of the electronic documents and at
6 the seller's place of business or if none the seller's residence; and

7
8 UNIFORM COMMENT

9 * * * *

10 2. Paragraph (b) while providing for inspection by the buyer before he pays, protects
11 the seller. He is not required to give up possession of the goods until he has received
12 payment, where no credit has been contemplated by the parties. The seller may collect
13 through a bank by a sight draft against an order bill of lading "hold until arrival;
14 inspection allowed." The obligations of the bank under such a provision are set forth in
15 Part 5 of Article 4. Under subsection (c), in the absence of a credit term, the seller is
16 permitted to ship under reservation and if he does payment is then due where and when
17 the buyer is to receive delivery of the tangible documents of title. In the case of an
18 electronic document of title, payment is due when the buyer is to receive delivery of the
19 electronic document and at the seller's place of business, or if none, the seller's residence.
20 Delivery as to documents of title is stated in Article 1, Section 1-201.

21
22 3. Unless otherwise agreed, the place for the receipt delivery of the documents and
23 payment is the buyer's city but the time for payment is only after arrival of the goods,
24 since under paragraph (b), and Sections 2-512 and 2-513 the buyer is under no duty to
25 pay prior to inspection. Tender of a document of title requires that the seller be ready,
26 willing and able to transfer possession of a tangible document of title or control of an
27 electronic document of title to the buyer.

28 **Sec. B-7. 11 MRSA §2-323, sub-§(2) is amended to read:**

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

33 (a). Due tender of a single part is acceptable within the provisions of this Article on
34 cure of improper delivery (section 2-508, subsection (1)); and

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

38
39 UNIFORM COMMENT

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42 2. Subsection (2) deals with the problem of bills of lading covering deep water
43 shipments, issued not as a single bill of lading but in a set of parts, each part referring to
44 the other parts and the entire set constituting in commercial practice and at law a single

1 bill of lading. Commercial practice in international commerce is to accept and pay
2 against presentation of the first part of a set if the part is sent from overseas even though
3 the contract of the buyer requires presentation of a full set of bills of lading provided
4 adequate indemnity for the missing parts is forthcoming. In accord with the amendment
5 to Section 7-304, bills of lading in a set are limited to tangible bills.
6

7 **Sec. B-8. 11 MRSA §2-401, sub-§(3)** is amended to read:

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

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

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

16
17 **UNIFORM COMMENT**

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19
20 4. The factual situations in subsections (2) and (3) upon which passage of title turn
21 actually base the test upon the time when the seller has finally committed himself in
22 regard to specific goods. Thus in a "shipment" contract he commits himself by the act of
23 making the shipment. If shipment is not contemplated subsection (3) turns on the seller's
24 final commitment, i.e. the delivery of documents or the making of the contract. As to
25 delivery of an electronic document of title, see definition of delivery in Article 1, Section
26 1-201. This Article does not state a rule as to the place of title passage as to goods
27 covered by an electronic document of title.
28

29 **Sec. B-9. 11 MRSA §2-403, sub-§(4)**, as amended by PL 1991, c. 636, §2, is
30 further amended to read:

31 (4). The rights of other purchasers of goods and of lien creditors are governed by
32 the Articles on secured transactions (Article 9 9-A) and documents of title (Article 7
33 7-A).

34 **UNIFORM COMMENT**

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37 2. The many particular situations in which a buyer in ordinary course of business
38 from a dealer has been protected against reservation of property or other hidden interest
39 are gathered by subsections (2)-(4) into a single principle protecting persons who buy in
40 ordinary course out of inventory. Consignors have no reason to complain, nor have
41 lenders who hold a security interest in the inventory, since the very purpose of goods in
42 inventory is to be turned into cash by sale.

1 The principle is extended in subsection (3) to fit with the abolition of the old law of
2 "cash sale" by subsection (1)(c). It is also freed from any technicalities depending on the
3 extended law of larceny; such extension of the concept of theft to include trick, particular
4 types of fraud, and the like is for the purpose of helping conviction of the offender; it has
5 no proper application to the long-standing policy of civil protection of buyers from
6 persons guilty of such trick or fraud. Finally, the policy is extended, in the interest of
7 simplicity and sense, to any entrusting by a bailor; this is in consonance with the explicit
8 provisions of Section 7-205 on the powers of a warehouseman who is also in the business
9 of buying and selling fungible goods of the kind he warehouses stores. As to entrusting
10 by a secured party, subsection (2) is limited by the more specific provisions of Section 9-
11 320, which deny protection to a person buying farm products from a person engaged in
12 farming operations.
13

14 **Sec. B-10. 11 MRS §2-503, sub-§(4), ¶(b)** is amended to read:

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

24 **Sec. B-11. 11 MRS §2-503, sub-§(5)** is amended to read:

25 (5). Where the contract requires the seller to deliver documents,

26 (a). ~~He~~ The seller must tender all such documents in correct form, except as provided
27 in this Article with respect to bills of lading in a set (section 2-323, subsection (2));
28 and

29 (b). Tender through customary banking channels is sufficient and dishonor of a draft
30 accompanying or associated with the documents constitutes nonacceptance or
31 rejection.
32

33 **UNIFORM COMMENT**

34 1. The major general rules governing the manner of proper or due tender of delivery
35 are gathered in this section. The term "tender" is used in this Article in two different
36 senses. In one sense it refers to "due tender" which contemplates an offer coupled with a
37 present ability to fulfill all the conditions resting on the tendering party and must be
38 followed by actual performance if the other party shows himself ready to proceed.
39 Unless the context unmistakably indicates otherwise this is the meaning of "tender" in
40 this Article and the occasional addition of the word "due" is only for clarity and
41 emphasis. At other times it is used to refer to an offer of goods or documents under a
42 contract as if in fulfillment of its conditions even though there is a defect when measured
43 against the contract obligation. Used in either sense, however, "tender" connotes such
44 performance by the tendering party as puts the other party in default if he fails to proceed

1 in some manner. These concepts of tender would apply to tender of either tangible or
2 electronic documents of title.

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6 7. Under subsection (5) documents are never "required" except where there is an
7 express contract term or it is plainly implicit in the peculiar circumstances of the case or
8 in a usage of trade. Documents may, of course, be "authorized" although not required,
9 but such cases are not within the scope of this subsection. When documents are required,
10 there are three main requirements of this subsection: (1) "All": each required document
11 is essential to a proper tender; (2) "Such": the documents must be the ones actually
12 required by the contract in terms of source and substance; (3) "Correct form": All
13 documents must be in correct form. These requirements apply to both tangible and
14 electronic documents of title. When tender is made through customary banking channels,
15 a draft may accompany or be associated with a document of title. The language has been
16 broadened to allow for drafts to be associated with an electronic document of title.
17 Compare Section 2-104(2) definition of financing agency.
18

19 When a prescribed document cannot be procured, a question of fact arises under the
20 provision of this Article on substituted performance as to whether the agreed manner of
21 delivery is actually commercially impracticable and whether the substitute is
22 commercially reasonable.
23

24 **Sec. B-12. 11 MRSA §2-505, sub-§(1), ¶(b)** is amended to read:

25 (b). A nonnegotiable bill of lading to himself the seller or his the seller's nominee
26 reserves possession of the goods as security, but except in a case of conditional
27 delivery under section 2-507, subsection (2) a nonnegotiable bill of lading naming the
28 buyer as consignee reserves no security interest even though the seller retains
29 possession or control of the bill of lading.

30 **Sec. B-13. 11 MRSA §2-505, sub-§(2)** is amended to read:

31 (2). When shipment by the seller with reservation of a security interest is in
32 violation of the contract for sale, it constitutes an improper contract for transportation
33 within section 2-504 but impairs neither the rights given to the buyer by shipment and
34 identification of the goods to the contract nor the seller's powers as a holder of a
35 negotiable document of title.

36
37 **UNIFORM COMMENT**

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40 5. Under subsection (2) an improper reservation by the seller which would constitute
41 a breach in no way impairs such of the buyer's rights as result from identification of the
42 goods. The security title reserved by the seller under subsection (1) does not protect his
43 holding- retaining possession or control of the document or the goods for the purpose of
44 exacting more than is due him under the contract.
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Sec. B-14. 11 MRSA §2-506, sub-§(2) is amended to read:

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

UNIFORM COMMENT

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5. The deletion of the language "on its face" from subsection (2) is designed to accommodate electronic documents of title without changing the requirement of regularity of the document.

Sec. B-15. 11 MRSA §2-509, sub-§(2), ¶(a) is amended to read:

(a). On ~~his~~ the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

Sec. B-16. 11 MRSA §2-509, sub-§(2), ¶(c) is amended to read:

(c). After ~~his~~ the buyer's receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in section 2-503, subsection (4), paragraph (b).

UNIFORM COMMENT

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4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal from the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer of risk. Due delivery of a negotiable document of title covering the goods or acknowledgment by the bailee that he holds for the buyer completes the "delivery" and passes the risk. See definition of delivery in Article 1, Section 1-201 and the definition of control in Article 7, Section 7-106.

Sec. B-17. 11 MRSA §2-605, sub-§(2) is amended to read:

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

UNIFORM COMMENT

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4. Subsection (2) applies to the particular case of documents the same principle which the section on effects of acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" of objections rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods and partly because defects in documents which are not taken as grounds for rejection are generally

1 minor ones. The only defects concerned in the present subsection are defects in the
2 documents which are apparent. ~~on their face.~~ This rule applies to both tangible and
3 electronic documents of title. Where payment is required against the documents they
4 must be inspected before payment, and the payment then constitutes acceptance of the
5 documents. Under the section dealing with this problem, such acceptance of the
6 documents does not constitute an acceptance of the goods or impair any options or
7 remedies of the buyer for their improper delivery. Where the documents are delivered
8 without requiring such contemporary action as payment from the buyer, the reason of the
9 next section on what constitutes acceptance of goods, applies. Their acceptance by non-
10 objection is therefore postponed until after a reasonable time for their inspection. In
11 either situation, however, the buyer "waives" only ~~what is the defects~~ apparent on the face
12 of in the documents.
13

14 **Sec. B-18. 11 MRSA §2-705, sub-§(3), ¶(c)** is amended to read:

15 (c). If a negotiable document of title has been issued for goods the bailee is not
16 obliged to obey a notification to stop until surrender of possession or control of the
17 document.
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19 **UNIFORM COMMENT**

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22 3. A diversion of a shipment is not a "reshipment" under subsection (2)(c) when it is
23 merely an incident to the original contract of transportation. Nor is the procurement of
24 "exchange bills" of lading which change only the name of the consignee to that of the
25 buyer's local agent but do not alter the destination of a reshipment.
26

27 Acknowledgment by the carrier as a "warehouseman" within the meaning of this
28 Article requires a contract of a truly different character from the original shipment, a
29 contract not in extension of transit but as a warehouseman.
30

31 4. Subsection (3)(c) makes the bailee's obedience of a notification to stop conditional
32 upon the surrender of possession or control of any outstanding negotiable document.
33

34 **Sec. B-19. 11 MRSA §2-1103, sub-§(1), ¶(a)**, as enacted by PL 1991, c. 805,
35 §4, is amended to read:

36 (a). "Buyer in ordinary course of business" means a person who, in good faith and
37 without knowledge that the sale to that person is in violation of the ownership rights
38 or security interest or leasehold interest of a third party in the goods, buys in ordinary
39 course from a person in the business of selling goods of that kind but does not include
40 a pawnbroker. Buying may be for cash or by exchange of other property or on
41 secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of
42 title under a preexisting contract for sale but does not include a transfer in bulk or as
43 security for or in total or partial satisfaction of a money debt.

1 **Sec. B-20. 11 MRSA §2-1103, sub-§(1), ¶(o)**, as enacted by PL 1991, c. 805,
2 §4, is amended to read:

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

11 **Sec. B-21. 11 MRSA §2-1514, sub-§(2)**, as enacted by PL 1991, c. 805, §4, is
12 amended to read:

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

16 **Sec. B-22. 11 MRSA §2-1526, sub-§(2), ¶(c)**, as enacted by PL 1991, c. 805,
17 §4, is amended to read:

18 (c). Such an acknowledgment to the lessee by a carrier via reshipment or as a
19 warehouse operator.

20 **Sec. B-23. 11 MRSA §4-104, sub-§(3)**, as amended by PL 2003, c. 594, §9, is
21 further amended to read:

22 (3). ~~The~~ "Control" as provided in section 7-1106 and the following definitions in
23 other Articles apply to this Article:

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| 1 | "Acceptance." | Section 3-1409. |
| 2 | "Alteration." | Section 3-1407. |
| 3 | "Cashier's check." | Section 3-1104. |
| 4 | "Certificate of deposit." | Section 3-1104. |
| 5 | "Certified Check." | Section 3-1409. |
| 6 | "Check." | Section 3-1104. |
| 7 | "Demand draft." | Section 3-1104. |
| 8 | "Draft." | Section 3-1104. |
| 9 | "Good faith." | Section 3-1103. |
| 10 | "Holder in due course." | Section 3-1102. |
| 11 | "Instrument." | Section 3-1104. |
| 12 | "Notice of dishonor." | Section 3-1503. |
| 13 | "Order." | Section 3-1103. |
| 14 | "Ordinary care." | Section 3-1103. |
| 15 | "Person entitled to enforce." | Section 3-1301. |
| 16 | "Presentment." | Section 3-1501. |
| 17 | "Promise." | Section 3-1103. |
| 18 | "Prove." | Section 3-1103. |
| 19 | "Teller's check." | Section 3-1104. |
| 20 | "Unauthorized signature." | Section 3-1403. |

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UNIFORM COMMENT

5. Paragraph (a)(6): "Documentary draft" applies even though the documents do not accompany the draft but are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be either in electronic or tangible form. See Article 5, Section 5-102, Comment 2 and Article 1, Section 1-201 (definition of "document of title").

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Sec. B-24. 11 MRSA §4-208, sub-§(3), as amended by PL 1999, c. 699, Pt. B, §17 and affected by §28, is further amended to read:

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(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. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9 9-A, but:

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- (a). No security agreement is necessary to make the security interest enforceable (section 9-1203, subsection (2), paragraph (c), subparagraph (i)); ~~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.

| | | |
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| 1 | "Applicant" | Section 5-1102. |
| 2 | "Beneficiary" | Section 5-1102. |
| 3 | "Broker" | Section 8-1102. |
| 4 | "Certificated security" | Section 8-1102. |
| 5 | "Check" | Section 3-1104. |
| 6 | "Clearing corporation" | Section 8-1102. |
| 7 | "Contract for sale" | Section 2-106. |
| 8 | "Customer" | Section 4-104. |
| 9 | "Entitlement holder" | Section 8-1102. |
| 10 | "Financial asset" | Section 8-1102. |
| 11 | "Holder in due course" | Section 3-1302. |
| 12 | "Issuer" (with respect to a letter of | Section 5-1102. |
| 13 | credit or letter-of-credit right) | |
| 14 | "Issuer" (with respect to a security) | Section 8-1201. |
| 15 | <u>"Issuer" (with respect to documents of</u> | <u>Section 7-1102.</u> |
| 16 | <u>title)</u> | |
| 17 | "Lease" | Section 2-1103. |
| 18 | "Lease agreement" | Section 2-1103. |
| 19 | "Lease contract" | Section 2-1103. |
| 20 | "Leasehold interest" | Section 2-1103. |
| 21 | "Lessee in ordinary course of | Section 2-1103. |
| 22 | business" | |
| 23 | "Lessor" | Section 2-1103. |
| 24 | "Lessor's residual interest" | Section 2-1103. |
| 25 | "Letter of credit" | Section 5-1102. |
| 26 | "Merchant" | Section 2-104. |
| 27 | "Negotiable instrument" | Section 3-1104. |
| 28 | "Nominated person" | Section 5-1102. |
| 29 | "Note" | Section 3-1104. |
| 30 | "Proceeds of a letter of credit" | Section 5-114. |
| 31 | "Prove" | Section 3-1103. |
| 32 | "Sale" | Section 2-106. |
| 33 | "Securities account" | Section 8-1501. |
| 34 | "Securities intermediary" | Section 8-1102. |
| 35 | "Security" | Section 8-1102. |
| 36 | "Security certificate" | Section 8-1102. |
| 37 | "Security entitlement" | Section 8-1102. |
| 38 | "Uncertificated security" | Section 8-1102. |

39 **UNIFORM COMMENT**

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42 16. **"Document."** ~~The definition of "document" is unchanged in substance from the~~
43 ~~corresponding definitions in former Section 9-105. incorporates both tangible and~~
44 ~~electronic documents of title. See Section 1-201(15)[1-201(b)16] and Comment 15 [16].~~

45 *Legislative Note: Former Article 1 defined document of title in section 1-201(15) and*
46 *accompanying comment 15. Revised Article 1 defines document of title in Section 1-*

1 201(b)(16) and accompanying comment 16. Cross references should be adapted
2 depending upon which version of Article 1 is in force in the jurisdiction.
3

4 **Sec. B-29. 11 MRSA §9-1203, sub-§(2), ¶(c)**, as enacted by PL 1999, c. 699,
5 Pt. A, §2 and affected by §4, is amended to read:

6 (c). One of the following conditions is met:

7 (i) The debtor has authenticated a security agreement that provides a description
8 of the collateral and, if the security interest covers timber to be cut, a description
9 of the land concerned;

10 (ii) The collateral is not a certificated security and is in the possession of the
11 secured party under section 9-1313 pursuant to the debtor's security agreement;

12 (iii) The collateral is a certificated security in registered form and the security
13 certificate has been delivered to the secured party under section 8-1302 pursuant
14 to the debtor's security agreement; or

15 (iv) The collateral is deposit accounts, electronic chattel paper, investment
16 property, ~~or~~ letter-of-credit rights or electronic documents, and the secured party
17 has control under sections 9-1104, 9-1105, 9-1106 or 9-1107 pursuant to the
18 debtor's security agreement.

19
20 **UNIFORM COMMENT**

21 * * * *

22
23 **4. Possession, Delivery, or Control Pursuant to Security Agreement.** The other
24 alternatives in subsection (b)(3) dispense with the requirement of an authenticated
25 security agreement and provide alternative evidentiary tests. Under paragraph (3)(B), the
26 secured party's possession substitutes for the debtor's authentication under paragraph
27 (3)(A) if the secured party's possession is "pursuant to the debtor's security agreement."
28 That phrase refers to the debtor's agreement to the secured party's possession for the
29 purpose of creating a security interest. The phrase should not be confused with the phrase
30 "debtor has authenticated a security agreement," used in paragraph (3)(A), which
31 contemplates the debtor's authentication of a record. In the unlikely event that possession
32 is obtained without the debtor's agreement, possession would not suffice as a substitute
33 for an authenticated security agreement. However, once the security interest has become
34 enforceable and has attached, it is not impaired by the fact that the secured party's
35 possession is maintained without the agreement of a subsequent debtor (e.g., a
36 transferee). Possession as contemplated by Section 9-313 is possession for purposes of
37 subsection (b)(3)(B), even though it may not constitute possession "pursuant to the
38 debtor's agreement" and consequently might not serve as a substitute for an authenticated
39 security agreement under subsection (b)(3)(A). Subsection (b)(3)(C) provides that
40 delivery of a certificated security to the secured party under Section 8-301 pursuant to the
41 debtor's security agreement is sufficient as a substitute for an authenticated security
42 agreement. Similarly, under subsection (b)(3)(D), control of investment property, a
43 deposit account, electronic chattel paper, ~~or~~ a letter-of-credit right, or electronic

1 documents satisfies the evidentiary test if control is pursuant to the debtor's security
2 agreement.
3

4 **Sec. B-30. 11 MRSA §9-1207, sub-§(3)**, as enacted by PL 1999, c. 699, Pt. A,
5 §2 and affected by §4, is amended to read:

6 (3). Except as otherwise provided in subsection (4), a secured party having
7 possession of collateral or control of collateral under section 7-1106, 9-1104, 9-1105,
8 9-1106 or 9-1107:

9 (a). May hold as additional security any proceeds, except money or funds, received
10 from the collateral;

11 (b). Shall apply money or funds received from the collateral to reduce the secured
12 obligation, unless remitted to the debtor; and

13 (c). May create a security interest in the collateral.

14 **Sec. B-31. 11 MRSA §9-1208, sub-§(2), ¶(d)**, as enacted by PL 1999, c. 699,
15 Pt. A, §2 and affected by §4, is amended to read:

16 (d). A secured party having control of investment property under section 8-1106,
17 subsection (4), paragraph (b) or 9-1106, subsection (2) shall send to the securities
18 intermediary or commodity intermediary with which the security entitlement or
19 commodity contract is maintained an authenticated record that releases the securities
20 intermediary or commodity intermediary from any further obligation to comply with
21 entitlement orders or directions originated by the secured party; and

22 **Sec. B-32. 11 MRSA §9-1208, sub-§(2), ¶(e)**, as enacted by PL 1999, c. 699,
23 Pt. A, §2 and affected by §4, is amended to read:

24 (e). A secured party having control of a letter-of-credit right under section 9-1107
25 shall send to each person having an unfulfilled obligation to pay or deliver proceeds
26 of the letter of credit to the secured party an authenticated release from any further
27 obligation to pay or deliver proceeds of the letter of credit to the secured party; and

28 **Sec. B-33. 11 MRSA §9-1208, sub-§(2), ¶(f)** is enacted to read:

29 (f). A secured party having control of an electronic document shall:

30 (1) Give control of the electronic document to the debtor or its designated
31 custodian;

32 (2) If the debtor designates a custodian that is the designated custodian with
33 which the authoritative copy of the electronic document is maintained for the
34 secured party, communicate to the custodian an authenticated record releasing the
35 designated custodian from any further obligation to comply with instructions
36 originated by the secured party and instructing the custodian to comply with
37 instructions originated by the debtor; and

38 (3) Take appropriate action to enable the debtor or its designated custodian to
39 make copies of or revisions to the authoritative copy that add or change an

1 identified assignee of the authoritative copy without the consent of the secured
2 party.

3 **UNIFORM COMMENT**

4 * * * *

5
6 2. **Scope and Purpose.** This section imposes duties on a secured party who has
7 control of a deposit account, electronic chattel paper, investment property, or a letter-of-
8 credit right, or electronic documents of title. The duty to terminate the secured party's
9 control is analogous to the duty to file a termination statement, imposed by Section 9-
10 513. Under subsection (a), it applies only when there is no outstanding secured obligation
11 and the secured party is not committed to give value. The requirements of this section can
12 be varied by agreement under Section 1-102(3). For example, a debtor could by contract
13 agree that the secured party may comply with subsection (b) by releasing control more
14 than 10 days after demand. Also, duties under this section should not be read to conflict
15 with the terms of the collateral itself. For example, if the collateral is a time deposit
16 account, subsection (b)(2) should not require a secured party with control to make an
17 early withdrawal of the funds (assuming that were possible) in order to pay them over to
18 the debtor or put them in an account in the debtor's name.
19

20 **Sec. B-34. 11 MRSA §9-1301, sub-§(3)**, as enacted by PL 1999, c. 699, Pt. A,
21 §2 and affected by §4, is amended to read:

22 (3). Except as otherwise provided in subsection (4), while tangible negotiable
23 documents, goods, instruments, money or tangible chattel paper is located in a
24 jurisdiction, the local law of that jurisdiction governs:

- 25 (a). Perfection of a security interest in the goods by filing a fixture filing;
26 (b). Perfection of a security interest in timber to be cut; and
27 (c). The effect of perfection or nonperfection and the priority of a nonpossessory
28 security interest in the collateral.

29 **UNIFORM COMMENT**

30 * * * *

31 5. **Law Governing Perfection: Exceptions.** The general rule is subject to several
32 exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303),
33 deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-
34 of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e.,
35 security interests that the secured party has perfected by taking possession of the
36 collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see
37 subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or
38 security interests in as-extracted collateral (see paragraph (4)).
39

40 a. **Possessory Security Interests.** Paragraph (2) applies to possessory security
41 interests and provides that perfection is governed by the local law of the jurisdiction in
42 which the collateral is located. This is the rule of former Section 9-103(1)(b), except
43 paragraph (2) eliminates the troublesome "last event" test of former law.
44

1 The distinction between nonpossessory and possessory security interests creates the
2 potential for the same jurisdiction to apply two different choice- of-law rules to determine
3 perfection in the same collateral. For example, were a secured party in possession of an
4 instrument or a tangible document to relinquish possession in reliance on temporary
5 perfection, the applicable law immediately would change from that of the location of the
6 collateral to that of the location of the debtor. The applicability of two different choice-
7 of-law rules for perfection is unlikely to lead to any material practical problems. The
8 perfection rules of one Article 9 jurisdiction are likely to be identical to those of another.
9 Moreover, under paragraph (3), the relative priority of competing security interests in
10 tangible collateral is resolved by reference to the law of the jurisdiction in which the
11 collateral is located, regardless of how the security interests are perfected.
12

13 * * * *

14
15 **7. Law Governing Effect of Perfection and Priority: Goods, Documents,**
16 **Instruments, Money, Negotiable Documents, and Tangible Chattel Paper.** Under
17 former Section 9-103, the law of a single jurisdiction governed both questions of
18 perfection and those of priority. This Article generally adopts that approach. See
19 paragraph (1). But the approach may create problems if the debtor and collateral are
20 located in different jurisdictions. For example, assume a security interest in equipment
21 located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If
22 the law of the jurisdiction in which the debtor is located were to govern priority, then the
23 priority of an execution lien on goods located in Pennsylvania would be governed by
24 rules enacted by the Illinois legislature.
25

26 To address this problem, paragraph (3)(C) divorces questions of perfection from
27 questions of "the effect of perfection or nonperfection and the priority of a security
28 interest." Under paragraph (3)(C), the rights of competing claimants to tangible collateral
29 are resolved by reference to the law of the jurisdiction in which the collateral is located.
30 A similar bifurcation applied to security interests in investment property under former
31 Section 9-103(6). See Section 9-305.
32

33 Paragraph (3)(C) applies the law of the situs to determine priority only with respect to
34 goods (including fixtures), instruments, money, tangible negotiable documents, and
35 tangible chattel paper. Compare former Section 9-103(1), which applied the law of the
36 location of the collateral to documents, instruments, and "ordinary" (as opposed to
37 "mobile") goods. This Article does not distinguish among types of goods. The
38 ordinary/mobile goods distinction appears to address concerns about where to file and
39 search, rather than concerns about priority. There is no reason to preserve this distinction
40 under the bifurcated approach.
41

42 Particularly serious confusion may arise when the choice-of-law rules of a given
43 jurisdiction result in each of two competing security interests in the same collateral being
44 governed by a different priority rule. The potential for this confusion existed under
45 former Section 9-103(4) with respect to chattel paper: Perfection by possession was
46 governed by the law of the location of the paper, whereas perfection by filing was
47 governed by the law of the location of the debtor. Consider the mess that would have
48 been created if the language or interpretation of former Section 9-308 were to differ in the

1 two relevant States, or if one of the relevant jurisdictions (e.g., a foreign country) had not
2 adopted Article 9. The potential for confusion could have been exacerbated when a
3 secured party perfected both by taking possession in the State where the collateral is
4 located (State A) and by filing in the State where the debtor is located (State B)--a
5 common practice for some chattel paper financiers. By providing that the law of the
6 jurisdiction in which the collateral is located governs priority, paragraph (3) substantially
7 diminishes this problem.
8

9 **Sec. B-35. 11 MRSA §9-1310, sub-§(2), ¶(e)**, as enacted by PL 1999, c. 699,
10 Pt. A, §2 and affected by §4, is amended to read:

11 (e). In certificated securities, documents, goods or instruments that is perfected
12 without filing, control or possession under section 9-1312, subsection (5), (6) or (7);

13 **Sec. B-36. 11 MRSA §9-1310, sub-§(2), ¶(h)**, as enacted by PL 1999, c. 699,
14 Pt. A, §2 and affected by §4, is amended to read:

15 (h). In deposit accounts, electronic chattel paper, electronic documents, investment
16 property or letter-of-credit rights that is perfected by control under section 9-1314;

17 **Sec. B-37. 11 MRSA §9-1312, sub-§(5)**, as enacted by PL 1999, c. 699, Pt. A,
18 §2 and affected by §4, is amended to read:

19 (5). A security interest in certificated securities, negotiable documents or instruments
20 is perfected without filing or the taking of possession or control for a period of 20 days
21 from the time it attaches to the extent that it arises for new value given under an
22 authenticated security agreement.

23 **UNIFORM COMMENTS**

24 * * * *

25
26 **3. Chattel Paper; Negotiable Documents.** Subsection (a) further provides that filing
27 is available as a method of perfection for security interests in chattel paper and negotiable
28 documents. Tangible chattel paper is sometimes delivered to the assignee, and sometimes
29 left in the hands of the assignor for collection. Subsection (a) allows the assignee to
30 perfect its security interest by filing in the latter case. Alternatively, the assignee may
31 perfect by taking possession. See Section 9-313(a). An assignee of electronic chattel
32 paper may perfect by taking control. See Sections 9-314(a), 9-105. The security interest
33 of an assignee who takes possession or control may qualify for priority over a competing
34 security interest perfected by filing. See Section 9-330.

35
36 Negotiable documents may be, and usually are, delivered to the secured party. See
37 Article 1, Section 1-201 (definition of "delivery"). The secured party's taking possession
38 of a tangible document or control of an electronic document will suffice as a perfection
39 step. See Sections 9-313(a), 9-314 and 7-106. However, as is the case with chattel paper,
40 a security interest in a negotiable document may be perfected by filing.

41 * * * *

1 **7. Goods Covered by Document of Title.** Subsection (c) applies to goods in the
2 possession of a bailee who has issued a negotiable document covering the goods.
3 Subsection (d) applies to goods in the possession of a bailee who has issued a
4 nonnegotiable document of title, including a document of title that is "non- negotiable"
5 under Section 7-104. Section 9-313 governs perfection of a security interest in goods in
6 the possession of a bailee who has not issued a document of title.
7

8 Subsection (c) clarifies the perfection and priority rules in former Section 9-304(2).
9 Consistently with the provisions of Article 7, subsection (c) takes the position that, as
10 long as a negotiable document covering goods is outstanding, title to the goods is, so to
11 say, locked up in the document. Accordingly, a security interest in goods covered by a
12 negotiable document may be perfected by perfecting a security interest in the document.
13 The security interest also may be perfected by another method, e.g., by filing. The
14 priority rule in subsection (c) governs only priority between (i) a security interest in
15 goods which is perfected by perfecting in the document and (ii) a security interest in the
16 goods which becomes perfected by another method while the goods are covered by the
17 document.
18

19 **Example 1:** While wheat is in a grain elevator and covered by a negotiable
20 warehouse receipt, Debtor creates a security interest in the wheat in favor of SP-1 and SP-
21 2. SP-1 perfects by filing a financing statement covering "wheat." Thereafter, SP-2
22 perfects by filing a financing statement describing the warehouse receipt. Subsection
23 (c)(1) provides that SP-2's security interest is perfected. Subsection (c)(2) provides that
24 SP-2's security interest is senior to SP-1's.
25

26 **Example 2:** The facts are as in Example 1, but SP-1's security interest attached and
27 was perfected before the goods were delivered to the grain elevator. Subsection (c)(2)
28 does not apply, because SP-1's security interest did not become perfected during the time
29 that the wheat was in the possession of a bailee. Rather, the first-to-file-or-perfect priority
30 rule applies. See Sections 9-322 and 7-503.
31

32 A secured party may become "a holder to whom a negotiable document of title has
33 been duly negotiated" under Section 7-501. If so, the secured party acquires the rights
34 specified by Article 7. Article 9 does not limit those rights, which may include the right to
35 priority over an earlier-perfected security interest. See Section 9-331(a).
36

37 Subsection (d) takes a different approach to the problem of goods covered by a
38 nonnegotiable document. Here, title to the goods is not looked on as being locked up in
39 the document, and the secured party may perfect its security interest directly in the goods
40 by filing as to them. The subsection provides two other methods of perfection: issuance
41 of the document in the secured party's name (as consignee of a straight bill of lading or
42 the person to whom delivery would be made under a non-negotiable warehouse receipt)
43 and receipt of notification of the secured party's interest by the bailee. Perfection under
44 subsection (d) occurs when the bailee receives notification of the secured party's interest
45 in the goods, regardless of who sends the notification. Receipt of notification is effective
46 to perfect, regardless of whether the bailee responds. Unlike former Section 9-304(3),
47 from which it derives, subsection (d) does not apply to goods in the possession of a bailee
48 who has not issued a document of title. Section 9-313(c) covers that case and provides

1 that perfection by possession as to goods not covered by a document requires the bailee's
2 acknowledgment.

3 **8. Temporary Perfection Without Having First Otherwise Perfected.** Subsection
4 (e) follows former Section 9-304(4) in giving perfected status to security interests in
5 certificated securities, instruments, and negotiable documents for a short period (reduced
6 from 21 to 20 days, which is the time period generally applicable in this Article),
7 although there has been no filing and the collateral is in the debtor's possession or control.
8 The 20-day temporary perfection runs from the date of attachment. There is no limitation
9 on the purpose for which the debtor is in possession, but the secured party must have
10 given "new value" (defined in Section 9-102) under an authenticated security agreement.

11
12 **9. Maintaining Perfection After Surrendering Possession.** There are a variety of
13 legitimate reasons--many of them are described in subsections (f) and (g)--why certain
14 types of collateral must be released temporarily to a debtor. No useful purpose would be
15 served by cluttering the files with records of such exceedingly short term transactions.

16
17 Subsection (f) affords the possibility of 20-day perfection in negotiable documents
18 and goods in the possession of a bailee but not covered by a negotiable document.
19 Subsection (g) provides for 20-day perfection in certificated securities and instruments.
20 These subsections derive from former Section 9-305(5). However, the period of
21 temporary perfection has been reduced from 21 to 20 days, which is the time period
22 generally applicable in this Article, and "enforcement" has been added in subsection (g)
23 as one of the special and limited purposes for which a secured party can release an
24 instrument or certificated security to the debtor and still remain perfected. The period of
25 temporary perfection runs from the date a secured party who already has a perfected
26 security interest turns over the collateral to the debtor. There is no new value requirement,
27 but the turnover must be for one or more of the purposes stated in subsection (f) or (g).
28 The 20-day period may be extended by perfecting as to the collateral by another method
29 before the period expires. However, if the security interest is not perfected by another
30 method until after the 20-day period expires, there will be a gap during which the security
31 interest is unperfected.

32
33 Temporary perfection extends only to the negotiable document or goods under
34 subsection (f) and only to the certificated security or instrument under subsection (g). It
35 does not extend to proceeds. If the collateral is sold, the security interest will continue in
36 the proceeds for the period specified in Section 9-315.

37
38 Subsections (f) and (g) deal only with perfection. Other sections of this Article
39 govern the priority of a security interest in goods after surrender of possession or control
40 of the document covering them. In the case of a purchase-money security interest in
41 inventory, priority may be conditioned upon giving notification to a prior inventory
42 financier. See Section 9-324.

43
44 **Sec. B-38. 11 MRSA §9-1313, sub-§(1),** as enacted by PL 1999, c. 699, Pt. A,
45 §2 and affected by §4, is amended to read:

1 (1). Except as otherwise provided in subsection (2), a secured party may perfect a
2 security interest in tangible negotiable documents, goods, instruments, money or tangible
3 chattel paper by taking possession of the collateral. A secured party may perfect a
4 security interest in certificated securities by taking delivery of the certificated securities
5 under section 8-1301.

6 UNIFORM COMMENT

7 * * * *

8
9 2. **Perfection by Possession.** As under the common law of pledge, no filing is
10 required by this Article to perfect a security interest if the secured party takes possession
11 of the collateral. See Section 9-310(b)(6).

12
13 This section permits a security interest to be perfected by the taking of possession
14 only when the collateral is goods, instruments, tangible negotiable documents, money, or
15 tangible chattel paper. Accounts, commercial tort claims, deposit accounts, investment
16 property, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before
17 extraction are excluded. (But see Comment 6, below, regarding certificated securities.) A
18 security interest in accounts and payment intangibles--property not ordinarily represented
19 by any writing whose delivery operates to transfer the right to payment--may under this
20 Article be perfected only by filing. This rule would not be affected by the fact that a
21 security agreement or other record described the assignment of such collateral as a
22 "pledge." Section 9-309(2) exempts from filing certain assignments of accounts or
23 payment intangibles which are out of the ordinary course of financing. These exempted
24 assignments are perfected when they attach. Similarly, under Section 9-309(3), sales of
25 payment intangibles are automatically perfected.
26

27 **Sec. B-39. 11 MRSA §9-1314, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
28 §2 and affected by §4, is amended to read:

29 (1). A security interest in investment property, deposit accounts, letter-of-credit
30 rights ~~or~~, electronic chattel paper or electronic documents may be perfected by control of
31 the collateral under section 7-1106, 9-1104, 9-1105, 9-1106 or 9-1107.

32 **Sec. B-40. 11 MRSA §9-1314, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
33 §2 and affected by §4, is amended to read:

34 (2). A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-
35 credit rights or electronic documents is perfected by control under section 7-1106,
36 9-1104, 9-1105 or 9-1107 when the secured party obtains control and remains perfected
37 by control only while the secured party retains control.

38 UNIFORM COMMENT

39 * * * *

40
41
42 2. **Control.** This section provides for perfection by control with respect to investment
43 property, deposit accounts, letter-of-credit rights, and electronic chattel paper, and
44 electronic documents. For explanations of how a secured party takes control of these

1 types of collateral, see Sections 9-104 through 9-107 and Section 7-106. Subsection (b)
2 explains when a security interest is perfected by control and how long a security interest
3 remains perfected by control. Like Section 9-313(d) and for the same reasons, subsection
4 (b) makes no reference to the doctrine of "relation back." See Section 9-313, Comment 5.
5 As to an electronic document that is reissued in a tangible medium, Section 7-105, a
6 secured party that is perfected by control in the electronic document should file as to the
7 document before relinquishing control in order to maintain continuous perfection in the
8 document. See Section 9-308.
9

10 **Sec. B-41. 11 MRSA §9-1317, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
11 §2 and affected by §4, is amended to read:

12 (2). Except as otherwise provided in subsection (5), a buyer, other than a secured
13 party, of tangible chattel paper, tangible documents, goods, instruments or a security
14 certificate takes free of a security interest or agricultural lien if the buyer gives value and
15 receives delivery of the collateral without knowledge of the security interest or
16 agricultural lien and before it is perfected.

17 **Sec. B-42. 11 MRSA §9-1317, sub-§(4)**, as enacted by PL 1999, c. 699, Pt. A,
18 §2 and affected by §4, is amended to read:

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

24
25 **UNIFORM COMMENT**

26 * * * *

27
28 **6. Purchasers Other Than Secured Parties.** Subsections (b), (c), and (d) afford
29 priority over an unperfected security interest to certain purchasers (other than secured
30 parties) of collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-
31 301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests
32 are "subordinate" to the rights of certain purchasers. But, as former Comment 9
33 suggested, the practical effect of subordination in this context is that the purchaser takes
34 free of the security interest. To avoid any possible misinterpretation, subsections (b) and
35 (d) of this section use the phrase "takes free."
36

37 Subsection (b) governs goods, as well as intangibles of the type whose transfer is
38 effected by physical delivery of the representative piece of paper (tangible chattel paper,
39 tangible documents, instruments, and security certificates). To obtain priority, a buyer
40 must both give value and receive delivery of the collateral without knowledge of the
41 existing security interest and before perfection. Even if the buyer gave value without
42 knowledge and before perfection, the buyer would take subject to the security interest if
43 perfection occurred before physical delivery of the collateral to the buyer. Subsection (c)
44 contains a similar rule with respect to lessees of goods. Note that a lessee of goods in

1 ordinary course of business takes free of all security interests created by the lessor, even
2 if perfected. See Section 9-321.

3
4 Normally, there will be no question when a buyer of tangible chattel paper, tangible
5 documents, instruments, or security certificates "receives delivery" of the property. See
6 Section 1-201 (defining "delivery"). However, sometimes a buyer or lessee of goods,
7 such as complex machinery, takes delivery of the goods in stages and completes assembly
8 at its own location. Under those circumstances, the buyer or lessee "receives delivery"
9 within the meaning of subsections (b) and (c) when, after an inspection of the portion of
10 the goods remaining with the seller or lessor, it would be apparent to a potential lender to
11 the seller or lessor that another person might have an interest in the goods.

12
13 The rule of subsection (b) obviously is not appropriate where the collateral consists of
14 intangibles and there is no representative piece of paper whose physical delivery is the
15 only or the customary method of transfer. Therefore, with respect to such intangibles
16 (accounts, electronic chattel paper, electronic documents, general intangibles, and
17 investment property other than certificated securities), subsection (d) gives priority to any
18 buyer who gives value without knowledge, and before perfection, of the security interest.
19 A licensee of a general intangible takes free of an unperfected security interest in the
20 general intangible under the same circumstances. Note that a licensee of a general
21 intangible in ordinary course of business takes rights under a nonexclusive license free of
22 security interests created by the licensor, even if perfected. See Section 9-321.

23
24 Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts,
25 chattel paper, payment intangibles, or promissory notes is a "secured party" (defined in
26 Section 9-102), and subsections (b) and (d) do not determine priority of the security
27 interest created by the sale. Rather, the priority rules generally applicable to competing
28 security interests apply. See Section 9-322.

29
30 **Sec. B-43. 11 MRSA §9-1338, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
31 §2 and affected by §4, is amended to read:

32 (2). A purchaser, other than a secured party, of the collateral takes free of the
33 security interest or agricultural lien to the extent that, in reasonable reliance upon the
34 incorrect information, the purchaser gives value and, in the case of tangible chattel paper,
35 tangible documents, goods, instruments or a security certificate, receives delivery of the
36 collateral.

37 **Sec. B-44. 11 MRSA §9-1601, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
38 §2 and affected by §4, is amended to read:

39 (2). A secured party in possession of collateral or control of collateral under section
40 7-1106, 9-1104, 9-1105, 9-1106 or 9-1107 has the rights and duties provided in section
41 9-1207.

42 **Sec. B-45. 17 MRSA §1663** is amended to read:

1 **§1663. Issue of duplicate bills not so marked**

2 Any officer, agent or servant of a carrier who, with intent to defraud, issues or aids in
3 issuing a duplicate or additional negotiable bill for goods in violation of Title 11, section
4 ~~7-402~~ 7-1402, knowing that a former negotiable bill for the same goods or any part of
5 them is outstanding and uncanceled, ~~shall be~~ is guilty of a crime, and upon conviction
6 shall must be punished for each offense by a fine of not more than \$5,000 or by
7 imprisonment for not more than 5 years, or by both.

8 **Sec. B-46. 17 MRSA §1703** is amended to read:

9 **§1703. Issue of duplicate receipts not so marked**

10 A ~~warehouseman~~ warehouse, or any officer's agent, or servant of a ~~warehouseman~~
11 warehouse, who issues or aids in issuing a duplicate or additional negotiable receipt for
12 goods knowing that a former negotiable receipt for the same goods or any part of them is
13 outstanding and uncanceled, without plainly placing upon the face thereof the word
14 "Duplicate", except in the case of a lost or destroyed receipt after proceedings as provided
15 for in Title 11, section ~~7-402~~ 7-1402, ~~shall be~~ is guilty of a crime, and upon conviction
16 shall must be punished for each offense by a fine of not more than \$5,000 or by
17 imprisonment for not more than 5 years, or by both.

18 **Sec. B-47. 17 MRSA §1705** is amended to read:

19 **§1705. Delivery of goods without obtaining negotiable receipt**

20 A ~~warehouseman~~ warehouse, or any officer, agent or servant of a ~~warehouseman~~
21 warehouse who delivers goods out of the possession of such ~~warehouseman~~ warehouse,
22 knowing that a negotiable receipt the negotiation of which would transfer the right to the
23 possession of such goods is outstanding and uncanceled, without obtaining the possession
24 of such receipt at or before the time of such delivery, ~~shall~~, except in the cases provided
25 for in Title 11, sections ~~7-402~~ 7-1402 and ~~7-403~~ 7-1403, ~~be found~~ is guilty of a crime,
26 and upon conviction shall must be punished for each offense by a fine of not more than
27 \$1,000 or by imprisonment for not more than 11 months, or by both.

28 **Sec. B-48. Effective date.** This Part takes effect January 1, 2010.

29 **SUMMARY**

30 This bill replaces Article 7 of the Uniform Commercial Code with the 2003 version
31 of the Article as approved by the National Conference of Commissioners on Uniform
32 State Laws. Explanatory notes and Uniform Comments as prepared by the uniform law
33 commissioners are included.