

NOTE: Chapter 120 is repealed by the Commercial Code (Ch. 158, Laws 1963) effective July 1, 1965.

CHAPTER 120.

UNIFORM BILLS OF LADING ACT.

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120.01 Bills governed by this chapter. Bills of lading issued by any common carrier shall be governed by this chapter.

120.02 Form of bills; essential terms. (1) Every bill must embody within its written or printed terms:

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place where the goods have been received,
- (d) The place to which the goods are to be transported,
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 120.23, and
- (g) The signature of the carrier.

(2) A negotiable bill shall have the words "order of" printed thereon, immediately before the name of the person upon whose order the goods received are deliverable.

(3) A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

120.03 Form of bills; what terms may be inserted. A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

- (1) Be contrary to law or public policy, or
- (2) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him, which a reasonably careful man would exercise in regard to similar goods of his own.

120.04 Nonnegotiable bills. A bill in which it is stated that the goods are consigned or destined to a specified person, is a nonnegotiable or straight bill.

120.05 Definition of negotiable bill. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is a negotiable or

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order bill. Any provision in such a bill that it is nonnegotiable shall not affect its negotiability within the meaning of this chapter.

120.06 Negotiable bills not issued in sets. Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

120.07 Duplicates to be so marked. When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

120.08 Nonnegotiable bills to be so marked. A nonnegotiable bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character.

120.09 Insertion of name of person to be notified. The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

120.10 Acceptance indicates assent to terms. Except as otherwise provided in this chapter, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

120.11 Obligation of carrier to deliver. (1) A carrier, in the absence of some lawful excuse, is bound to deliver goods upon demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

- (a) An offer in good faith to satisfy the carrier's lawful lien upon the goods.
- (b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

(2) In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

120.12 Justification of carrier in delivering. A carrier is justified, subject to the provisions of ss. 120.13 to 120.15, in delivering goods to one who is:

- (1) A person lawfully entitled to the possession of the goods, or
- (2) The consignee named in a nonnegotiable bill for the goods, or
- (3) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

120.13 Carrier's liability for misdelivery. (1) Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by s. 120.12 (2) and (3), and, though he delivered the goods as authorized by either of said subsections, he shall be so liable if prior to such delivery he:

- (a) Had been requested, by or on behalf of a person having a right of property or possession in the goods not to make such delivery, or
- (b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

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(2) A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

120.14 Negotiable bills must be canceled on delivery of goods. Except as provided in section 120.27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto.

120.15 Cancellation on part delivery. Except as provided in section 120.27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

(1) To take up and cancel the bill, or

(2) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

120.16 Altered bills. Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

120.17 Lost or destroyed bills. (1) Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

(2) The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

120.18 Effect of duplicate bills. A bill, upon the face of which the word "duplicate," or some other word or words indicating that the document is not an original bill, is placed plainly, shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

120.19 Carrier cannot set up title in himself. No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

120.20 Interpleader of adverse claimants. If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate.

120.21 Carrier has reasonable time to determine validity of claims. If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reason-

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able time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

120.22 Adverse title is no defense. Except as provided in ss. 120.12, 120.20 and 120.21, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a nonnegotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

120.23 Liability for nonreceipt or misdescription of goods. (1) If a bill of lading has been issued by a carrier or on his behalf by an agent or employe, the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

(a) The consignee named in a nonnegotiable bill, or
(b) The holder of a negotiable bill, who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

(2) If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon the packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill.

120.24 Attachment or levy on goods. If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

120.25 Creditor's remedies to reach negotiable bills. A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

120.26 Negotiable bill must state lien charges. If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

120.27 Effect of sale. After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they are shipped, even if such bill be negotiable.

120.28 Negotiation of negotiable bill by delivery. A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

120.29 Negotiation by indorsement. A negotiable bill may be negotiated by the

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indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

120.30 Transfer of bills. (1) A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

(2) A nonnegotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

120.31 Who may negotiate a bill. A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

120.32 Rights of person to whom a bill is negotiated. A person to whom a negotiable bill has been duly negotiated acquires thereby:

(1) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(2) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

120.33 Rights of person to whom a bill is transferred. (1) A person to whom a bill has been transferred but not negotiated acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is nonnegotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

(2) Prior to the notification of the carrier by the transferor or transferee of a nonnegotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

(3) A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

120.34 Transfer without indorsement. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

120.35 Warranties on sale of bill. (1) A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

(a) That the bill is genuine,
(b) That he has a legal right to transfer it,
(c) That he has knowledge of no fact which would impair the validity or worth of the bill, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

(2) In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

120.36 Indorser not a guarantor. The indorsement of a bill shall not make the in-

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doer liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

120.37 No warranty implied from accepting payment of a debt. A mortgagee or pledgee, or other holder of a bill for security, who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

120.38 Effect of fraud, accident, mistake, duress, conversion. The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

120.39 Subsequent negotiation. Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession, and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

120.40 Form of bill as indicating rights of buyer and seller. Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(1) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(2) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods, but if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(4) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

120.41 Title to bill on presentation or acceptance of draft. (1) Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

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(2) The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order.

120.42 Negotiation defeats vendor's lien. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

120.43 Effect on rights under liens. Except as provided in section 120.42, nothing in this chapter shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this chapter, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

120.44 Issue of bill for goods not received. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill, knowing that all or any part of the goods for which such bill is issued, have not been received by such carrier, or by an agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

120.45 Issue of bill containing false statement. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

120.46 Issue of duplicate bills not so marked. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 120.07, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

120.47 Negotiation of bill for mortgaged goods. Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

120.48 Negotiation of bill when goods not in possession. Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods, which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

120.49 Inducing issue of bill when goods not received. Any person who with intent to defraud, secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier or an agent of such carrier, or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

120.50 Issue of nonnegotiable bill not so marked. Any person who with intent to

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defraud issues or aids in issuing a nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

120.51 Rule for cases not provided for. In any case not provided for in this chapter, the rules of law and equity including the law merchant; and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress, coercion, accident, mistake, bankruptcy or other invalidating cause, shall govern.

120.52 Interpretation of chapter. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

120.53 Definitions. (1) In this chapter, unless the context or subject matter otherwise requires:

"Action" includes counterclaim, set-off and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

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

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract.

An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith," within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not.

120.54 Existing bills not affected. The provisions of this chapter do not apply to bills made and delivered prior to September 1, 1917.

120.55 Citation of chapter. This chapter may be cited as the Uniform Bills of Lading Act.