

2009 DRAFTING REQUEST

Bill

Received: 09/23/2008

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: David Cullen (608) 267-9836

By/Representing: Ritch Williams

This file may be shown to any legislator: NO

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Pre Topic:

No specific pre topic given

Topic:

Revised UCC Article 7

Instructions:

See attached

Drafting History:

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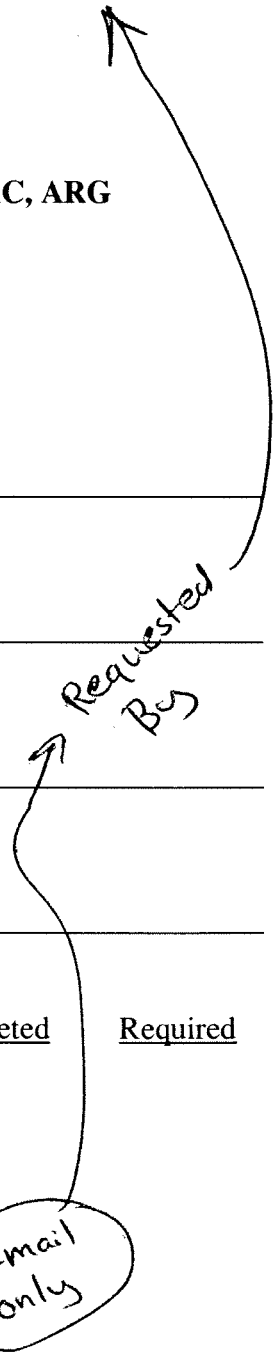
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<END>

Kunkel, Mark

From: Champagne, Rick
Sent: Friday, September 05, 2008 9:00 AM
To: Kunkel, Mark

Hi Mark:

I spoke with Ritch Williams in Rep. Cullen's office and he would like to have redrafted for the 2009 legislative session the two Uniform Commercial Code Acts (LRB 07-1880 and 1881) that you prepared for Rep. Cullen this past session. Thanks for your help.

Rick

D R A F T

FOR APPROVAL

**PROPOSED REVISIONS TO
UNIFORM COMMERCIAL CODE,
ARTICLE 7—DOCUMENTS OF TITLE**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
and
AMERICAN LAW INSTITUTE

MEETING IN ITS ONE-HUNDRED-AND-TWELFTH YEAR
WASHINGTON, D. C.
AUGUST 1 - 7, 2003

**PROPOSED REVISIONS TO
UNIFORM COMMERCIAL CODE,
ARTICLE 7—DOCUMENTS OF TITLE**

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
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The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

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UNIFORM COMMERCIAL CODE ARTICLE 7, DOCUMENTS OF TITLE**

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UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE

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1 **UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE**

2
3 **Prefatory Note**

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

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

22
23 Key to the integration of the electronic document of title scheme is the concept of “control”
24 defined in Section 7-106. This definition is adapted from the Uniform Electronic Transactions
25 Act § 16 on Transferrable Records and from Uniform Commercial Code § 9-105 concerning
26 control of electronic chattel paper. Control of an electronic document of title is the conceptual
27 equivalent to possession and indorsement of a tangible document of title. Of equal importance is
28 the acknowledgment that parties may desire to substitute an electronic document of title for an
29 already-issued paper document and vice versa. Section 7-105 sets forth the minimum
30 requirements that need to be fulfilled in order to give effect to the substitute document issued in
31 the alternate medium. To the extent possible, the rules for electronic documents of title are the
32 same or as similar as possible to the rules for tangible documents of title. If a rule is meant to be
33 limited to one medium or the other, that is clearly stated. Rules that reference documents of
34 title, warehouse receipts, or bills of lading without a designation to “electronic” or “tangible”
35 apply to documents of title in either medium. As with tangible negotiable documents of title,
36 electronic negotiable documents of title may be negotiated and duly negotiated. Section 7-501.

- 37
38 Other changes that have been made are:
- 39 1. New definitions of “carrier,” “good faith,” “record”, “sign” and “shipper” in Section 7-
40 102.
 - 41 2. Deletion of references to tariffs or filed classifications given the deregulation of the
42 affected industries. See e.g. section 7-103 and 7-309,
 - 43 3. Clarifying the rules regarding when a document is nonnegotiable. Section 7-104.
 - 44 4. Making clear when rules apply just to warehouse receipts or bills of lading, thus

1 eliminating the need for former section 7-105.

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

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

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

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

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

11 10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504, 7-
12 509.

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

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

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

20
21 *Legislative Note: All cross-references in this draft to Article 1 are to Revised Article 1 (2001).*
22 *In the event a state has not enacted Revised Article 1, the cross-references should be changed to*
23 *refer to the relevant sections in former Article 1.*

1 **UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE**

2
3 **PART 1**

4 **GENERAL**

5
6 **SECTION 7-101. SHORT TITLE.** This article may be cited as Uniform Commercial

7 Code-Documents of Title.

8 **Preliminary Comments**

9
10 **Prior Uniform Statutory Provision:** Former Section 7-101.

11
12 **Changes:** Revised for style only.

13
14 This Article is a revision of the 1962 Official Text with Comments as amended since 1962.
15 The 1962 Official Text was a consolidation and revision of the Uniform Warehouse Receipts Act
16 and the Uniform Bills of Lading Act, and embraced the provisions of the Uniform Sales Act
17 relating to negotiation of documents of title.

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

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

33
34
35 **SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

36 (a) In this article, unless the context otherwise requires:

37 (1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other

1 document of title acknowledges possession of goods and contracts to deliver them.

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

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

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

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

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

12 (7) "Goods" means all things that are treated as movable for the purposes of a
13 contract for storage or transportation.

14 (8) "Issuer" means a bailee that issues a document of title or, in the case of an
15 unaccepted delivery order, the person that orders the possessor of goods to deliver. The term
16 includes a person for which an agent or employee purports to act in issuing a document if the
17 agent or employee has real or apparent authority to issue documents, even if the issuer did not
18 receive any goods, the goods were misdescribed, or in any other respect the agent or employee
19 violated the issuer's instructions.

20 (9) "Person entitled under the document" means the holder, in the case of a
21 negotiable document of title, or the person to which delivery of the goods is to be made by the
22 terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

1 (10) "Record" means information that is inscribed on a tangible medium or that is
2 stored in an electronic or other medium and is retrievable in perceivable form.

3 (11) "Sign" means, with present intent to authenticate or adopt a record:

4 (A) to execute or adopt a tangible symbol; or

5 (B) to attach to or logically associate with the record an electronic sound, symbol,
6 or process.

7 (12) "Shipper" means a person that enters into a contract of transportation with a
8 carrier.

9 (13) "Warehouse" means a person engaged in the business of storing goods for hire.

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

12 (1) "Contract for sale", Section 2-106.

13 (2) "Lessee in ordinary course", Section 2A-103.

14 (3) "'Receipt' of goods", Section 2-103.

15 (c) In addition, Article 1 contains general definitions and principles of construction and
16 interpretation applicable throughout this article.

17 *Legislative Note: If the state has enacted Revised Article 1, the definitions of "good faith" in*
18 *subsection (a)(6) and "record" in (a)(10) need not be enacted in this section as they are*
19 *contained in Article 1, Section 1-201. These subsections should be marked as "reserved" in*
20 *order to provide for uniform numbering of subsections.*

21
22 **Preliminary Comments**

23
24 **Prior Uniform Statutory Provision:** Former Section 7-102.

25
26 **Changes:** New definitions of "carrier," "good faith," "record," "sign," and "shipper." Other
27 definitions revised to accommodate electronic mediums.

1 **Purposes:**
2

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

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

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

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

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

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

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

37
38 **Cross References:**

39 Point 1: Sections 7-203 and 7-301.

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

41 Point 3: Section 1-201.

42 Point 4: Section 1-304.

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

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

1 **Definitional Cross References:**

- 2 "Bill of lading". Section 1-201.
3 "Contract". Section 1-201.
4 "Contract for sale". Section 2-106.
5 "Delivery". Section 1-201.
6 "Document of title". Section 1-201.
7 "Person". Section 1-201.
8 "Purchase". Section 1-201.
9 "Receipt of goods". Section 2-103.
10 "Right". Section 1-201.
11 "Warehouse receipt". Section 1-201.
12
13
14

15 **SECTION 7-103. RELATION OF ARTICLE TO TREATY OR STATUTE.**

16 (a) This article is subject to any treaty or statute of the United States or a regulatory
17 statute of this State to the extent the treaty, statute, or regulatory statute is applicable.

18 (b) This article does not repeal or modify any law prescribing the form or contents of a
19 document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a
20 bailee's businesses in respects not specifically treated in this article. However, violation of these
21 laws does not affect the status of a document of title that otherwise complies with the definition
22 of a document of title.

23 (c) This [Act] modifies, limits, and supersedes the federal Electronic Signatures in
24 Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify,
25 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic
26 delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section
27 7003(b)).

28 (d) To the extent there is a conflict between the Uniform Electronic Transactions Act
29 and this article, this article governs.

1 **Preliminary Comments**

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

4
5 **Changes:** Deletion of references to tariffs and classifications; incorporation of former Section
6 10-104 into subsection (b).

7
8 **Purposes:**

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

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

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

27 4. Subsection (c) is included to make clear the interrelationship between the federal
28 Electronic Signatures in Global and National Commerce Act and this article. Section 102 of the
29 federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of
30 the federal act. See the comments to Revised Article 1, Section 1-108.

31 5. Subsection (d) makes clear that once this article is in effect, its provisions regarding
32 electronic commerce and regarding electronic documents of title control in the event there is a
33 conflict with the provisions of the Uniform Electronic Transactions Act.

34
35 **Cross References:**

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

37
38 **Definitional Cross Reference:**

39 "Bill of lading". Section 1-201.
40
41

42 **SECTION 7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.**

43 (a) A document of title is negotiable if by its terms the goods are to be delivered to bearer

1 or to the order of a named person.

2 (b) A document of title other than one described in subsection (a) is nonnegotiable. A
3 bill of lading that states that the goods are consigned to a named person is not made negotiable
4 by a provision that the goods are to be delivered only against an order in a record signed by the
5 same or another named person.

6 (c) A document of title is nonnegotiable if, at the time it is issued, the document has a
7 conspicuous legend, however expressed, that it is nonnegotiable.

8
9 **Proposed Comment**

10 **Prior Uniform Statutory Provision:** Former Section 7-104.

11
12
13 **Changes:** Subsection (a) is revised to reflect modern style and trade practice. Subsection (b) is
14 revised for style and medium neutrality. Subsection (c) is new.

15
16 **Purposes:**

17 1. This Article deals with a class of commercial paper representing commodities in storage or
18 transportation. This "commodity paper" is to be distinguished from what might be called
19 "money paper" dealt with in the Article of this Act on Commercial Paper (Article 3) and
20 "investment paper" dealt with in the Article of this Act on Investment Securities (Article 8). The
21 class of "commodity paper" is designated "document of title" following the terminology of the
22 Uniform Sales Act Section 76. Section 1-201. The distinctions between negotiable and
23 nonnegotiable documents in this section makes the most important subclassification employed in
24 the Article, in that the holder of negotiable documents may acquire more rights than its transferor
25 had (See Section 7-502). The former Section 7-104, which provided that a document of title was
26 negotiable if it runs to a named person or assigns if such designation was recognized in overseas
27 trade, has been deleted as not necessary in light of current commercial practice.

28 A document of title is negotiable only if it satisfies this section. "Deliverable on proper
29 indorsement and surrender of this receipt" will not render a document negotiable. Bailees often
30 include such provisions as a means of insuring return of nonnegotiable receipts for record
31 purposes. Such language may be regarded as insistence by the bailee upon a particular kind of
32 receipt in connection with delivery of the goods. Subsection (a) makes it clear that a document
33 is not negotiable which provides for delivery to order or bearer only if written instructions to that
34 effect are given by a named person. Either tangible or electronic documents of title may be
35 negotiable if the document meets the requirement of this section.

36 2. Prior to issuance, an issuer may stamp or otherwise provide by a notation on the document
37 of title that it is nonnegotiable even if the document would otherwise comply with the

1 requirement of subsection (a). Subsection (c). Subsection (c) is derived from Section 3-104(d).
2 Once issued as a negotiable document of title, the document cannot be changed from a
3 negotiable document to a nonnegotiable document. However, one can fail to negotiate a
4 negotiable document of title by due negotiation. See Section 7-501(5). A document of title that
5 is nonnegotiable cannot be made negotiable by stamping or providing a notation that the
6 document is negotiable. The only way to make a document of title negotiable is to comply with
7 subsection (a).

8
9 **Cross Reference:** Sections 7-501 and 7-502.

10
11 **Definitional Cross References:**

12 "Bearer". Section 1-201.

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

14 "Delivery". Section 1-201.

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

16 "Person". Section 1-201.

17 "Sign". Section 7-102

18 "Warehouse receipt". Section 1-201.

19
20
21
22 **SECTION 7-105. REISSUANCE IN ALTERNATIVE MEDIUM.**

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

26 (1) the person entitled under the electronic document surrenders control of the
27 document to the issuer; and

28 (2) the tangible document when issued contains a statement that it is issued in
29 substitution for the electronic document.

30 (b) Upon issuance of a tangible document of title in substitution for an electronic
31 document of title in accordance with subsection (a):

32 (1) the electronic document ceases to have any effect or validity; and

33 (2) the person that procured issuance of the tangible document warrants to all

1 subsequent persons entitled under the tangible document that the warrantor was a person entitled
2 under the electronic document when the warrantor surrendered control of the electronic
3 document to the issuer.

4 (c) Upon request of a person entitled under a tangible document of title, the issuer of the
5 tangible document may issue an electronic document of title as a substitute for the tangible
6 document if:

7 (1) the person entitled under the tangible document surrenders possession of the
8 document to the issuer; and

9 (2) the electronic document when issued contains a statement that it is issued in
10 substitution for the tangible document.

11 (d) Upon issuance of the electronic document of title in substitution for a tangible
12 document of title in accordance with subsection (c):

13 (1) the tangible document ceases to have any effect or validity; and

14 (2) the person that procured issuance of the electronic document warrants to all
15 subsequent persons entitled under the electronic document that the warrantor was a person
16 entitled under the tangible document when the warrantor surrendered possession of the tangible
17 document to the issuer.

18 **Preliminary Comments**

19 **Prior Uniform Statutory Provisions:** None.

20 **Other relevant law:** UNCITRAL Draft Instrument on Transport Law.

21 **Purpose:**

22
23 1. This section allows for documents of title issued in one medium to be reissued in another
24 medium. This section applies to both negotiable and nonnegotiable documents. This section sets
25
26

1 forth minimum requirements for giving the reissued document effect and validity. The issuer is
2 not required to issue a document in an alternative medium and if the issuer chooses to do so, it
3 may impose additional requirements. Because a document of title imposes obligations on the
4 issuer of the document, it is imperative for the issuer to be the one who issues the substitute
5 document in order for the substitute document to be effective and valid.

6 2. The request must be made to the issuer by the person entitled to enforce the document of
7 title (Section 7-102(a)(9)) and that person must surrender possession or control of the original
8 document to the issuer. The reissued document must have a notation that it has been issued as a
9 substitute for the original document. These minimum requirements must be met in order to give
10 the substitute document effect and validity. If these minimum requirements are not met for
11 issuance of a substitute document of title, the original document of title continues to be effective
12 and valid. However, if the minimum requirements imposed by this section are met, in addition
13 to any other requirements that the issuer may impose, the substitute document will be the
14 document that is effective and valid.

15 3. To protect parties who subsequently take the substitute document of title, the person who
16 procured issuance of the substitute document warrants that it was a person entitled under the
17 original document at the time it surrendered possession or control of the original document to the
18 issuer. This warranty is modeled after the warranty found in Section 4-209.

19
20 **Cross Reference:** Sections 7-106 and 7-601.

21 **Definitional Cross Reference:** "Person entitled to enforce," Section 7-102.

22
23
24 **SECTION 7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.**

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

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

31 (1) a single authoritative copy of the document exists which is unique, identifiable,
32 and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

33 (2) the authoritative copy identifies the person asserting control as:

34 (A) the person to which the document was issued; or

1 (B) if the authoritative copy indicates that the document has been transferred, the
2 person to which the document was most recently transferred;

3 (3) the authoritative copy is communicated to and maintained by the person asserting
4 control or its designated custodian;

5 (4) copies or amendments that add or change an identified assignee of the
6 authoritative copy can be made only with the consent of the person asserting control;

7 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable
8 as a copy that is not the authoritative copy; and

9 (6) any amendment of the authoritative copy is readily identifiable as authorized or
10 unauthorized.

11 Preliminary Comments

12
13 **Prior Uniform Statutory Provision:** Uniform Electronic Transactions Act Section 16.

14 **Purpose:**

15
16
17 1. The section defines “control” for electronic documents of title and derives its rules from
18 the Uniform Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16,
19 however, a document of title may be reissued in an alternative medium pursuant to Section 7-
20 105. At any point in time in which a document of title is in electronic form, the control concept
21 of this section is relevant. As under UETA § 16, the control concept embodied in this section
22 provides the legal framework for developing systems for electronic documents of title.

23 2. Control of an electronic document of title substitutes for the concept of indorsement and
24 possession in the tangible document of title context. See Section 7-501. A person with a tangible
25 document of title delivers the document by voluntarily transferring possession and a person with
26 an electronic document of title delivers the document by voluntarily transferring control.
27 (Delivery is defined in Section 1-201).

28 3. Subsection (a) sets forth the general rule that the “system employed for evidencing the
29 transfer of interests in the electronic document reliably establishes that person as the person to
30 which the electronic document was issued or transferred.” The key to having a system that
31 satisfies this test is that identity of *the* person to which the document was issued or transferred
32 must be reliably established. Of great importance to the functioning of the control concept is to
33 be able to demonstrate, at any point in time, *the one person* entitled under the electronic
34 document. For example, a carrier may issue an electronic bill of lading by having the required

1 information in a database that is encrypted and accessible by virtue of a password. If the
2 computer system in which the required information is maintained identifies the person as *the*
3 person to which the electronic bill of lading was issued or transferred, that person has control of
4 the electronic document of title. That identification may be by virtue of passwords or other
5 encryption methods. Registry systems may satisfy this test. This Article leaves to the market
6 place the development of sufficient technologies and business practices that will meet the test.

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

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

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

27 5. Article 7 has historically provided for rights under documents of title and rights of
28 transferees of documents of title as those rights relate to the goods covered by the document.
29 Third parties may possess or have control of documents of title. While misfeasance or
30 negligence in failure to transfer or misdelivery of the **document** by those third parties may create
31 serious issues, this Article has never dealt with those issues as it relates to tangible documents of
32 title, preferring to leave those issues to the law of contracts, agency and tort law. In the
33 electronic document of title regime, third party registry systems are just beginning to develop. It
34 is very difficult to write rules regulating those third parties without some definitive sense of how
35 the third party registry systems will be structured. Systems that are evolving to date tend to be
36 "closed" systems in which all participants must sign on to the master agreement which provides
37 for rights as against the registry system as well as rights among the members. In those closed
38 systems, the document of title never leaves the system so the parties rely upon the master
39 agreement as to rights against the registry in its failures in dealing with the document. This
40 article contemplates that those "closed" systems will continue to evolve and that the control
41 mechanism in this statute provides a method for the participants in the closed system to achieve
42 the benefits of obtaining control allowed by this article.

43 This article also contemplates that parties will evolve open systems where parties need not be
44 subject to a master agreement. In an open system a party that is expecting to obtain rights

1 through an electronic document may not be a party to the master agreement. To the extent that
2 open systems evolve by use of the control concept contained in this section, the law of contracts,
3 agency, and torts as it applies to the registry's misfeasance or negligence concerning the transfer
4 of control of the electronic document will allocate the risks and liabilities of the parties as that
5 other law now does so for third parties who hold tangible documents and fail to deliver the
6 documents.

7

8 **Cross Reference:** Section 7-105.

9

1 **PART 2**

2 **WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

3
4 **SECTION 7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT;**
5 **STORAGE UNDER BOND.**

6 (a) A warehouse receipt may be issued by any warehouse.

7 (b) If goods, including distilled spirits and agricultural commodities, are stored under a
8 statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature
9 of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if
10 issued by a person that is the owner of the goods and is not a warehouse.

11 **Preliminary Comments**

12
13 **Prior Uniform Statutory Provision:** Former Section 7-201.

14
15 **Changes:** Update for style only.

16
17 **Purposes:**

18 It is not intended by re-enactment of subsection (a) to repeal any provisions of special
19 licensing or other statutes regulating who may become a warehouse. Limitations on the transfer
20 of the receipts and criminal sanctions for violation of such limitations are not impaired. Section
21 7-103. Compare Section 7-401(4) on the liability of the issuer in such cases. Subsection (b)
22 covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses
23 under such statutes as 26 U.S.C. Chapter 51.

24
25 **Cross References:** Sections 7-103, 7-401.

26
27 **Definitional Cross References:**

28 "Warehouse receipt". Section 1-201.

29 "Warehouse". Section 7-102.

30
31
32
33 **SECTION 7-202. FORM OF WAREHOUSE RECEIPT.**

- 1 (a) A warehouse receipt need not be in any particular form.
- 2 (b) Unless a warehouse receipt provides for each of the following, the warehouse is liable
3 for damages caused to a person injured by its omission:
- 4 (1) the location of the warehouse facility where the goods are stored;
- 5 (2) the date of issue of the receipt;
- 6 (3) the unique identification code of the receipt;
- 7 (4) a statement whether the goods received will be delivered to the bearer, to a named
8 person, or to a named person or its order;
- 9 (5) the rate of storage and handling charges, but if goods are stored under a field
10 warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;
- 11 (6) a description of the goods or the packages containing them;
- 12 (7) the signature of the warehouse or its agent;
- 13 (8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or
14 in common with others, the fact of that ownership; and
- 15 (9) a statement of the amount of advances made and of liabilities incurred for which
16 the warehouse claims a lien or security interest, but if the precise amount of advances made or of
17 liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its
18 agent that issued the receipt, a statement of the fact that advances have been made or liabilities
19 incurred and the purpose of the advances or liabilities is sufficient.
- 20 (c) A warehouse may insert in its receipt any terms that are not contrary to [the Uniform
21 Commercial Code] and do not impair its obligation of delivery under Section 7-403 or its duty of
22 care under Section 7-204. Any contrary provisions are ineffective.

1 **Preliminary Comments**

2
3 **Prior Uniform Statutory Provision:** Former Section 7-202.

4
5 **Changes:** Language is updated to accommodate electronic commerce and to reflect modern
6 style.

7
8 **Purposes:**

9 1. This section does not displace any particular legislation that requires other terms in a
10 warehouse receipt or that may require a particular form of a warehouse receipt. This section
11 does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not
12 contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long
13 as the receipt falls within the definition of "warehouse receipt" in Article 1. The only
14 consequence of a warehouse receipt not containing any term listed in subsection (b) is that a
15 person injured by a term's omission has a right as against the warehouse for harm caused by the
16 omission.

17 2. The unique identification code referred to in subsection (b)(3) can include any
18 combination of letters, number, signs, and/or symbols that provide a unique identification.
19 Whether an electronic or tangible warehouse receipt contains a signature will be resolved with
20 the definition of sign in Section 7-102.

21
22 **Cross References:** Sections 7-103 and 7-401.

23
24 **Definitional Cross References:**

- 25 "Bearer". Section 1-201.
26 "Delivery". Section 1-201.
27 "Goods". Section 7-102.
28 "Person". Section 1-201.
29 "Security interest". Section 1-201.
30 "Sign". Section 7-102.
31 "Term". Section 1-201.
32 "Warehouse receipt". Section 1-201.
33 "Warehouse". Section 7-102.

34
35
36 **SECTION 7-203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION.** A party to
37 or purchaser for value in good faith of a document of title, other than a bill of lading, that relies
38 upon the description of the goods in the document may recover from the issuer damages caused
39 by the nonreceipt or misdescription of the goods, except to the extent that:

- 40 (1) the document conspicuously indicates that the issuer does not know whether all or

1 part of the goods in fact were received or conform to the description, such as a case in which the
2 description is in terms of marks or labels or kind, quantity, or condition, or the receipt or
3 description is qualified by "contents, condition, and quality unknown", "said to contain", or
4 words of similar import, if the indication is true; or

5 (2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

6 Preliminary Comments

7
8 **Prior Uniform Statutory Provision:** Former Section 7-203.

9
10 **Changes:** Changes to this section are for style only.

11 **Purpose:**

12 This section is a simplified restatement of existing law as to the method by which a bailee
13 may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon
14 information furnished by the depositor. The issuer is liable on documents issued by an agent,
15 contrary to instructions of its principal, without receiving goods. No disclaimer of the latter
16 liability is permitted.

17
18
19 **Cross Reference:** Section 7-301.

20 **Definitional Cross References:**

21 "Conspicuous". Section 1-201.

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

23 "Goods". Section 7-102.

24 "Good Faith". Section 1-201. [7-102]

25 "Issuer". Section 7-102.

26 "Notice". Section 1-202.

27 "Party". Section 1-201.

28 "Purchaser". Section 1-201.

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

30 "Value". Section 1-204.

1 **Changes:** Updated to reflect modern, standard commercial practices.
2

3 **Purposes of Changes:**

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

6 2. Former Section 7-204(2) required that the term limiting damages do so by setting forth a
7 specific liability per article or item or of a value per unit of weight. This requirement has been
8 deleted as out of step with modern industry practice. Under subsection (b) a warehouse may limit
9 its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or
10 storage agreement. The parties cannot disclaim by contract the warehouse's obligation of care.
11 Section 1-302.

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

18 4. As under former Section 7-204(2), subsection (b) provides that a limitation of damages is
19 ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver
20 the goods is not conversion to the warehouse's own use. Conversion to its own use has a
21 specialized meaning in the case law that is narrower than the idea of conversion generally.

22 5. Storage agreements commonly establish the contractual relationship between warehouses
23 and depositors who have an on-going relationship. The storage agreement may allow for the
24 movement into and out of a warehouse without the necessity of issuing or amending a warehouse
25 receipt upon each entry or exit of goods from the warehouse.
26

27 **Cross References:** Sections 1-302, 7-103, 7-309 and 7-403.
28

29 **Definitional Cross References:**

30 "Goods". Section 7-102.

31 "Reasonable time". Section 1-204.

32 "Sign". Section 7-102.

33 "Term". Section 1-201.

34 "Value". Section 1-204.

35 "Warehouse receipt". Section 1-201.

36 "Warehouse". Section 7-102.
37
38

39 **SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN**

40 **CERTAIN CASES.** A buyer in ordinary course of business of fungible goods sold and

41 delivered by a warehouse that is also in the business of buying and selling such goods takes the

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

3 **Preliminary Comments**

4
5 **Prior Uniform Statutory Provision:** Former Section 7-205.

6
7 **Changes:** Changes for style only.

8 9 **Purposes:**

10 1. The typical case covered by this section is that of the warehouse-dealer in grain, and the
11 substantive question at issue is whether in case the warehouse becomes insolvent the receipt
12 holders shall be able to trace and recover grain shipped to farmers and other purchasers from the
13 elevator. This was possible under the old acts, although courts were eager to find estoppels to
14 prevent it. The practical difficulty of tracing fungible grain means that the preservation of this
15 theoretical right adds little to the commercial acceptability of negotiable grain receipts, which
16 really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the
17 receipt holders at least share in what grain remains, whereas retaking the grain from a good faith
18 cash purchaser reduces the purchaser completely to the status of general creditor in a situation
19 where there was very little the purchaser could do to guard against the loss. Compare 15 U.S.C.
20 Section 714p enacted in 1955.

21 2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The
22 concept of due negotiation is provided for in 7-501. The definition of "buyer in ordinary course"
23 is in Article 1 and provides, among other things, that a buyer must either have possession or a
24 right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section
25 requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires
26 voluntary transfer of possession of the fungible goods to the buyer. See amended Section 2-103.
27 This section is not satisfied by the delivery of the document of title to the buyer in ordinary
28 course.

29
30 **Cross References:** Sections 2-403 and 9-320.

31 32 **Definitional Cross References:**

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

34 "Delivery". Section 1-201.

35 "Duly negotiate". Section 7-501.

36 "Fungible" goods. Section 1-201.

37 "Goods". Section 7-102.

38 "Value". Section 1-204.

39 "Warehouse receipt". Section 1-201.

40 "Warehouse". Section 7-102.

1 **SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION.**

2 (a) A warehouse, by giving notice to the person on whose account the goods are held and
3 any other person known to claim an interest in the goods, may require payment of any charges
4 and removal of the goods from the warehouse at the termination of the period of storage fixed by
5 the document of title or, if a period is not fixed, within a stated period not less than 30 days after
6 the warehouse gives notice. If the goods are not removed before the date specified in the notice,
7 the warehouse may sell them pursuant to Section 7-210.

8 (b) If a warehouse in good faith believes that goods are about to deteriorate or decline in
9 value to less than the amount of its lien within the time provided in subsection (a) and Section 7-
10 210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter
11 time for removal of the goods and, if the goods are not removed, may sell them at public sale
12 held not less than one week after a single advertisement or posting.

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

19 (d) A warehouse shall deliver the goods to any person entitled to them under this article
20 upon due demand made at any time before sale or other disposition under this section.

21 (e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under
22 this section but shall hold the balance for delivery on the demand of any person to which the

1 warehouse would have been bound to deliver the goods.

2 **Preliminary Comments**

3
4 **Prior Uniform Statutory Provision:** Former Section 7-206.

5
6 **Changes:** Changes for style.

7
8 **Purposes:**

9 1. Most warehousing is for an indefinite term, the bailor being entitled to delivery on
10 reasonable demand. It is necessary to define the warehouse's power to terminate the bailment,
11 since it would be commercially intolerable to allow warehouses to order removal of the goods on
12 short notice. The thirty day period provided where the document does not carry its own period
13 of termination corresponds to commercial practice of computing rates on a monthly basis. The
14 right to terminate under subsection (a) includes a right to require payment of "any charges", but
15 does not depend on the existence of unpaid charges.

16 2. In permitting expeditious disposition of perishable and hazardous goods the pre-Code
17 Uniform Warehouse Receipts Act, Section 34, made no distinction between cases where the
18 warehouse knowingly undertook to store such goods and cases where the goods were discovered
19 to be of that character subsequent to storage. The former situation presents no such emergency
20 as justifies the summary power of removal and sale. Subsections (b) and (c) distinguish between
21 the two situations.

22 3. Protection of its lien is the only interest which the warehouse has to justify summary sale
23 of perishable goods which are not hazardous. This same interest must be recognized when the
24 stored goods, although not perishable, decline in market value to a point which threatens the
25 warehouse's security.

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

31
32 **Cross References:** Sections 7-103 and 7-403.

33
34 **Definitional Cross References:**

35 "Delivery". Section 1-201.

36 "Document of title". Section 1-102.

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

38 "Goods". Section 7-102.

39 "Notice". Section 1-202.

40 "Notification". Section 1-202.

41 "Person". Section 1-201.

42 "Reasonable time". Section 1-205.

43 "Value". Section 1-204.

1 "Warehouse". Section 7-102.
2
3

4 **SECTION 7-207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.**

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

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

13 **Preliminary Comments**

14
15 **Prior Uniform Statutory Provision:** Former Section 7-207.

16
17 **Changes:** Changes for style only.

18
19 **Purposes:**

20 No change of substance is made from former Section 7-207. Holders to whom overissued
21 receipts have been duly negotiated shall share in a mass of fungible goods. Where individual
22 ownership interests are merged into claims on a common fund, as is necessarily the case with
23 fungible goods, there is no policy reason for discriminating between successive purchasers of
24 similar claims.
25

26 **Definitional Cross References:**

27 "Delivery". Section 1-201.

28 "Duly negotiate". Section 7-501.

29 "Fungible goods". Section 1-201.

30 "Goods". Section 7-102.

31 "Holder". Section 1-201.

32 "Person". Section 1-201.

33 "Warehouse receipt". Section 1-201.

34 "Warehouse". Section 7-102.
35

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

14 (b) The warehouse may also reserve a security interest under Article 9 against the bailor
15 for the maximum amount specified on the receipt for charges other than those specified in
16 subsection (a), such as for money advanced and interest. A security interest is governed by
17 Article 9.

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

1 the goods and that did not:

2 (1) deliver or entrust the goods or any document covering the goods to the bailor or
3 the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to
4 obtain delivery under Section 7-403; or with power of disposition under Sections 2-403, 2A-
5 304(2), 2A-305(2) or 9-320 or other statute or rule of law; or

6 (2) acquiesce in the procurement by the bailor or its nominee of any document.

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

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

13 Preliminary Comments

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

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

17 **Purposes:**

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

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

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

6 Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a
7 warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will
8 also have a lien on goods covered by the warehouse receipt for storage charges and the other
9 expenses for any other goods that are stored with the warehouse by the bailor. The statement
10 about the lien on other goods does not specify an amount or a rate. Bailor then stored other
11 goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien
12 on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second
13 sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other
14 expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless
15 of whether the receipt is negotiable or nonnegotiable.

16 Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of
17 that receipt by due negotiation is limited to the amount or rate specified on the receipt for the
18 specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the
19 specific goods covered by the receipt for storage after the date of the receipt.

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

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

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

40 2. Subsection (b) provides for a security interest based upon agreement. Such a security
41 interest arises out of relations between the parties other than bailment for storage or
42 transportation, as where the bailee assumes the role of financier or performs a manufacturing
43 operation, extending credit in reliance upon the goods covered by the receipt. Such a security
44 interest is not a statutory lien. Compare Sections 9-109 and 9-333. It is governed in all respects

1 by Article 9, except that subsection (b) requires that the receipt specify a maximum amount and
2 limits the security interest to the amount specified. A warehouse could also take a security
3 interest to secure its charges for storage and the other expenses listed in subsection (a) to protect
4 these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses
5 possession of the goods as provided in subsection (e).

6 Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse
7 receipt that states that the warehouse is taking a security interest in the bailed goods for charges
8 of storage, expenses, for money advanced, for manufacturing services rendered, and all other
9 obligations that the bailor may owe the warehouse. That is a security interest covered in all
10 respects by Article 9. Subsection (b). As allowed by this section, a warehouse may rely upon its
11 statutory possessory lien to protect its charges for storage and the other expenses related to
12 storage. For those storage charges covered by the statutory possessory lien, the warehouse is not
13 required to use a security interest under subsection (b).

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

18 Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable
19 warehouse receipt that also claims a general lien in other goods stored with the warehouse. A
20 lien on the bailed goods for the charges for storage and the other expenses arises under
21 subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the
22 bailee acknowledges that fact to the Buyer. Section 2-503. The warehouse lien for storage of
23 those goods is effective against Buyer for both the specific lien and the general lien. Section 7-
24 504.

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

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

41 As against third parties who have interests in the goods prior to the storage with the
42 warehouse, subsection (c) continues the rule under the prior uniform statutory provision that to
43 validate the lien or security interest of the warehouse, the owner must have entrusted the goods
44 to the depositor, and that the circumstances must be such that a pledge by the depositor to a good

1 faith purchaser for value would have been valid. Thus the owner's interest will not be subjected
2 to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may
3 be protected because of the actual, implied or apparent authority of the depositor, because of a
4 Factor's Act, or because of other circumstances which would protect a bona fide pledgee, unless
5 those circumstances are denied effect under the second sentence of subsection (c). The
6 language of Section 7-503 is brought into subsection (c) for purposes of clarity. The comments
7 to Section 7-503 are helpful in interpreting delivery, entrustment or acquiescence.

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

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

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

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

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

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

1 the buyer "is liable for" such charges, or by reserving a security interest under subsection (b).

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

11
12 **Cross References:**

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

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

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

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

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

18 Point 6: Sections 7-202 and 7-204.

19
20 **Definitional Cross References:**

21 "Deliver". Section 1-201.

22 "Document of Title". Section 1-201

23 "Goods". Section 7-102.

24 "Money". Section 1-201.

25 "Person". Section 1-201.

26 "Purchaser". Section 1-201.

27 "Right". Section 1-201.

28 "Security interest". Section 1-201.

29 "Value". Section 1-204.

30 "Warehouse receipt". Section 1-201.

31 "Warehouse". Section 7-102.

32
33
34 **SECTION 7-210. ENFORCEMENT OF WAREHOUSE'S LIEN.**

35 (a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced
36 by public or private sale of the goods, in bulk or in packages, at any time or place and on any
37 terms that are commercially reasonable, after notifying all persons known to claim an interest in
38 the goods. The notification must include a statement of the amount due, the nature of the
39 proposed sale, and the time and place of any public sale. The fact that a better price could have

1 been obtained by a sale at a different time or in a different method from that selected by the
2 warehouse is not of itself sufficient to establish that the sale was not made in a commercially
3 reasonable manner. The warehouse has sold in a commercially reasonable manner if the
4 warehouse sells the goods in the usual manner in any recognized market therefor, sells at the
5 price current in that market at the time of the sale, or has otherwise sold in conformity with
6 commercially reasonable practices among dealers in the type of goods sold. A sale of more
7 goods than apparently necessary to be offered to ensure satisfaction of the obligation is not
8 commercially reasonable, except in cases covered by the preceding sentence.

9 (b) A warehouse's lien on goods, other than goods stored by a merchant in the course of
10 its business, may be enforced only if the following requirements are satisfied:

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

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

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

17 (4) The sale must be held at the nearest suitable place to where the goods are held or
18 stored.

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

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

5 (c) Before any sale pursuant to this section, any person claiming a right in the goods may
6 pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying
7 with this section. In that event, the goods may not be sold but must be retained by the warehouse
8 subject to the terms of the receipt and this article.

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

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

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

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

18 (h) If a lien is on goods stored by a merchant in the course of its business, the lien may be
19 enforced in accordance with subsection (a) or (b).

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

22 **Preliminary Comments**
23

1 **Prior Uniform Statutory Provision:** Former Section 7-210.

2
3 **Changes:** Update to accommodate electronic commerce and for style.

4
5 **Purposes:**

6
7 1. Subsection (a) makes "commercial reasonableness" the standard for foreclosure
8 proceedings in all cases except non-commercial storage with a warehouse. The latter category
9 embraces principally storage of household goods by private owners; and for such cases the
10 detailed provisions as to notification, publication and public sale are retained in subsection (b)
11 with one change. The requirement in former Section 7-210(2)(b) that the notification must be
12 sent in person or by registered or certified mail has been deleted. Notification may be sent by
13 any reasonable means as provided in Section 1-202. The swifter, more flexible procedure of
14 subsection (a) is appropriate to commercial storage. Compare seller's power of resale on breach
15 by buyer under the provisions of the Article on Sales (Section 2-706). Commercial
16 reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of
17 this section, including electronic means of posting and sale.

18 2. The provisions of subsections (d) and (e) permitting the bailee to bid at public sales and
19 confirming the title of purchasers at foreclosure sales are designed to secure more bidding and
20 better prices and remain unchanged from former Section 7-210.

21 3. A warehouses may have recourse to an interpleader action in appropriate circumstances.
22 See Section 7-603.

23 4. If a warehouse has both a warehouse lien and a security interest, the warehouse may
24 enforce both the lien and the security interest simultaneously by using the procedures of Article
25 9. Section 7-210 adopts as its touchstone "commercial reasonableness" for the enforcement of a
26 warehouse lien. Following the procedures of Article 9 satisfies "commercial reasonableness."
27

28 **Cross Reference:** Sections 2-706, 7-403, 7-603 and Part 6 of Article 9.

29
30 **Definitional Cross References:**

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

32 "Conspicuous". Section 1-201.

33 "Creditor". Section 1-201.

34 "Delivery". Section 1-201.

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

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

37 "Goods". Section 7-102.

38 "Notification". Section 1-202.

39 "Notifies". Section 1-202.

40 "Person". Section 1-201.

41 "Purchaser". Section 1-201.

42 "Rights". Section 1-201.

43 "Term". Section 1-201.

44 "Warehouse". Section 7-102.