2009 DRAFTING REQUEST

Bill

Received: **01/12/2010**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Terry**

This file may be shown to any legislator: **NO**

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - UCC**

Extra Copies: **RAC**

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Revised UCC Article 7

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rchampag 01/12/2010	csicilia 01/12/2010		_____ _____			
/1			phenry 01/12/2010	_____ _____	lparisi 01/12/2010	lparisi 01/19/2010	

FE Sent For:

<END>

↳ Not Needed

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/?	rchampag	/1 cjs 1/12 10	1/ 12 ph	1/12 ph/13			

FE Sent For:

<END>

Champagne, Rick

From: Kunkel, Mark
Sent: Monday, January 11, 2010 3:31 PM
To: Champagne, Rick
Subject: RE: Unifom Law Bills

Thanks, I'd appreciate it.

From: Champagne, Rick
Sent: Monday, January 11, 2010 3:07 PM
To: Kunkel, Mark
Subject: FW: Unifom Law Bills

Mark, I can prepare these if you don't have time.

From: Williams, Ritch
Sent: Monday, January 11, 2010 2:58 PM
To: Champagne, Rick
Cc: Kunkel, Mark; Tuschen, Terry
Subject: Unifom Law Bills

Hi Rick and Mark -

Senator Risser is going to be doing Senate companion bills to both LRB 0365/1 and LRB 0388/1 (Article 1 and Article 7 revisions). Terry Tuschen from the senator's office will likely be calling to make that request. Thanks.

Ritch Williams
Clerk, Committee on Insurance
Office of Rep. David Cullen
216 North, State Capitol
(608) 267-9836

D-Note

~~State of Wisconsin~~
2009 - 2010 LEGISLATURE

FROM

~~LRB-0388/1~~
~~MDK:cjs:md~~

LRB-4104/1
MDK:cjs

SCON

2009 BILL

sk/

-regen. cat.

AN ACT ***to amend*** 99.01 (2), 137.24 (1), 402.104 (2), 402.310 (3), 402.323 (2) (intro.), 402.401 (3) (a), 402.401 (3) (b), 402.503 (4) (b), 402.503 (5) (b), 402.505 (1) (b), 402.505 (2), 402.506 (2), 402.509 (2) (a), 402.509 (2) (c), 402.605 (2), 402.705 (2) (c), 402.705 (3) (c), 404.210 (3) (intro.), 409.203 (2) (c) 4., 409.207 (3) (intro.), 409.208 (2) (d), 409.208 (2) (e), 409.301 (3) (intro.), 409.310 (2) (e), 409.310 (2) (h), 409.312 (5), 409.313 (1), 409.314 (1), 409.314 (2), 409.317 (2), 409.317 (4), 409.338 (2), 409.601 (2), 411.103 (1) (a), 411.103 (1) (o), 411.514 (2), 411.526 (2) (c) and 799.45 (3) (b); ***to repeal and recreate*** chapter 407; and ***to create*** 137.12 (6), 402.103 (3) (dm), 404.104 (3) (fc), 408.103 (7), 409.102 (2) (df) and 409.208 (2) (f) of the statutes; **relating to:** adopting revised Article 7 of the Uniform Commercial Code, concerning documents of title.

Analysis by the Legislative Reference Bureau

Article 7 of the Uniform Commercial Code (UCC) regulates the transfer of goods in interstate commerce, specifically dealing with the transfer of title to goods that are moved or shipped from one location to another. Wisconsin had earlier enacted article 7 of the UCC, but in 2003 the National Conference of Commissioners on Uniform

State Laws adopted a revised version of article 7 of the UCC and recommended its enactment in all of the states. This bill enacts the revised version of article 7 of the UCC into Wisconsin law.

The transfer of goods in interstate commerce involves not only the shipment and storage of tangible goods, but also the transfer of the ownership rights to those goods. Under current law, such rights are transferred by specific documents of title. These title documents are paper documents, consisting of originals and copies, and may be either negotiable or nonnegotiable. The use of paper documents to transfer title and other ownership rights has worked well in the past, but as commercial transactions in the United States and around the world are increasingly conducted and facilitated through electronic means the current-law requirements for paper documents may now impede the transfer of title to goods that are moved or shipped from one location to another. Revised article 7 of the UCC addresses this issue by permitting electronic documents of title for the transfer of goods in interstate commerce.

Under the bill, article 7 of the UCC is revised to provide that a lawful document of title includes an electronic document of title, which is evidenced by a record consisting of information stored in an electronic medium. Under the bill, for the purpose of transferring ownership rights in tangible goods, electronic documents of title are the legal equivalent of paper documents of title. The remaining portions of current law relating to article 7 of the UCC are amended to facilitate the use of either electronic documents of title or the current paper documents of title. Most importantly, revised article 7 of the UCC, as contained in the bill, creates new definitions of "record" and "sign." Under the bill, a record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to mean "to execute or adopt a tangible symbol" and "to attach or logically associate with the record an electronic sound, symbol, or process." Wherever the term "writing" or an equivalent was previously used in article 7 of the UCC, the term "record" is uniformly used in revised article 7 of the UCC. When a document is required to be signed under article 7 of the UCC, electronic signing satisfies the requirement under revised article 7 of the UCC.

Finally, the bill incorporates all technical or nonsubstantive portions of revised article 7 of the UCC that update or clarify the earlier version of article 7 of the UCC, as well as eliminates provisions that no longer have legal effect.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 99.01 (2) of the statutes is amended to read:

2 99.01 **(2)** "Property" means goods as defined in s. 407.102 (1) ~~(f)~~ (g). "Property"

3 includes food; agricultural and commercial products, commodities or equipment;

household furnishings; automobiles, boats, snowmobiles or other vehicles and conveyances; and all other items of a personal, family, household, agricultural, business or commercial nature which may be the subject of a contract of storage.

SECTION 2. 137.12 (6) of the statutes is created to read:

137.12 **(6)** To the extent there is a conflict between this subchapter and ch. 407, ch. 407 governs.

SECTION 3. 137.24 (1) of the statutes is amended to read:

137.24 **(1)** In this section, "transferable record" means an electronic record that ~~would be~~ is a note under ch. 403 or a record under ch. 407 ~~if the electronic record were in writing~~.

SECTION 4. 402.103 (3) (dm) of the statutes is created to read:

402.103 **(3)** (dm) "Control" — s. 407.106.

SECTION 5. 402.104 (2) of the statutes is amended to read:

402.104 **(2)** "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (s. 402.707).

SECTION 6. 402.310 (3) of the statutes is amended to read:

402.310 **(3)** If delivery is authorized and made by way of documents of title otherwise than by sub. (2) then payment is due regardless of where the goods are to

be received at the time and place at which the buyer is to receive the documents ~~regardless of where the goods are to be received~~; or at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence; and

SECTION 7. 402.323 (2) (intro.) of the statutes is amended to read:

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

SECTION 8. 402.401 (3) (a) of the statutes is amended to read:

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

SECTION 9. 402.401 (3) (b) of the statutes is amended to read:

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

SECTION 10. 402.503 (4) (b) of the statutes is amended to read:

402.503 **(4)** (b) Tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in ch. 409 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all 3rd persons; but risk of loss of the goods and of any failure by the bailee to

honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

SECTION 11. 402.503 (5) (b) of the statutes is amended to read:

402.503 **(5)** (b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying <u>or associated with</u> the documents constitutes nonacceptance or rejection.

SECTION 12. 402.505 (1) (b) of the statutes is amended to read:

402.505 **(1)** (b) A nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (s. 402.507 (2)) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession <u>or control</u> of the bill of lading.

SECTION 13. 402.505 (2) of the statutes is amended to read:

402.505 **(2)** When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within s. 402.504 but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document <u>of title</u>.

SECTION 14. 402.506 (2) of the statutes is amended to read:

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

SECTION 15. 402.509 (2) (a) of the statutes is amended to read:

402.509 **(2)** (a) On the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

SECTION 16. 402.509 (2) (c) of the statutes is amended to read:

402.509 **(2)** (c) After 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 s. 402.503 (4) (b).

SECTION 17. 402.605 (2) of the statutes is amended to read:

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

SECTION 18. 402.705 (2) (c) of the statutes is amended to read:

402.705 **(2)** (c) Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse ~~keeper~~; or

SECTION 19. 402.705 (3) (c) of the statutes is amended to read:

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

SECTION 20. 404.104 (3) (fc) of the statutes is created to read:

404.104 **(3)** (fc) "Control" — s. 407.106.

SECTION 21. 404.210 (3) (intro.) of the statutes is amended to read:

404.210 **(3)** (intro.) 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 ch. 409, but all of the following apply:

SECTION 22. Chapter 407 of the statutes is repealed and recreated to read:

CHAPTER 407

UNIFORM COMMERCIAL CODE

— DOCUMENTS OF TITLE

SUBCHAPTER I

GENERAL

407.101 Short title. This chapter may be cited as uniform commercial code — documents of title.

407.102 Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

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

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

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

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

(e) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

1 (g) "Goods" means all things that are treated as movable for the purposes of a
2 contract for storage or transportation.
3 (h) "Issuer" means a bailee that issues a document of title or, in the case of an
4 unaccepted delivery order, the person that orders the possessor of goods to deliver.
5 The term includes a person for which an agent or employee purports to act in issuing
6 a document if the agent or employee has real or apparent authority to issue
7 documents, even if the issuer did not receive any goods, the goods were misdescribed,
8 or in any other respect the agent or employee violated the issuer's instructions.
9 (i) "Person entitled under the document" means the holder, in the case of a
10 negotiable document of title, or the person to which delivery of the goods is to be made
11 by the terms of, or pursuant to instructions in a record under, a nonnegotiable
12 document of title.
13 (j) "Record" means information that is inscribed on a tangible medium or that
14 is stored in an electronic or other medium and is retrievable in perceivable form.
15 (k) "Shipper" means a person that enters into a contract of transportation with
16 a carrier.
17 (L) "Sign" means, with present intent to authenticate or adopt a record, any of
18 the following:
19 1. To execute or adopt a tangible symbol.
20 2. To attach to or logically associate with the record an electronic sound, symbol,
21 or process.
22 (m) "Warehouse" means a person engaged in the business of storing goods for
23 hire.
24 **(2)** Definitions in other chapters applying to this chapter and the sections in
25 which they appear are:

1 (a) "Contract for sale," s. 402.106.

2 (b) "Lessee in ordinary course of business," s. 411.103.

3 (c) "Receipt" of goods, s. 402.103.

4 **(3)** In addition, ch. 401 contains general definitions and principles of
5 construction and interpretation applicable throughout this chapter.

6 **407.103 Relation of chapter to treaty or statute. (1)** This chapter is
7 subject to any treaty or statute of the United States or a regulatory statute of this
8 state to the extent the treaty, statute, or regulatory statute is applicable.

9 **(2)** This chapter does not repeal or modify any law prescribing the form or
10 contents of a document of title or the services or facilities to be afforded by a bailee,
11 or otherwise regulating a bailee's businesses in respects not specifically treated in
12 this chapter. However, violation of such a law does not affect the status of a document
13 of title that otherwise complies with the definition of a document of title.

14 **(3)** This chapter modifies, limits, and supersedes the federal Electronic
15 Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not
16 modify, limit, or supersede section 101 (c) of that act, 15 USC 7001(c), or authorize
17 electronic delivery of any of the notices described in section 103 (b) of that act, 15 USC
18 7003 (b).

19 **(4)** To the extent there is a conflict between subch. II of ch. 137 and this chapter,
20 this chapter governs.

21 **407.104 Negotiable and nonnegotiable document of title. (1)** Except as
22 provided in sub. (3), a document of title is negotiable if by its terms the goods are to
23 be delivered to bearer or to the order of a named person.

24 **(2)** A document of title other than one described in sub. (1) is nonnegotiable.
25 A bill of lading that states that the goods are consigned to a named person is not made

1 negotiable by a provision that the goods are to be delivered only against an order in
2 a record signed by the same or another named person.

3 **(3)** A document of title is nonnegotiable if, at the time it is issued, the document
4 has a conspicuous legend, however expressed, that it is nonnegotiable.

5 **407.105 Reissuance in alternative medium. (1)** Upon request of a person
6 entitled under an electronic document of title, the issuer of the electronic document
7 may issue a tangible document of title as a substitute for the electronic document if
8 all of the following apply:

9 (a) The person entitled under the electronic document surrenders control of the
10 document to the issuer.

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

13 **(2)** Upon issuance of a tangible document of title in substitution for an
14 electronic document of title in accordance with sub. (1), all of the following apply:

15 (a) The electronic document ceases to have any effect or validity.

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

20 **(3)** Upon request of a person entitled under a tangible document of title, the
21 issuer of the tangible document may issue an electronic document of title as a
22 substitute for the tangible document if all of the following apply:

23 (a) The person entitled under the tangible document surrenders possession of
24 the document to the issuer.

1 (b) The electronic document when issued contains a statement that it is issued
2 in substitution for the tangible document.
3 **(4)** Upon issuance of the electronic document of title in substitution for a
4 tangible document of title in accordance with sub. (3), all of the following apply:
5 (a) The tangible document ceases to have any effect or validity.
6 (b) The person that procured issuance of the electronic document warrants to
7 all subsequent persons entitled under the electronic document that the warrantor
8 was a person entitled under the tangible document when the warrantor surrendered
9 possession of the tangible document to the issuer.
10 **407.106 Control of electronic document of title. (1)** A person has control
11 of an electronic document of title if a system employed for evidencing the transfer of
12 interests in the electronic document reliably establishes that person as the person
13 to which the electronic document was issued or transferred.
14 **(2)** A system satisfies sub. (1), and a person is deemed to have control of an
15 electronic document of title, if the document is created, stored, and assigned in such
16 a manner that satisfies all of the following:
17 (a) A single authoritative copy of the document exists which is unique,
18 identifiable, and, except as otherwise provided in pars. (d), (e), and (f), unalterable.
19 (b) The authoritative copy identifies the person asserting control as one of the
20 following:
21 1. The person to which the document was issued.
22 2. If the authoritative copy indicates that the document has been transferred,
23 the person to which the document was most recently transferred.
24 (c) The authoritative copy is communicated to and maintained by the person
25 asserting control or its designated custodian.

1 (d) Copies or amendments that add or change an identified assignee of the
2 authoritative copy can be made only with the consent of the person asserting control.
3 (e) Each copy of the authoritative copy and any copy of a copy is readily
4 identifiable as a copy that is not the authoritative copy.
5 (f) Any amendment of the authoritative copy is readily identifiable as
6 authorized or unauthorized.

7 SUBCHAPTER II
8 WAREHOUSE RECEIPTS: SPECIAL
9 PROVISIONS

10 **407.201 Person that may issue a warehouse receipt; storage under**
11 **bond. (1)** A warehouse receipt may be issued by any warehouse.
12 **(2)** If goods, including distilled spirits and agricultural commodities, are stored
13 under a statute requiring a bond against withdrawal or a license for the issuance of
14 receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed
15 to be a warehouse receipt even if issued by a person that is the owner of the goods
16 and is not a warehouse.
17 **407.202 Form of warehouse receipt. (1)** A warehouse receipt need not be
18 in any particular form.
19 **(2)** Unless a warehouse receipt provides for each of the following, the
20 warehouse is liable for damages caused to a person injured by its omission:
21 (a) The location of the warehouse facility where the goods are stored.
22 (b) The date of issue of the receipt.
23 (c) The unique identification code of the receipt.
24 (d) A statement whether the goods received will be delivered to the bearer, to
25 a named person, or to a named person or its order.

1 (e) The rate of storage and handling charges, but if goods are stored under a
2 field warehousing arrangement, a statement of that fact is sufficient on a
3 nonnegotiable receipt.

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

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

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

8 (i) A statement of the amount of advances made and of liabilities incurred for
9 which the warehouse claims a lien or security interest, but if the precise amount of
10 advances made or of liabilities incurred is, at the time of the issue of the receipt,
11 unknown to the warehouse or to its agent that issued the receipt, a statement of the
12 fact that advances have been made or liabilities incurred and the purpose of the
13 advances or liabilities is sufficient.

14 **(3)** A warehouse may insert in its receipt any terms that are not contrary to chs.
15 401 to 411 and do not impair its obligation of delivery under s. 407.403 or its duty of
16 care under s. 407.204. Any contrary provisions are ineffective.

17 **407.203 Liability for nonreceipt or misdescription.** A party to or
18 purchaser for value in good faith of a document of title, other than a bill of lading,
19 that relies upon the description of the goods in the document may recover from the
20 issuer damages caused by the nonreceipt or misdescription of the goods, except to the
21 extent that any of the following apply:

22 **(1)** The document conspicuously indicates that the issuer does not know
23 whether all or part of the goods in fact were received or conform to the description,
24 such as a case in which the description is in terms of marks or labels or kind, quantity,
25 or condition, or the receipt or description is qualified by "contents, condition, and

1 quality unknown," "said to contain," or words of similar import, if the indication is
2 true.

3 **(2)** The party or purchaser otherwise has notice of the nonreceipt or
4 misdescription.

5 **407.204 Duty of care; contractual limitation of warehouse's liability.**
6 **(1)** A warehouse is liable for damages for loss of or injury to the goods caused by its
7 failure to exercise care with regard to the goods that a reasonably careful person
8 would exercise under similar circumstances. However, unless otherwise agreed, the
9 warehouse is not liable for damages that could not have been avoided by the exercise
10 of that care.

11 **(2)** Damages may be limited by a term in the warehouse receipt or storage
12 agreement limiting the amount of liability in case of loss or damage beyond which
13 the warehouse is not liable. Such a limitation is not effective with respect to the
14 warehouse's liability for conversion to its own use. The warehouse's liability, on
15 request of the bailor in a record at the time of signing such storage agreement or
16 within a reasonable time after receipt of the warehouse receipt, may be increased on
17 part or all of the goods covered by the storage agreement or the warehouse receipt.
18 In this event, increased rates may be charged based on an increased valuation of the
19 goods.

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

23 **407.205 Title under warehouse receipt defeated in certain cases.** A
24 buyer in ordinary course of business of fungible goods sold and delivered by a
25 warehouse that is also in the business of buying and selling such goods takes the

goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

407.206 Termination of storage at warehouse's option. (1) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to s. 407.210.

(2) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in sub. (1) and s. 407.210, the warehouse may specify in the notice given under sub. (1) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

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

1 **(4)** A warehouse shall deliver the goods to any person entitled to them under
2 this chapter upon due demand made at any time before sale or other disposition
3 under this section.

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

7 **407.207 Goods must be kept separate; fungible goods. (1)** Unless the
8 warehouse receipt provides otherwise, a warehouse shall keep separate the goods
9 covered by each receipt so as to permit at all times identification and delivery of those
10 goods. However, different lots of fungible goods may be commingled.

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

16 **407.208 Altered warehouse receipts.** If a blank in a negotiable tangible
17 warehouse receipt has been filled in without authority, a good faith purchaser for
18 value and without notice of the lack of authority may treat the insertion as
19 authorized. Any other unauthorized alteration leaves any tangible or electronic
20 warehouse receipt enforceable against the issuer according to its original tenor.

21 **407.209 Lien of warehouse. (1)** A warehouse has a lien against the bailor
22 on the goods covered by a warehouse receipt or storage agreement or on the proceeds
23 thereof in its possession for charges for storage or transportation, including
24 demurrage and terminal charges, insurance, labor, or other charges, present or
25 future, in relation to the goods, and for expenses necessary for preservation of the

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

13 **(2)** The warehouse may also reserve a security interest under ch. 409 against
14 the bailor for the maximum amount specified on the receipt for charges other than
15 those specified in sub. (1), such as for money advanced and interest. A security
16 interest is governed by ch. 409.

17 **(3)** A warehouse's lien for charges and expenses under sub. (1) or a security
18 interest under sub. (2) is also effective against any person that so entrusted the bailor
19 with possession of the goods that a pledge of them by the bailor to a good faith
20 purchaser for value would have been valid. However, the lien or security interest is
21 not effective against a person that before issuance of a document of title had a legal
22 interest or a perfected security interest in the goods and that did not do any of the
23 following:

24 (a) Deliver or entrust the goods or any document covering the goods to the bailor
25 or the bailor's nominee with actual or apparent authority to ship, store, or sell; or

with power to obtain delivery under s. 407.403; or with power of disposition under s. 402.403, 409.320, 409.321 (3), 411.304 (2), or 411.305 (2), or other statute or rule of law.

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

(4) A warehouse's lien on household goods for charges and expenses in relation to the goods under sub. (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

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

407.210 Enforcement of warehouse's lien. (1) Except as otherwise provided in sub. (2), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods

1 than apparently necessary to be offered to ensure satisfaction of the obligation is not
2 commercially reasonable, except in cases covered by the preceding sentence.
3 **(2)** A warehouse's lien on goods, other than goods stored by a merchant in the
4 course of its business, may be enforced only if all of the following requirements are
5 satisfied:
6 (a) All persons known to claim an interest in the goods must be notified.
7 (b) The notification must include an itemized statement of the claim, a
8 description of the goods subject to the lien, a demand for payment within a specified
9 time not less than 10 days after receipt of the notification, and a conspicuous
10 statement that unless the claim is paid within that time the goods will be advertised
11 for sale and sold by auction at a specified time and place.
12 (c) The sale must conform to the terms of the notification.
13 (d) The sale must be held at the nearest suitable place to where the goods are
14 held or stored.
15 (e) After the expiration of the time given in the notification, an advertisement
16 of the sale must be published once a week for 2 weeks consecutively in a newspaper
17 of general circulation where the sale is to be held. The advertisement must include
18 a description of the goods, the name of the person on whose account the goods are
19 being held, and the time and place of the sale. The sale must take place at least 15
20 days after the first publication. If there is no newspaper of general circulation where
21 the sale is to be held, the advertisement must be posted at least 10 days before the
22 sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.
23 **(3)** Before any sale pursuant to this section, any person claiming a right in the
24 goods may pay the amount necessary to satisfy the lien and the reasonable expenses
25 incurred in complying with this section. In that event, the goods may not be sold but

must be retained by the warehouse subject to the terms of the receipt and this chapter.

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

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

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

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

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

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

SUBCHAPTER III

BILLS OF LADING: SPECIAL PROVISIONS

407.301 Liability for nonreceipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. **(1)** A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods,

1 except to the extent that the document of title indicates that the issuer does not know
2 whether any part or all of the goods in fact were received or conform to the
3 description, such as in a case in which the description is in terms of marks or labels
4 or kind, quantity, or condition or the receipt or description is qualified by "contents
5 or condition of contents of packages unknown," "said to contain," "shipper's weight,
6 load, and count," or words of similar import, if that indication is true.

7 **(2)** If goods are loaded by the issuer of the bill of lading, the issuer shall count
8 the packages of goods if shipped in packages and ascertain the kind and quantity if
9 shipped in bulk and words such as "shipper's weight, load, and count," or words of
10 similar import indicating that the description was made by the shipper are
11 ineffective except as to goods concealed by packages.

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

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

22 **(5)** A shipper guarantees to the issuer the accuracy at the time of shipment of
23 the description, marks, labels, number, kind, quantity, condition, and weight, as
24 furnished by the shipper, and the shipper shall indemnify the issuer against damage
25 caused by inaccuracies in those particulars. This right of the issuer to that indemnity

1 does not limit its responsibility or liability under the contract of carriage to any
2 person other than the shipper.

3 **407.302 Through bills of lading and similar documents of title. (1)** The
4 issuer of a through bill of lading or other document of title embodying an undertaking
5 to be performed in part by a person acting as its agent or by a performing carrier is
6 liable to any person entitled to recover on the document for any breach by the other
7 person or the performing carrier of its obligation under the document. However, to
8 the extent that the bill covers an undertaking to be performed overseas or in territory
9 not contiguous to the continental United States or an undertaking including matters
10 other than transportation, this liability for breach by the other person or the
11 performing carrier may be varied by agreement of the parties.

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

19 **(3)** The issuer of a through bill of lading or other document of title described
20 in sub. (1) is entitled to recover from the performing carrier, or other person in
21 possession of the goods when the breach of the obligation under the document
22 occurred, all of the following:

23 (a) The amount it may be required to pay to any person entitled to recover on
24 the document for the breach, as may be evidenced by any receipt, judgment, or
25 transcript of judgment.

1 (b) The amount of any expense reasonably incurred by the issuer in defending
2 any action commenced by any person entitled to recover on the document for the
3 breach.

4 **407.303 Diversion; reconsignment; change of instructions. (1)** Unless
5 the bill of lading otherwise provides, a carrier may deliver the goods to a person or
6 destination other than that stated in the bill or may otherwise dispose of the goods,
7 without liability for misdelivery, on instructions from any of the following:

8 (a) The holder of a negotiable bill.

9 (b) The consignor on a nonnegotiable bill even if the consignee has given
10 contrary instructions.

11 (c) The consignee on a nonnegotiable bill in the absence of contrary instructions
12 from the consignor, if the goods have arrived at the billed destination or if the
13 consignee is in possession of the tangible bill or in control of the electronic bill.

14 (d) The consignee on a nonnegotiable bill, if the consignee is entitled as against
15 the consignor to dispose of the goods.

16 **(2)** Unless instructions described in sub. (1) are included in a negotiable bill of
17 lading, a person to which the bill is duly negotiated may hold the bailee according to
18 the original terms.

19 **407.304 Tangible bills of lading in a set. (1)** Except as customary in
20 international transportation, a tangible bill of lading may not be issued in a set of
21 parts. The issuer is liable for damages caused by violation of this subsection.

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

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

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

8 **(5)** The bailee is obliged to deliver in accordance with subch. IV against the first
9 presented part of a tangible bill of lading lawfully issued in a set. Delivery in this
10 manner discharges the bailee's obligation on the whole bill.

11 **407.305 Destination bills. (1)** Instead of issuing a bill of lading to the
12 consignor at the place of shipment, a carrier, at the request of the consignor, may
13 procure the bill to be issued at destination or at any other place designated in the
14 request.

15 **(2)** Upon request of any person entitled as against a carrier to control the goods
16 while in transit and on surrender of possession or control of any outstanding bill of
17 lading or other receipt covering the goods, the issuer, subject to s. 407.105, may
18 procure a substitute bill to be issued at any place designated in the request.

19 **407.306 Altered bills of lading.** An unauthorized alteration or filling in of
20 a blank in a bill of lading leaves the bill enforceable according to its original tenor.

21 **407.307 Lien of carrier. (1)** A carrier has a lien on the goods covered by a
22 bill of lading or on the proceeds thereof in its possession for charges after the date
23 of the carrier's receipt of the goods for storage or transportation, including
24 demurrage and terminal charges, and for expenses necessary for preservation of the
25 goods incident to their transportation or reasonably incurred in their sale pursuant

1 to law. However, against a purchaser for value of a negotiable bill of lading, a
2 carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no
3 charges are stated, a reasonable charge.

4 **(2)** A lien for charges and expenses under sub. (1) on goods that the carrier was
5 required by law to receive for transportation is effective against the consignor or any
6 person entitled to the goods unless the carrier had notice that the consignor lacked
7 authority to subject the goods to those charges and expenses. Any other lien under
8 sub. (1) is effective against the consignor and any person that permitted the bailor
9 to have control or possession of the goods unless the carrier had notice that the bailor
10 lacked authority.

11 **(3)** A carrier loses its lien on any goods that it voluntarily delivers or
12 unjustifiably refuses to deliver.

13 **407.308 Enforcement of carrier's lien. (1)** A carrier's lien on goods may
14 be enforced by public or private sale of the goods, in bulk or in packages, at any time
15 or place and on any terms that are commercially reasonable, after notifying all
16 persons known to claim an interest in the goods. The notification must include a
17 statement of the amount due, the nature of the proposed sale, and the time and place
18 of any public sale. The fact that a better price could have been obtained by a sale at
19 a different time or in a different method from that selected by the carrier is not of
20 itself sufficient to establish that the sale was not made in a commercially reasonable
21 manner. The carrier has sold goods in a commercially reasonable manner if the
22 carrier sells the goods in the usual manner in any recognized market therefor, sells
23 at the price current in that market at the time of the sale, or has otherwise sold in
24 conformity with commercially reasonable practices among dealers in the type of
25 goods sold. A sale of more goods than apparently necessary to be offered to ensure

1 satisfaction of the obligation is not commercially reasonable, except in cases covered
2 by the preceding sentence.

3 **(2)** Before any sale pursuant to this section, any person claiming a right in the
4 goods may pay the amount necessary to satisfy the lien and the reasonable expenses
5 incurred in complying with this section. In that event, the goods may not be sold but
6 must be retained by the carrier, subject to the terms of the bill of lading and this
7 chapter.

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

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

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

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

17 **(7)** A carrier's lien may be enforced pursuant to either sub. (1) or the procedure
18 set forth in s. 407.210 (2).

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

22 **407.309 Duty of care; contractual limitation of carrier's liability. (1)**
23 A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall
24 exercise the degree of care in relation to the goods which a reasonably careful person
25 would exercise under similar circumstances. This subsection does not affect any

1 statute, regulation, or rule of law that imposes liability upon a common carrier for
2 damages not caused by its negligence.

3 **(2)** Damages may be limited by a term in the bill of lading or in a transportation
4 agreement that the carrier's liability may not exceed a value stated in the bill or
5 transportation agreement if the carrier's rates are dependent upon value and the
6 consignor is afforded an opportunity to declare a higher value and the consignor is
7 advised of the opportunity. However, such a limitation is not effective with respect
8 to the carrier's liability for conversion to its own use.

9 **(3)** Reasonable provisions as to the time and manner of presenting claims and
10 commencing actions based on the shipment may be included in a bill of lading or a
11 transportation agreement.

12 SUBCHAPTER IV

13 WAREHOUSE RECEIPTS AND BILLS OF

14 LADING: GENERAL OBLIGATIONS

15 **407.401 Irregularities in issue of receipt or bill or conduct of issuer.**
16 The obligations imposed by this chapter on an issuer apply to a document of title even
17 if any of the following are satisfied:

18 **(1)** The document does not comply with the requirements of this chapter or of
19 any other statute, rule, or regulation regarding its issue, form, or content.

20 **(2)** The issuer violated laws regulating the conduct of its business.

21 **(3)** The goods covered by the document were owned by the bailee when the
22 document was issued.

23 **(4)** The person issuing the document is not a warehouse but the document
24 purports to be a warehouse receipt.

1 **407.402 Duplicate document of title; overissue.** A duplicate or any other
2 document of title purporting to cover goods already represented by an outstanding
3 document of the same issuer does not confer any right in the goods, except as
4 provided in the case of tangible bills of lading in a set of parts, overissue of documents
5 for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute
6 documents issued pursuant to s. 407.105. The issuer is liable for damages caused by
7 its overissue or failure to identify a duplicate document by a conspicuous notation.

8 **407.403 Obligation of warehouse or carrier to deliver; excuse. (1)** A
9 bailee shall deliver the goods to a person entitled under a document of title if the
10 person complies with subs. (2) and (3), unless and to the extent that the bailee
11 establishes any of the following:

12 (a) Delivery of the goods to a person whose receipt was rightful as against the
13 claimant.

14 (b) Damage to or delay, loss, or destruction of the goods for which the bailee is
15 not liable.

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

18 (d) The exercise by a seller of its right to stop delivery pursuant to s. 402.705
19 or by a lessor of its right to stop delivery pursuant to s. 411.526.

20 (e) A diversion, reconsignment, or other disposition pursuant to s. 407.303.

21 (f) Release, satisfaction, or any other fact affording a personal defense against
22 the claimant.

23 (g) Any other lawful excuse.

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

4 **(3)** Unless a person claiming the goods is one against which the document of
5 title does not confer a right under s. 407.503 (1), all of the following apply:

6 (a) The person claiming under a document shall surrender possession or control
7 of any outstanding negotiable document covering the goods for cancellation or
8 indication of partial deliveries.

9 (b) The bailee shall cancel the document or conspicuously indicate in the
10 document the partial delivery or be liable to any person to which the document is duly
11 negotiated.

12 **407.404 No liability for good faith delivery pursuant to document of**
13 **title.** A bailee that in good faith has received goods and delivered or otherwise
14 disposed of the goods according to the terms of a document of title or pursuant to this
15 chapter is not liable for the goods even if any of the following apply:

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

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

20 SUBCHAPTER V

21 WAREHOUSE RECEIPTS AND BILLS OF

22 LADING: NEGOTIATION AND TRANSFER

23 **407.501 Form of negotiation and requirements of due negotiation. (1)**
24 The following rules apply to a negotiable tangible document of title:

1 (a) If the document's original terms run to the order of a named person, the
2 document is negotiated by the named person's endorsement and delivery. After the
3 named person's endorsement in blank or to bearer, any person may negotiate the
4 document by delivery alone.
5 (b) If the document's original terms run to bearer, it is negotiated by delivery
6 alone.
7 (c) If the document's original terms run to the order of a named person and it
8 is delivered to the named person, the effect is the same as if the document had been
9 negotiated.
10 (d) Negotiation of the document after it has been endorsed to a named person
11 requires endorsement by the named person as well as delivery.
12 (e) A document is duly negotiated if it is negotiated in the manner stated in this
13 subsection to a holder that purchases it in good faith, without notice of any defense
14 against or claim to it on the part of any person, and for value, unless it is established
15 that the negotiation is not in the regular course of business or financing or involves
16 receiving the document in settlement or payment of a monetary obligation.
17 **(2)** The following rules apply to a negotiable electronic document of title:
18 (a) If the document's original terms run to the order of a named person or to
19 bearer, the document is negotiated by delivery of the document to another person.
20 Endorsement by the named person is not required to negotiate the document.
21 (b) If the document's original terms run to the order of a named person and the
22 named person has control of the document, the effect is the same as if the document
23 had been negotiated.
24 (c) A document is duly negotiated if it is negotiated in the manner stated in this
25 subsection to a holder that purchases it in good faith, without notice of any defense

against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

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

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

407.502 Rights acquired by due negotiation. (1) Subject to ss. 407.205 and 407.503, a holder to which a negotiable document of title has been duly negotiated acquires thereby all of the following:

(a) Title to the document.

(b) Title to the goods.

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

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

(2) Subject to s. 407.503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if any of the following apply:

1 (a) The due negotiation or any prior due negotiation constituted a breach of
2 duty.
3 (b) Any person has been deprived of possession of a negotiable tangible
4 document or control of a negotiable electronic document by misrepresentation, fraud,
5 accident, mistake, duress, loss, theft, or conversion.
6 (c) A previous sale or other transfer of the goods or document has been made
7 to a 3rd person.
8 **407.503 Document of title to goods defeated in certain cases. (1)** A
9 document of title confers no right in goods against a person that before issuance of
10 the document had a legal interest or a perfected security interest in the goods and
11 that did not do any of the following:
12 (a) Deliver or entrust the goods or any document covering the goods to the bailor
13 or the bailor's nominee with actual or apparent authority to ship, store, or sell; with
14 power to obtain delivery under s. 407.403; or with power of disposition under s.
15 402.403, 409.320, 409.321 (3), 411.304 (2), or 411.305 (2), or other statute or rule of
16 law.
17 (b) Acquiesce in the procurement by the bailor or its nominee of any document.
18 **(2)** Title to goods based upon an unaccepted delivery order is subject to the
19 rights of any person to which a negotiable warehouse receipt or bill of lading covering
20 the goods has been duly negotiated. That title may be defeated under s. 407.504 to
21 the same extent as the rights of the issuer or a transferee from the issuer.
22 **(3)** Title to goods based upon a bill of lading issued to a freight forwarder is
23 subject to the rights of any person to which a bill issued by the freight forwarder is
24 duly negotiated. However, delivery by the carrier in accordance with subch. IV
25 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

1 **407.504 Rights acquired in absence of due negotiation; effect of**
2 **diversion; stoppage of delivery. (1)** A transferee of a document of title, whether
3 negotiable or nonnegotiable, to which the document has been delivered but not duly
4 negotiated, acquires the title and rights that its transferor had or had actual
5 authority to convey.

6 **(2)** In the case of a nonnegotiable document of title, until but not after the bailee
7 receives notice of the transfer, the rights of the transferee may be defeated by any of
8 the following:

9 (a) Those creditors of the transferor that could treat the transfer as void under
10 s. 402.402 or 411.308.

11 (b) A buyer from the transferor in ordinary course of business if the bailee has
12 delivered the goods to the buyer or received notification of the buyer's rights.

13 (c) A lessee from the transferor in ordinary course of business if the bailee has
14 delivered the goods to the lessee or received notification of the lessee's rights.

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

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

21 **(4)** Delivery of the goods pursuant to a nonnegotiable document of title may be
22 stopped by a seller under s. 402.705 or a lessor under s. 411.526, subject to the
23 requirements of due notification in those sections. A bailee honoring the seller's or
24 lessor's instructions is entitled to be indemnified by the seller or lessor against any
25 resulting loss or expense.

1 **407.505 Endorser not guarantor for other parties.** The endorsement of
2 a tangible document of title issued by a bailee does not make the endorser liable for
3 any default by the bailee or previous endorsers.

4 **407.506 Delivery without endorsement; right to compel endorsement.**
5 The transferee of a negotiable tangible document of title has a specifically
6 enforceable right to have its transferor supply any necessary endorsement, but the
7 transfer becomes a negotiation only as of the time the endorsement is supplied.

8 **407.507 Warranties on negotiation or delivery of document of title.** If
9 a person negotiates or delivers a document of title for value, otherwise than as a mere
10 intermediary under s. 407.508, unless otherwise agreed, the transferor warrants to
11 its immediate purchaser only in addition to any warranty made in selling or leasing
12 the goods that all of the following apply:

13 **(1)** The document is genuine.

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

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

18 **407.508 Warranties of collecting bank as to documents of title.** A
19 collecting bank or other intermediary known to be entrusted with documents of title
20 on behalf of another or with collection of a draft or other claim against delivery of
21 documents warrants by the delivery of the documents only its own good faith and
22 authority even if the collecting bank or other intermediary has purchased or made
23 advances against the claim or draft to be collected.

1 **407.509 Adequate compliance with commercial contract.** Whether a
2 document of title is adequate to fulfill the obligations of a contract for sale, a contract
3 for lease, or the conditions of a letter of credit is determined by ch. 402, 405, or 411.

4 SUBCHAPTER VI

5 WAREHOUSE RECEIPTS AND BILLS OF

6 LADING: MISCELLANEOUS PROVISIONS

7 **407.601 Lost, stolen, or destroyed documents of title. (1)** If a document
8 of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance
9 of a substitute document and the bailee may without liability to any person comply
10 with the order. If the document was negotiable, a court may not order delivery of the
11 goods or issuance of a substitute document without the claimant's posting security
12 unless it finds that any person that may suffer loss as a result of nonsurrender of
13 possession or control of the document is adequately protected against the loss. If the
14 document was nonnegotiable, the court may require security. The court may also
15 order payment of the bailee's reasonable costs and attorney fees in any action under
16 this subsection.

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

23 **407.602 Attachment of goods covered by negotiable document of title.**
24 Unless a document of title was originally issued upon delivery of the goods by a
25 person that did not have power to dispose of them, a lien does not attach by virtue

of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

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

SECTION 23. 408.103 (7) of the statutes is created to read:

408.103 **(7)** A document of title, as defined in s. 401.201 (15), is not a financial asset unless s. 408.102 (1) (i) 1. c. applies.

SECTION 24. 409.102 (2) (df) of the statutes is created to read:

409.102 **(2)** (df) "Control" (with respect to a document of title) — s. 407.106.

SECTION 25. 409.203 (2) (c) 4. of the statutes is amended to read:

409.203 **(2)** (c) 4. The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, <u>or electronic documents,</u> and the secured party has control under s. <u>407.106,</u> 409.104, 409.105, 409.106, or 409.107 pursuant to the debtor's security agreement.

SECTION 26. 409.207 (3) (intro.) of the statutes is amended to read:

409.207 **(3)** DUTIES AND RIGHTS WHEN SECURED PARTY IN POSSESSION OR CONTROL. (intro.) Except as otherwise provided in sub. (4), a secured party having possession

of collateral or control of collateral under s. 407.106, 409.104, 409.105, 409.106, or 409.107:

SECTION 27. 409.208 (2) (d) of the statutes is amended to read:

409.208 **(2)** (d) A secured party having control of investment property under s. 408.106 (4) (b) or 409.106 (2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

SECTION 28. 409.208 (2) (e) of the statutes is amended to read:

409.208 **(2)** (e) A secured party having control of a letter-of-credit right under s. 409.107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party~~.~~; and

SECTION 29. 409.208 (2) (f) of the statutes is created to read:

409.208 **(2)** (f) A secured party having control of an electronic document shall do all of the following:

1. Give control of the electronic document to the debtor or its designated custodian.

2. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions

originated by the secured party and instructing the custodian to comply with instructions originated by the debtor.

3. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 30. 409.301 (3) (intro.) of the statutes is amended to read:

409.301 **(3)** LOCATION OF PROPERTY. (intro.) Except as otherwise provided in sub. (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

SECTION 31. 409.310 (2) (e) of the statutes is amended to read:

409.310 **(2)** (e) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under s. 409.312 (5), (6), or (7);

SECTION 32. 409.310 (2) (h) of the statutes is amended to read:

409.310 **(2)** (h) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under s. 409.314;

SECTION 33. 409.312 (5) of the statutes is amended to read:

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

SECTION 34. 409.313 (1) of the statutes is amended to read:

409.313 **(1)** PERFECTION BY POSSESSION OR DELIVERY. Except as otherwise provided in sub. (2), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under s. 408.301.

SECTION 35. 409.314 (1) of the statutes is amended to read:

409.314 **(1)** PERFECTION BY CONTROL. A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under s. 407.106, 409.104, 409.105, 409.106, or 409.107.

SECTION 36. 409.314 (2) of the statutes is amended to read:

409.314 **(2)** SPECIFIED COLLATERAL: TIME OF PERFECTION BY CONTROL; CONTINUATION OF PERFECTION. A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, or electronic documents is perfected by control under s. 407.106, 409.104, 409.105, or 409.107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

SECTION 37. 409.317 (2) of the statutes is amended to read:

409.317 **(2)** BUYERS THAT RECEIVE DELIVERY. Except as otherwise provided in sub. (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

1 **SECTION 38.** 409.317 (4) of the statutes is amended to read:

2 409.317 **(4)** LICENSEES AND BUYERS OF CERTAIN COLLATERAL. A licensee of a
3 general intangible or a buyer, other than a secured party, of accounts, electronic
4 chattel paper, electronic documents, general intangibles, or investment property
5 other than a certificated security takes free of a security interest if the licensee or
6 buyer gives value without knowledge of the security interest and before it is
7 perfected.

8 **SECTION 39.** 409.338 (2) of the statutes is amended to read:

9 409.338 **(2)** A purchaser, other than a secured party, of the collateral takes free
10 of the security interest or agricultural lien to the extent that, in reasonable reliance
11 upon the incorrect information, the purchaser gives value and, in the case of tangible
12 chattel paper, tangible documents, goods, instruments, or a security certificate,
13 receives delivery of the collateral.

14 **SECTION 40.** 409.601 (2) of the statutes is amended to read:

15 409.601 **(2)** RIGHTS AND DUTIES OF SECURED PARTY IN POSSESSION OR CONTROL. A
16 secured party in possession of collateral or control of collateral under s. 407.106,
17 409.104, 409.105, 409.106, or 409.107 has the rights and duties provided in s.
18 409.207.

19 **SECTION 41.** 411.103 (1) (a) of the statutes is amended to read:

20 411.103 **(1)** (a) "Buyer in ordinary course of business" means a person who, in
21 good faith and without knowledge that the sale to him or her is in violation of the
22 ownership rights or security interest or leasehold interest of a 3rd party in the goods,
23 buys in ordinary course from a person in the business of selling goods of that kind
24 but does not include a pawnbroker. "Buying" may be for cash or by exchange of other
25 property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or

documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

SECTION 42. 411.103 (1) (o) of the statutes is amended to read:

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

SECTION 43. 411.514 (2) of the statutes is amended to read:

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

SECTION 44. 411.526 (2) (c) of the statutes is amended to read:

411.526 **(2)** (c) Acknowledgment to the lessee by a carrier via reshipment or as a warehouse ~~keeper~~ that the carrier holds the goods for the lessee.

SECTION 45. 799.45 (3) (b) of the statutes is amended to read:

799.45 **(3)** (b) Except as provided in pars. (am) and (c), the property removed from such premises shall be taken to some place of safekeeping within the county selected by the sheriff. Within 3 days of the removal of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4) stating the place where the goods are kept and, if the plaintiff had not removed the property under par. (am),

shall deliver to the defendant any receipt or other document required to obtain possession of the goods. Warehouse or other similar receipts issued with respect to goods stored by the sheriff under this subsection shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the sheriff or by the plaintiff to a place of safekeeping shall be the responsibility of the defendant. Any person accepting goods from the sheriff or the plaintiff for storage under this subsection, or the plaintiff, if he or she stores the property in his or her premises, shall have all of the rights and remedies accorded by law against the defendant personally and against the property stored for the collection of such charges, including the lien of a warehouse ~~keeper~~ under s. 407.209. Risk of damages to or loss of such property shall be borne by the defendant after delivery by the sheriff to the place of safekeeping.

SECTION 46. Initial applicability.

(1) This act first applies to a document of title that is issued or a bailment that arises on the effective date of this subsection.

SECTION 47. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)

d-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0388/1dn
MDK:cjs:md

LRB-4104/1dN
MDK:cjs

~~November 20, 2008~~

– date –

and is identical to 2009 LRB-0388/1

Senator Risser:

~~Rep. Cullerton~~

This is a redraft of ASA1 to 2007 AB–481. Note that 2007 AB–481 was based on the draft UCC Article 7 (draft Article 7) that was prepared by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for its meeting in August 2003. After that meeting, NCCUSL made technical changes to the draft that were not incorporated into 2007 AB–481. However, based on a review by the State Bar's Business Law Section, the technical changes were incorporated into ASA1 to 2007 AB–481. I have included copies of both draft Article 7 and the letter describing the State Bar's review in the drafting file for this bill.

Please note the following differences between this redraft and ASA1 to 2007 AB–481:

1. I made changes to the amendment of the definition of "transferable record" in s. 137.24 (1) to fix a grammatical error.

2. I amended s. 799.45 (3) (b) to refer to a "warehouse under s. 407.209," rather than a "warehouse keeper." This change is consistent with other changes made in 2007 AB–481.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4104/1dn
MDK:cjs:ph

January 12, 2010

Senator Risser:

This is a redraft of ASA1 to 2007 AB-481 and is identical to 2009 LRB-0388/1.

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Parisi, Lori

From: Tuschen, Terry
Sent: Tuesday, January 19, 2010 3:40 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4104/1 Topic: Revised UCC Article 7

Please Jacket LRB 09-4104/1 for the SENATE.