

1 **PART 6**

2 **WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS**  
3 **PROVISIONS**  
4

5 **SECTION 7-601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE.**

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

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

20 **Preliminary Comments**

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

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

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2 **Purposes:**  
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4 1. Subsection (a) authorizes courts to order compulsory delivery of the goods or compulsory  
5 issuance of a substitute document. Compare Section 7-402. Using language similar to that  
6 found in Section 3-309, courts are given discretion as to what is adequate protection when the  
7 lost, stolen or destroyed document was negotiable or whether security should be required when  
8 the lost, stolen or destroyed document was nonnegotiable. In determining whether a party is  
9 adequately protected against loss in the case of a negotiable document, the court should consider  
10 the likelihood that the party will suffer a loss. The court is also given discretion as to the  
11 bailee's costs and attorney fees. The rights and obligations of a bailee under this section depend  
12 upon whether the document of title is lost, stolen or destroyed and is in addition to the ability of  
13 the bailee to bring an action for interpleader. See Section 7-603.

14 2. Courts have the authority under this section to order a substitute document for either  
15 tangible or electronic documents. If the substitute document will be in a different medium than  
16 the original document, the court should fashion its order in light of the requirements of Section  
17 7-105.

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

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

31 5. The bailee's lien should be protected when a court orders delivery of the goods pursuant  
32 to this section.  
33

34 **Cross References:**

35 Point 1: Sections 3-309, 7-402 and 7-603.

36 Point 2: Section 7-105.

37 Point 3: Section 7-403.

38 Point 4: Section 7-403.

39 Point 5: Sections 7-209 and 7-307.  
40

41 **Definitional Cross References:**

42 "Bailee". Section 7-102.

43 "Delivery". Section 1-201.

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

1 "Good faith". Section 1-201 [7-102].  
2 "Goods". Section 7-102.  
3 "Person". Section 1-201.  
4  
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6 **SECTION 7-602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE**

7 **DOCUMENT OF TITLE.** Unless a document of title was originally issued upon delivery of  
8 the goods by a person that did not have power to dispose of them, a lien does not attach by virtue  
9 of any judicial process to goods in the possession of a bailee for which a negotiable document of  
10 title is outstanding unless possession or control of the document is first surrendered to the bailee  
11 or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods  
12 pursuant to process until possession or control of the document is surrendered to the bailee or to  
13 the court. A purchaser of the document for value without notice of the process or injunction  
14 takes free of the lien imposed by judicial process.

15 **Preliminary Comments**

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

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19 **Changes:** Changes to accommodate electronic documents of title and for style.  
20

21 **Purposes:**

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

29 2. The last sentence covers the possibility that the holder of a document who has been  
30 enjoined from negotiating it will violate the injunction by negotiating to an innocent purchaser  
31 for value. In such case the lien will be defeated.  
32

33 **Cross Reference:**

34 Sections 7-106 and 7-503.  
35

1 **Definitional Cross References:**

2 "Bailee". Section 7-102.  
3 "Delivery". Section 1-201.  
4 "Document of title". Section 1-201.  
5 "Goods". Section 7-102.  
6 "Notice". Section 1-202.  
7 "Person". Section 1-201.  
8 "Purchase". Section 1-201.  
9 "Value". Section 1-204.

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12 **SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.** If more than one  
13 person claims title to or possession of the goods, the bailee is excused from delivery until the  
14 bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an  
15 action for interpleader. The bailee may assert an interpleader either in defending an action for  
16 nondelivery of the goods or by original action.

17 **Preliminary Comments**

18  
19 **Prior Uniform Statutory Provisions:** Former Section 7-603.

20  
21 **Changes:** Changes for style only.

22  
23 **Purposes:**

24 1. The section enables a bailee faced with conflicting claims to the goods to compel the  
25 claimants to litigate their claims with each other rather than with the bailee. The bailee is  
26 protected from legal liability when the bailee complies with court orders from the interpleader.  
27 *See e.g.* Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc., 162 Ga.App. 741,  
28 293 S.E.2d. 30 (1982).

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

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37 **Cross reference:**

38 Point 1: Section 7-403.  
39

1 **Definitional Cross References:**

2 "Action". Section 1-201.

3 "Bailee". Section 7-102.

4 "Delivery". Section 1-201.

5 "Goods". Section 7-102.

6 "Person". Section 1-201.

7 "Reasonable time". Section 1-205.

8 *LEGISLATIVE NOTE: The following provisions should be used to apply to both the Article 7*  
9 *provisions and the conforming amendments to other articles of the Uniform Commercial Code*  
10 *attached as Appendix I.*

11

1 **PART 7**

2 **MISCELLANEOUS PROVISIONS**

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4 **SECTION 7-701. EFFECTIVE DATE.** This [Act] takes effect on \_\_\_\_\_, 20\_\_\_\_.

5  
6 **SECTION 7-702. REPEALS.** [Existing Article 7] and [Section 10-104 of the Uniform  
7 Commercial Code] are repealed.

8 **Preliminary Comments**

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10 A state should repeal its prior version of Uniform Commercial Code Article 7 on documents  
11 of title and Uniform Commercial Code section 10-204. The substance of Section 10-104 has  
12 been incorporated into Section 7-103(b).  
13

14 **SECTION 7-703. APPLICABILITY.** This [Act] applies to a document of title that is  
15 issued or a bailment that arises on or after the effective date of this [Act]. This [Act] does not  
16 apply to a document of title that is issued or a bailment that arises before the effective date of  
17 this [Act] even if the document of title or bailment would be subject to this [Act] if the  
18 document of title had been issued or bailment had arisen after the effective date of this [Act].  
19 This [Act] does not apply to a right of action that has accrued before the effective date of this  
20 [Act].

21 **Preliminary Comments**

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23 This Act will apply prospectively only to documents of title issued or bailments that arise  
24 after the effective date of the Act.  
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29 **SECTION 7-704. SAVINGS CLAUSE.** A document of title issued or a bailment that

1 arises before the effective date of this [Act] and the rights, obligations, and interests flowing  
2 from that document or bailment are governed by any statute or other rule amended or repealed  
3 by this [Act] as if amendment or repeal had not occurred and may be terminated, completed,  
4 consummated, or enforced under that statute or other rule.

5 **Preliminary Comments**  
6

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





1 term is “conspicuous”. Whether a term or clause is “conspicuous” or not is for decision by the  
2 court.

3 (10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that  
4 a reasonable person against which it is to operate ought to have noticed it. Whether a term is  
5 “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

6 (A) a heading in capitals equal to or greater in size than the surrounding text, or in  
7 contrasting type, font, or color to the surrounding text of the same or lesser size; and

8 (B) language in the body of a record or display in larger type than the surrounding  
9 text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from  
10 surrounding text of the same size by symbols or other marks that call attention to the language.

11 \* \* \* \*

12 (14) “Delivery” with respect to an electronic document of title means voluntary transfer of  
13 control and with respect to instruments, tangible documents of title, chattel paper, or certificated  
14 securities means voluntary transfer of possession.

15 (15) “Document of title” ~~includes bill of lading, dock warrant, dock receipt, warehouse~~  
16 ~~receipt or order for the delivery of goods, and also any other~~ means a record (i) that document  
17 which in the regular course of business or financing is treated as adequately evidencing that the  
18 person in possession or control of the record it is entitled to receive, control, hold, and dispose  
19 of the record document and the goods it the record covers and (ii) that purports to be issued by or  
20 addressed to a bailee and to cover goods in the bailee’s possession which are either identified or  
21 are fungible portions of an identified mass. The term includes a bill of lading, transport  
22 document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. To

1 ~~be a document of title, a document must purport to be issued by or addressed to a bailee and~~  
2 ~~purport to cover goods in the bailee's possession which are either identified or are fungible~~  
3 ~~portions of an identified mass. An electronic document of title is evidenced by a record~~  
4 ~~consisting of information stored in an electronic medium. A tangible document of title is~~  
5 ~~evidenced by a record consisting of information that is inscribed on a tangible medium.~~

6 \* \* \* \*

7 (20) ~~“Holder,” with respect to a negotiable instrument, means the person in possession if the~~  
8 ~~instrument is payable to bearer or, in the case of an instrument payable to an identified person, if~~  
9 ~~the identified person is in possession. “Holder” with respect to a document of title means the~~  
10 ~~person in possession if the goods are deliverable to bearer or to the order of the person in~~  
11 ~~possession.~~

12 “Holder” means:

13 (A) the person in possession of a negotiable instrument that is payable either to bearer  
14 or to an identified person that is the person in possession;

15 (B) the person in possession of a negotiable tangible document of title if the goods  
16 are deliverable either to bearer or to the order of the person in possession; or

17 (C) a person in control of a negotiable electronic document of title.

18 \* \* \* \*

19 (25) Subject to subsection (27), a ~~A~~ person has “notice” of a fact if the person when

20 (a) ~~he~~ has actual knowledge of it; ~~or~~

21 (b) ~~he~~ has received a notice or notification of it; or

22 (c) from all the facts and circumstances known to ~~him~~ the person at the time in question,

1 ~~he~~ has reason to know that it exists.

2 A person “knows” or has “knowledge” of a fact when the person ~~he~~ has actual knowledge of it.  
3 “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to  
4 reason to know. The time and circumstances under which a notice or notification may cease to  
5 be effective are not determined by this Act.

6 (26) A person “notifies” or “gives” a notice or notification to another person by taking such  
7 steps as may be reasonably required to inform the other person in ordinary course, whether or  
8 not ~~such other~~ the other person actually comes to know of it. Subject to subsection (27), a ~~A~~  
9 person “receives” a notice or notification when

10 (a) it comes to ~~his~~ that person’s attention; or

11 (b) it is duly delivered in a form reasonable under the circumstances at the place of  
12 business through which the contract was made or at another location ~~any other place~~ held out by  
13 that person ~~him~~ as the place for receipt of such communications.

14 (27) Notice, knowledge, or a notice or notification received by an organization is effective  
15 for a particular transaction from the time when it is brought to the attention of the individual  
16 conducting that transaction, and in any event, from the time when it would have been brought to  
17 the individual’s ~~his~~ attention if the organization had exercised due diligence. An organization  
18 exercises due diligence if it maintains reasonable routines for communicating significant  
19 information to the person conducting the transaction and there is reasonable compliance with the  
20 routines. Due diligence does not require an individual acting for the organization to  
21 communicate information unless such communication is part of the individual’s ~~his~~ regular  
22 duties or the individual ~~unless he~~ has reason to know of the transaction and that the transaction

1 would be materially affected by the information.

2 \* \* \* \*

3 ~~(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver~~  
4 ~~for transmission by any other usual means of communication with postage or cost of~~  
5 ~~transmission provided for and properly addressed and in the case of an instrument to an address~~  
6 ~~specified thereon or otherwise agreed, or if there be none to any address reasonable under the~~  
7 ~~circumstances. The receipt of any writing or notice within the time at which it would have~~  
8 ~~arrived if properly sent has the effect of a proper signing.~~

9 (38) "Send" in connection with a writing, record, or notice means:

10 (A) to deposit in the mail or deliver for transmission by any other usual means of  
11 communication with postage or cost of transmission provided for and properly addressed and, in  
12 the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none  
13 to any address reasonable under the circumstances; or

14 (B) in any other way to cause to be received any record or notice within the time it would  
15 have arrived if properly sent.

16 \* \* \* \*

17 (45) "Warehouse receipt" means a document of title receipt issued by a person engaged in  
18 the business of storing goods for hire.

19 **OFFICIAL COMMENT**

20 \* \* \* \*

21 5. "Bearer". From Section 191, Uniform Negotiable Instruments Law. The prior definition has been broadened.  
22 The term bearer applies to negotiable documents of title and has been broadened to include a person in control of an  
23 electronic negotiable document of title. Control in the context of an electronic document of title is defined in Article  
24 7 (Section 7-106).

25 6. "Bill of Lading". See similar definitions in Section 1, Uniform Bills of Lading Act. The definition has been  
26 enlarged to include freight forwarders' bills and bills issued by contract carriers as well as those issued by common  
27 carriers. The definition of airbill is new: A bill of lading is one type of document of title as defined in subsection  
28 (15). This definition should be read in conjunction with the definition of carrier in Article 7 (Section 7-102).

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10. "Conspicuous". ~~New. This is intended to indicate some of the methods of making a term attention-calling. But the test is whether attention can reasonably be expected to be called to it. This definition states the general standard that to be conspicuous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with that test.~~

\* \* \* \*

14. "Delivery". Section 76, Uniform Sales Act, Section 191, Uniform Negotiable Instruments Law, Section 58, Uniform Warehouse Receipts Act and Section 53, Uniform Bills of Lading Act. The definition has been revised to accommodate electronic documents of title. Control in the context of an electronic document of title is defined in Article 7 (Section 7-106).

15. "Document of title". From Section 76, Uniform Sales Act, ~~but rephrased to eliminate certain ambiguities. This definition makes explicit Thus, by making it explicit that the obligation or designation of a third party as "bailee" is essential to a document, this definition and clearly rejects any such result as obtained in Hixson v. Ward, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included, including documents which gain commercial recognition in the international arena. See UNCITRAL Draft Instrument on Transport Law. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can move through banking channels faster than the goods themselves can reach their destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as "Documents of Title".~~ The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by ~~steamship shipping~~ companies upon delivery of the goods at the dock, entitling a designated person ~~to have issued to him at the company's office to be issued~~ a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this Section regardless of the name given to the instrument.

The goods must be "described", but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this Article. The definition is broad enough to include an airway bill.

A document of title may be either tangible or electronic. Tangible documents of title should be construed to mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control for electronic documents of title is defined in Article 7 (Section 7-106).

\* \* \* \*

19. "Good faith". See Section 76(2), Uniform Sales Act; Section 58(2), Uniform Warehouse Receipts Act; Section 53(2), Uniform Bills of Lading Act; Section 22(2), Uniform Stock Transfer Act. "Good faith", whenever it is used in the Code, means at least what is here stated. In certain Articles, by specific provision, additional requirements are made applicable. See, e.g., Secs. 2-103(1)(b), ~~7-404~~. To illustrate, in the Article on Sales, Section

1 2-103, good faith is expressly defined as including in the case of a merchant observance of reasonable commercial  
2 standards of fair dealing in the trade, so that throughout that Article wherever a merchant appears in the case an  
3 inquiry into his observance of such standards is necessary to determine his good faith.

4 20. "Holder". See similar definitions in Section 191, Uniform Negotiable Instruments Law; Section 58,  
5 Uniform Warehouse Receipts Act; Section 53, Uniform Bills of Lading Act. The definition has been amended to  
6 provide for electronic negotiable documents of title.

7 \* \* \* \*

8 25. "Notice". New. Compare N.I.L. Sec. 56. Under the definition a person has notice when he has received a  
9 notification of the fact in question. But by the last sentence the act leaves open the time and circumstances under  
10 which notice or notification may cease to be effective. Therefore such cases as *Graham v. White-Phillips Co.*, 296  
11 U.S. 27, 56 S.Ct. 21, 80 L.Ed. 20 (1935), are not overruled.

12 —26. "Notifies". New. This is the word used when the essential fact is the proper dispatch of the notice, not its  
13 receipt. Compare "Send". When the essential fact is the other party's receipt of the notice, that is stated. The second  
14 sentence states when a notification is received:

15 —27. New. This makes clear that reason to know, knowledge, or a notification, although "received" for instance  
16 by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from  
17 the time when it was or should have been communicated to the individual conducting that transaction:

18 A person has notice of a fact when, inter alia, the person has received a notification of the fact in question. The  
19 word "notifies" is used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "send."  
20 When the essential fact is the other party's receipt of the notice, that is stated. Subsection (26) states when a  
21 notification is received. Subsection (27) makes clear that notice, knowledge, or a notification, although "received,"  
22 for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B  
23 only from the time when it was or should have been communicated to the individual conducting that transaction.

24 \* \* \* \*

25 38. "Send". New. Compare "notifies". The definition of send has been modified to allow for electronic  
26 dispatch.

27 \* \* \* \*

28 45. "Warehouse receipt". See Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act.  
29 Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are  
30 different persons. The definition makes clear that the receipt must qualify as a document of title under subsection  
31 (15).

### 32 **ALTERNATIVE B**

33 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is enacting*  
34 *at the same time as this Act the provisions of Revised Article 1 as approved in 2001 .*

### 35 **SECTION 1-201. GENERAL DEFINITIONS.**

36 \* \* \* \*

37 (b) Subject to definitions contained in other articles of [the Uniform Commercial Code] that  
38 apply to particular articles or parts thereof:

39 \* \* \* \*

40 (5) "Bearer" means a person in control of a negotiable electronic document of title or a  
41 person in possession of a negotiable instrument, a negotiable tangible document of title, or a

1 certificated security that is payable to bearer or indorsed in blank.

2 (6) “Bill of lading” means a document of title evidencing the receipt of goods for  
3 shipment issued by a person engaged in the business of directly or indirectly transporting or  
4 forwarding goods. The term does not include a warehouse receipt.

5 \* \* \*

6 (15) “Delivery”, with respect to an electronic document of title means voluntary transfer  
7 of control and with respect to an instrument, a tangible document of title, or chattel paper, means  
8 voluntary transfer of possession.

9 (16) “Document of title” ~~includes bill of lading, dock warrant, dock receipt, warehouse~~  
10 ~~receipt or order for the delivery of goods, and also any other~~ means a record (i) that document  
11 ~~which~~ in the regular course of business or financing is treated as adequately evidencing that the  
12 person in possession or control of the record it is entitled to receive, control, hold, and dispose  
13 of the record document and the goods it the record covers and (ii) that purports to be issued by or  
14 addressed to a bailee and to cover goods in the bailee’s possession which are either identified or  
15 are fungible portions of an identified mass. The term includes a bill of lading, transport  
16 document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. To  
17 ~~be a document of title, a document must purport to be issued by or addressed to a bailee and~~  
18 ~~purport to cover goods in the bailee’s possession which are either identified or are fungible~~  
19 ~~portions of an identified mass. An electronic document of title is evidenced by a record~~  
20 consisting of information stored in an electronic medium. A tangible document of title is  
21 evidenced by a record consisting of information that is inscribed on a tangible medium.

22 \* \* \*

1 (21) "Holder" means:

2 (A) the person in possession of a negotiable instrument that is payable either to bearer  
3 or to an identified person that is the person in possession; or

4 (B) the person in possession of a negotiable tangible document of title if the goods  
5 are deliverable either to bearer or to the order of the person in possession; or

6 (C) a person in control of a negotiable electronic document of title.

7 \* \* \*

8 (42) "Warehouse receipt" means a document of title receipt issued by a person engaged  
9 in the business of storing goods for hire.

10 **OFFICIAL COMMENT**

11 5. "Bearer". Unchanged, except in one respect, from former section 1-201, which was derived from Section 191,  
12 Uniform Negotiable Instruments Law. The term bearer applies to negotiable documents of title and has been  
13 broadened to include a person in control of an electronic negotiable document of title. Control in the context of an  
14 electronic document of title is defined in Article 7 (Section 7-106).

15 6. "Bill of Lading". Derived from former Section 1-201. The reference to, and definition of, an "airbill" has  
16 been deleted as no longer necessary. A bill of lading is one type of document of title as defined in subsection (16).  
17 This definition should be read in conjunction with the definition of carrier in Article 7 (Section 7-102).

18 \* \* \* \*

19 15. "Delivery". Derived from former Section 1-201. The reference to certificated securities has been deleted in  
20 light of the more specific treatment of the matter in Section 8-301. The definition has been revised to accommodate  
21 electronic documents of title. Control in the context of an electronic document of title is defined in Article 7  
22 (Section 7-106).

23 16. "Document of title". Unchanged Derived from former Section 1-201, which was derived from Section 76,  
24 Uniform Sales Act. This definition makes explicit ~~Thus, by making it explicit~~ that the obligation or designation of a  
25 third party as "bailee" is essential to a document of title, this definition and clearly rejects any such result as obtained  
26 in Hixson v. Ward, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also  
27 the definition is left open so that new types of documents may be included, including documents which gain  
28 commercial recognition in the international arena. See UNCITRAL Draft Instrument on Transport Law. It is  
29 unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of  
30 lading. ~~Truck transport has already opened up problems which do not fit the patterns of practice resting upon the~~  
31 ~~assumption that a draft can move through banking channels faster than the goods themselves can reach their~~  
32 ~~destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be~~  
33 ~~regarded commercially as "Documents of Title".~~ The definition is stated in terms of the function of the documents  
34 with the intention that any document which gains commercial recognition as accomplishing the desired result shall  
35 be included within its scope. Fungible goods are adequately identified within the language of the definition by  
36 identification of the mass of which they are a part.

37 Dock warrants were within the Sales Act definition of document of title apparently for the purpose of  
38 recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a  
39 kind of interim certificate issued by steamship shipping companies upon delivery of the goods at the dock, entitling a  
40 designated person ~~to have issued to him at the company's office~~ to be issued a bill of lading. The receipt itself is



1 invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a  
2 document is not within the general compass of the definition, although trade usage may in some cases entitle such  
3 paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by  
4 the shipping company, then it is a warehouse receipt within this Section regardless of the name given to the  
5 instrument.

6 The goods must be "described", but the description may be by marks or labels and may be qualified in such a  
7 way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel  
8 checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token  
9 are not covered by this Article. The definition is broad enough to include an airway bill.

10 A document of title may be either tangible or electronic. Tangible documents of title should be construed to  
11 mean traditional paper documents. Electronic documents of title are documents that are stored in an electronic  
12 medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include  
13 electronic, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. As to  
14 reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control for electronic  
15 documents of title is defined in Article 7 (Section 7-106).

16 \* \* \* \*

17 21. "Holder". Derived from former Section 1-201. The definition has been reorganized for clarity and amended  
18 to provide for electronic negotiable documents of title.

19 \* \* \* \*

20 42. "Warehouse receipt". ~~Unchanged~~ Derived from former Section 1-201, which was derived from Section  
21 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are  
22 included, provided the warehouseman and the depositor of the goods are different persons. The definition makes  
23 clear that the receipt must qualify as a document of title under subsection (16).

## 24

## 25

## 26 **Amendments to Uniform Commercial Code Article 2**

## 27 **ALTERNATIVE A**

28  
29 *Legislative Note: These amendments should be adopted in the event a state has not yet adopted*  
30 *Amended Article 2 as approved in 2003.*

### 31

### 32 **SECTION 2-103. DEFINITIONS AND INDEX OF DEFINITIONS.**

33 \* \* \* \*

34 (3) The following definitions in other Articles apply to this Article:

35 "Check". Section 3-104.

36 "Consignee". Section 7-102.

37 "Consignor". Section 7-102.

38 "Consumer Goods". Section 9-102.

39 "Control". Section 7-106.

40 "Dishonor". Section 3-507.

41 "Draft". Section 3-104.

#### 42 **OFFICIAL COMMENT**

43 \* \* \* \*

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

1  
2  
3 **SECTION 2-104. DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS";**  
4 **"FINANCING AGENCY".**

5 \* \* \* \*

6 (2) "Financing agency" means a bank, finance company or other person who in the ordinary  
7 course of business makes advances against goods or documents of title or who by arrangement  
8 with either the seller or the buyer intervenes in ordinary course to make or collect payment due  
9 or claimed under the contract for sale, as by purchasing or paying the seller's draft or making  
10 advances against it or by merely taking it for collection whether or not documents of title  
11 accompany or are associated with the draft. "Financing agency" includes also a bank or other  
12 person who similarly intervenes between persons who are in the position of seller and buyer in  
13 respect to the goods (Section 2-707).

14 \* \* \* \*

15 **SECTION 2-308. ABSENCE OF SPECIFIED PLACE FOR DELIVERY.**

16 **OFFICIAL COMMENT**

17 3. Where "customary banking channels" call only for due notification by the banker that the documents are  
18 available on hand, leaving the buyer himself to see to the physical receipt of the goods, tender at the buyer's address  
19 is not required under paragraph (c). But that paragraph merely eliminates the possibility of a default by the seller if  
20 "customary banking channels" have been properly used in giving notice to the buyer. Where the bank has purchased  
21 a draft accompanied by or associated with documents or has undertaken its collection on behalf of the seller, Part 5  
22 of Article 4 spells out its duties and relations to its customer. Where the documents move forward under a letter of  
23 credit the Article on Letters of Credit spells out the duties and relations between the bank, the seller and the buyer.  
24 Delivery in relationship to either tangible or electronic documents of title is defined in Article 1, Section 1-201.

25 **SECTION 2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT;**  
26 **AUTHORITY TO SHIP UNDER RESERVATION.**

27 Unless otherwise agreed

28 (a) payment is due at the time and place at which the buyer is to receive the goods even  
29 though the place of shipment is the place of delivery; and

1 (b) if the seller is authorized to send the goods he may ship them under reservation, and may  
2 tender the documents of title, but the buyer may inspect the goods after their arrival before  
3 payment is due unless such inspection is inconsistent with the terms of the contract (Section  
4 2-513); and

5 (c) if delivery is authorized and made by way of documents of title otherwise than by  
6 subsection (b) then payment is due regardless of where the goods are to be received (i) at the  
7 time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the  
8 time the buyer is to receive delivery of the electronic documents and at the seller's place of  
9 business or if none, the seller's residence regardless of where the goods are to be received; and

10 (d) where the seller is required or authorized to ship the goods on credit the credit period runs  
11 from the time of shipment but post-dating the invoice or delaying its dispatch will  
12 correspondingly delay the starting of the credit period .

13 **OFFICIAL COMMENT**

14 \* \* \* \*

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

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

29 \* \* \* \*

30 **SECTION 2-320. C.I.F. AND C. & F. TERMS.**

31 **OFFICIAL COMMENT**

32 \* \* \* \*

1 5. The seller is given the option of paying or providing for the payment of freight. He has no option to ship  
2 "freight collect" unless the agreement so provides. The rule of the common law that the buyer need not pay the  
3 freight if the goods do not arrive is preserved.

4 Unless the shipment has been sent "freight collect" the buyer is entitled to receive documentary evidence that he  
5 is not obligated to pay the freight; the seller is therefore required to obtain a receipt "showing that the freight has  
6 been paid or provided for." The usual notation ~~in the appropriate space~~ on the bill of lading that the freight has been  
7 prepaid is a sufficient receipt, as at common law. The phrase "provided for" is intended to cover the frequent  
8 situation in which the carrier extends credit to a shipper for the freight on successive shipments and receives  
9 periodical payments of the accrued freight charges from him.

10 \* \* \* \*

11 11. The buyer needs all of the documents required under a C.I.F. contract, in due form and if a tangible  
12 document of title, with necessary endorsements, so that before the goods arrive he may deal with them by  
13 negotiating the documents or may obtain prompt possession of the goods after their arrival. If the goods are lost or  
14 damaged in transit the documents are necessary to enable him promptly to assert his remedy against the carrier or  
15 insurer. The seller is therefore obligated to do what is mercantilely reasonable in the circumstances and should make  
16 every reasonable exertion to send forward the documents as soon as possible after the shipment. The requirement  
17 that the documents be forwarded with "commercial promptness" expresses a more urgent need for action than that  
18 suggested by the phrase "reasonable time".

19 \* \* \* \*

## 20 SECTION 2-323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS

### 21 SHIPMENT; "OVERSEAS".

22 (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F.  
23 or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating  
24 that the goods have been loaded in board or, in the case of a term C.I.F. or C. & F., received for  
25 shipment.

26 (2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of  
27 parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may  
28 demand tender of the full set; otherwise only one part of the bill of lading need be tendered.

29 Even if the agreement expressly requires a full set

30 (a) due tender of a single part is acceptable within the provisions of this Article on cure  
31 of improper delivery (subsection (1) of Section 2-508); and

32 (b) even though the full set is demanded, if the documents are sent from abroad the  
33 person tendering an incomplete set may nevertheless require payment upon furnishing an

1 indemnity which the buyer in good faith deems adequate.

2 \* \* \* \*

3 **OFFICIAL COMMENT**

4 \* \* \* \*

5 2. Subsection (2) deals with the problem of bills of lading covering deep water shipments, issued not as a single  
6 bill of lading but in a set of parts, each part referring to the other parts and the entire set constituting in commercial  
7 practice and at law a single bill of lading. Commercial practice in international commerce is to accept and pay  
8 against presentation of the first part of a set if the part is sent from overseas even though the contract of the buyer  
9 requires presentation of a full set of bills of lading provided adequate indemnity for the missing parts is forthcoming.  
10 In accord with the amendment to Section 7-304, bills of lading in a set are limited to tangible bills.

11 \* \* \* \*

12 **SECTION 2-401. PASSING OF TITLE; RESERVATION FOR SECURITY;**

13 **LIMITED APPLICATION OF THIS SECTION.** Each provision of this Article with regard  
14 to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties  
15 applies irrespective of title to the goods except where the provision refers to such title. Insofar  
16 as situations are not covered by the other provisions of this Article and matters concerning title  
17 become material the following rules apply:

18 (1) Title to goods cannot pass under a contract for sale prior to their identification to the  
19 contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their  
20 identification a special property as limited by this Act. Any retention or reservation by the seller  
21 of the title (property) in goods shipped or delivered to the buyer is limited in effect to a  
22 reservation of a security interest. Subject to these provisions and to the provisions of the Article  
23 on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any  
24 manner and on any conditions explicitly agreed on by the parties.

25 (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which  
26 the seller completes his performance with reference to the physical delivery of the goods, despite

1 any reservation of a security interest and even though a document of title is to be delivered at a  
2 different time or place; and in particular and despite any reservation of a security interest by the  
3 bill of lading

4 (a) if the contract requires or authorizes the seller to send the goods to the buyer but does  
5 not require him to deliver them at destination, title passes to the buyer at the time and place of  
6 shipment; but

7 (b) if the contract requires delivery at destination, title passes on tender there.

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

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

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

15 (4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not  
16 justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such  
17 reversioning occurs by operation of law and is not a "sale".

18 **OFFICIAL COMMENT**

19 \* \* \* \*

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

26



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

4 (5) Where the contract requires the seller to deliver documents

5 (a) he must tender all such documents in correct form, except as provided in this Article  
6 with respect to bills of lading in a set (subsection (2) of Section 2-323); and

7 (b) tender through customary banking channels is sufficient and dishonor of a draft  
8 accompanying or associated with the documents constitutes non-acceptance or rejection.

9 **OFFICIAL COMMENT**

10 1. The major general rules governing the manner of proper or due tender of delivery are gathered in this section.  
11 The term "tender" is used in this Article in two different senses. In one sense it refers to "due tender" which  
12 contemplates an offer coupled with a present ability to fulfill all the conditions resting on the tendering party and  
13 must be followed by actual performance if the other party shows himself ready to proceed. Unless the context  
14 unmistakably indicates otherwise this is the meaning of "tender" in this Article and the occasional addition of the  
15 word "due" is only for clarity and emphasis. At other times it is used to refer to an offer of goods or documents  
16 under a contract as if in fulfillment of its conditions even though there is a defect when measured against the contract  
17 obligation. Used in either sense, however, "tender" connotes such performance by the tendering party as puts the  
18 other party in default if he fails to proceed in some manner. These concepts of tender would apply to tender of either  
19 tangible or electronic documents of title.

20 \* \* \* \*

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

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

33  
34 **SECTION 2-505. SELLER'S SHIPMENT UNDER RESERVATION.**

35 (1) Where the seller has identified goods to the contract by or before shipment:



1 (a) his procurement of a negotiable bill of lading to his own order or otherwise reserves  
2 in him a security interest in the goods. His procurement of the bill to the order of a financing  
3 agency or of the buyer indicates in addition only the seller's expectation of transferring that  
4 interest to the person named.

5 (b) a non-negotiable bill of lading to himself or his nominee reserves possession of the  
6 goods as security but except in a case of conditional delivery (subsection (2) of Section 2-507) a  
7 non-negotiable bill of lading naming the buyer as consignee reserves no security interest even  
8 though the seller retains possession or control of the bill of lading.

9 (2) When shipment by the seller with reservation of a security interest is in violation of the  
10 contract for sale it constitutes an improper contract for transportation within the preceding  
11 section but impairs neither the rights given to the buyer by shipment and identification of the  
12 goods to the contract nor the seller's powers as a holder of a negotiable document of title.

13 **OFFICIAL COMMENT**

14 \* \* \* \*

15 5. Under subsection (2) an improper reservation by the seller which would constitute a breach in no way impairs  
16 such of the buyer's rights as result from identification of the goods. The security title reserved by the seller under  
17 subsection (1) does not protect his ~~holding~~ retaining possession or control of the document or the goods for the  
18 purpose of exacting more than is due him under the contract.  
19

20  
21 **SECTION 2-506. RIGHTS OF FINANCING AGENCY.**

22 \* \* \* \*

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

1 OFFICIAL COMMENT

2 \* \* \* \*

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

5  
6 SECTION 2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.

7 \* \* \* \*

8 (2) Where the goods are held by a bailee to be delivered without being moved, the risk of  
9 loss passes to the buyer

10 (a) on his receipt of possession or control of a negotiable document of title covering the  
11 goods; or

12 (b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

13 (c) after his receipt of possession or control of a non-negotiable document of title or other  
14 ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

15 \* \* \* \*

16 OFFICIAL COMMENT

17 \* \* \* \*

18 4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal  
19 from the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer  
20 of risk. Due delivery of a negotiable document of title covering the goods or acknowledgment by the bailee that he  
21 holds for the buyer completes the "delivery" and passes the risk. See definition of delivery in Article 1, Section 1-  
22 201 and the definition of control in Article 7, Section 7-106.

23 \* \* \* \*

24 SECTION 2-513. BUYER'S RIGHT TO INSPECTION OF THE GOODS.

25 OFFICIAL COMMENT

26 \* \* \* \*

27 5. In the case of payment against documents, subsection (3) requires payment before inspection, since shipping  
28 documents against which payment is to be made will commonly ~~arrive and~~ be tendered while the goods are still in  
29 transit. This Article recognizes no exception in any peculiar case in which the goods happen to arrive before the  
30 documents are tendered. However, where by the agreement payment is to await the arrival of the goods, inspection

1 before payment becomes proper since the goods are then "available for inspection."

2 Where by the agreement the documents are ~~to be held~~ to be tendered after ~~until~~ arrival of the goods, the buyer is  
3 entitled to inspect before payment since the goods are then "available for inspection". Proof of usage is not  
4 necessary to establish this right, but if inspection before payment is disputed the contrary must be established by  
5 usage or by an explicit contract term to that effect.

6 For the same reason, that the goods are available for inspection, a term calling for payment against storage  
7 documents or a delivery order does not normally bar the buyer's right to inspection before payment under subsection  
8 (3)(b). This result is reinforced by the buyer's right under subsection (1) to inspect goods which have been  
9 appropriated with notice to him.

10 \* \* \* \*

11  
12 **SECTION 2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO**  
13 **PARTICULARIZE.**

14 \* \* \* \*

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

17 **OFFICIAL COMMENT**

18 \* \* \* \*

19 4. Subsection (2) applies to the particular case of documents the same principle which the section on effects of  
20 acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" of objections  
21 rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods  
22 and partly because defects in documents which are not taken as grounds for rejection are generally minor ones. The  
23 only defects concerned in the present subsection are defects in the documents which are apparent. ~~on their face.~~ This  
24 rule applies to both tangible and electronic documents of title. Where payment is required against the documents  
25 they must be inspected before payment, and the payment then constitutes acceptance of the documents. Under the  
26 section dealing with this problem, such acceptance of the documents does not constitute an acceptance of the goods  
27 or impair any options or remedies of the buyer for their improper delivery. Where the documents are delivered  
28 without requiring such contemporary action as payment from the buyer, the reason of the next section on what  
29 constitutes acceptance of goods, applies. Their acceptance by non-objection is therefore postponed until after a  
30 reasonable time for their inspection. In either situation, however, the buyer "waives" only ~~what is~~ the defects  
31 apparent ~~on the face of~~ in the documents.

32  
33 **SECTION 2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR**  
34 **OTHERWISE.**

35 \* \* \* \*

36 (2) As against such buyer the seller may stop delivery until  
37 (a) receipt of the goods by the buyer; or

1 (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the  
2 bailee holds the goods for the buyer; or

3 (c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouseman;  
4 or

5 (d) negotiation to the buyer of any negotiable document of title covering the goods.

6 (3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable  
7 diligence to prevent delivery of the goods.

8 (b) After such notification the bailee must hold and deliver the goods according to the  
9 directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

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

12 (d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a  
13 notification to stop received from a person other than the consignor.

14 **OFFICIAL COMMENT**

15 \* \* \* \*

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

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

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

23 \* \* \* \*

24 **ALTERNATIVE B**

25 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is enacting*  
26 *at the same time as this Act the provisions of Amended Article 2 as approved in 2003 . [Note to*  
27 *readers--Proposed amendments to comments are not yet completed as the comments to Amended*

1 *Article 2 are not yet complete. The proposed amendments to the Article 2 comments will*  
2 *parallel the proposed amendments to comments given in Alternative A.]*

3  
4 **SECTION 2-103. DEFINITIONS AND INDEX OF DEFINITIONS.**

5 \* \* \* \*

6 (3) The following definitions in other Articles apply to this Article:

7 "Check". Section 3-104(f).

8 "Consumer goods". Section 9-102(a)(23).

9 "Control". Section 7-106.

10 "Dishonor". Section 3-502.

11 "Draft". Section 3-104(e).

12 "Injunction against honor". Section 5-109(b).

13 "Letter of credit". Section 5-102(a)(10).

14 \* \* \* \*

15 **SECTION 2-104. DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS";**  
16 **"FINANCING AGENCY".**

17 \* \* \* \*

18 (2) "Financing agency" means a bank, finance company or other person that in the  
19 ordinary course of business makes advances against goods or documents of title or that by  
20 arrangement with either the seller or the buyer intervenes in ordinary course to make or collect  
21 payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft  
22 or making advances against it or by merely taking it for collection whether or not documents of

1 title accompany or are associated with the draft. "Financing agency" includes also a bank or  
2 other person that similarly intervenes between persons that are in the position of seller and buyer  
3 in respect to the goods (Section 2-707).

4 \* \* \* \*

5 **SECTION 2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT**

6 **AUTHORITY TO SHIP UNDER RESERVATION.**

7 Unless otherwise agreed

8 (a) payment is due at the time and place at which the buyer is to receive the goods even  
9 though the place of shipment is the place of delivery; and

10 (b) if the seller is required or authorized to send the goods the seller may ship them under  
11 reservation, and may tender the documents of title, but the buyer may inspect the goods after  
12 their arrival before payment is due unless such inspection is inconsistent with the terms of the  
13 contract (Section 2-513); and

14 (c) if tender of delivery is agreed to be made by way of documents of title otherwise than  
15 by subsection (b) then payment is due regardless of where the goods are to be received (i) at the  
16 time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the  
17 time the buyer is to receive delivery of the electronic documents and at the seller's place of  
18 business or if none, the seller's residence ~~regardless of where the goods are to be received;~~ and

19 (d) where the seller is required or authorized to ship the goods on credit the credit period  
20 runs from the time of shipment but post-dating the invoice or delaying its dispatch will  
21 correspondingly delay the starting of the credit period.

22



1 bill to the order of a financing agency or of the buyer indicates in addition only the seller's  
2 expectation of transferring that interest to the person named.

3 (b) a non-negotiable bill of lading to the seller or the seller's nominee reserves possession  
4 of the goods as security but except in a case when a seller has a right to reclaim the goods under  
5 subsection (2) of Section 2-507 a non-negotiable bill of lading naming the buyer as consignee  
6 reserves no security interest even though the seller retains possession or control of the bill of  
7 lading.

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

12  
13 **SECTION 2-506. RIGHTS OF FINANCING AGENCY.**

14 \* \* \* \*

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

19  
20 **SECTION 2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.**

21 \* \* \* \*

22 (2) Where the goods are held by a bailee to be delivered without being moved, the risk of



1 loss passes to the buyer

2 (a) on the buyer's receipt of possession or control of a negotiable document of title

3 covering the goods; or

4 (b) on acknowledgment by the bailee to the buyer of the buyer's right to possession of the

5 goods; or

6 (c) after the buyer's receipt of possession or control of a non-negotiable document of title

7 or other direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

8 \* \* \* \*

9 **SECTION 2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO**

10 **PARTICULARIZE.**

11 \* \* \* \*

12 (2) A buyer's payment against documents tendered to the buyer made without reservation of  
13 rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

14

15 **SECTION 2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR**

16 **OTHERWISE.**

17 \* \* \* \*

18 (2) As against such buyer the seller may stop delivery until

19 (a) receipt of the goods by the buyer; or

20 (b) acknowledgment to the buyer by any bailee of the goods, except a carrier, that the

21 bailee holds the goods for the buyer; or

22 (c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouseman;

1 or

2 (d) negotiation to the buyer of any negotiable document of title covering the goods.

3 (3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable  
4 diligence to prevent delivery of the goods.

5 (b) After such notification the bailee must hold and deliver the goods according to the  
6 directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

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

9 (d) A carrier that has issued a non-negotiable bill of lading is not obliged to obey a  
10 notification to stop received from a person other than the consignor.

11

## 12 **Amendments to Uniform Commercial Code Article 2A**

### 13 **ALTERNATIVE A**

14 *Legislative Note: These amendments should be used if the jurisdiction has not yet adopted*

15 *Amended Article 2A as approved in 2003.*

### 16 **SECTION 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.**

17 (1) In this Article unless the context otherwise requires:

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

1 acquiring goods or documents of title under a pre-existing contract for sale but does not include  
2 a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

3 \* \* \* \*

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

12 \* \* \* \*

13 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

14 \* \* \* \*

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

18  
19  
20  
21 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR**  
22 **OTHERWISE.**

1 \* \* \* \*

2 (2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

3 (a) receipt of the goods by the lessee;

4 (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the  
5 bailee holds the goods for the lessee; or

6 (c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouseman.

7 \* \* \* \*

8 **ALTERNATIVE B**

9 *Legislative Note: These amendments should be used if the jurisdiction has enacted or is*  
10 *enacting at the same time as this Act the provisions of Amended Article 2A as approved in 2003.*

11  
12 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

13 \* \* \* \*

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

17  
18 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR**  
19 **OTHERWISE.**

20 \* \* \* \*

21 (2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

22 (a) receipt of the goods by the lessee;

1 (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the  
2 bailee holds the goods for the lessee; or

3 (c) such an acknowledgment to the lessee by a carrier via reshipment or as a  
4 warehouseman.

5 \* \* \* \*

6 **Amendments to Uniform Commercial Code Article 4**

7 **SECTION 4-104. DEFINITIONS AND INDEX OF DEFINITIONS.**

8 \* \* \* \*

9 (c) The following definitions in other Articles apply to this Article:

10	"Acceptance"	Section 3-409
11	"Alteration"	Section 3-407
12	"Cashier's check"	Section 3-104
13	"Certificate of deposit"	Section 3-104
14	"Certified check"	Section 3-409
15	"Check"	Section 3-104
16	<u>"Control"</u>	<u>Section 7-106</u>
17	"Good faith"	Section 3-103
18	"Holder in due course"	Section 3-302
19	"Instrument"	Section 3-104
20	"Notice of dishonor"	Section 3-503
21	"Order"	Section 3-103
22	"Ordinary care"	Section 3-103

1	"Person entitled to enforce"	Section 3-301
2	"Presentment"	Section 3-501
3	"Promise"	Section 3-103
4	"Prove"	Section 3-103
5	"Teller's check"	Section 3-104
6	"Unauthorized signature"	Section 3-403

7 **OFFICIAL COMMENT**

8 \* \* \* \*

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

13 \* \* \* \*

14 **SECTION 4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,**  
15 **ACCOMPANYING DOCUMENTS AND PROCEEDS.**

16 (a) A collecting bank has a security interest in an item and any accompanying documents or  
17 the proceeds of either:

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

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

23 (3) if it makes an advance on or against the item.

24 (b) If credit given for several items received at one time or pursuant to a single agreement  
25 is withdrawn or applied in part, the security interest remains upon all the items, any  
26 accompanying documents or the proceeds of either. For the purpose of this section, credits first

1 given are first withdrawn.

2 (c) Receipt by a collecting bank of a final settlement for an item is a realization on its  
3 security interest in the item, accompanying documents, and proceeds. So long as the bank does  
4 not receive final settlement for the item or give up possession of the item or possession or  
5 control of the accompanying documents for purposes other than collection, the security interest  
6 continues to that extent and is subject to Article 9, but:

7 (1) no security agreement is necessary to make the security interest enforceable (Section  
8 9-203(b)(3)(A));

9 (2) no filing is required to perfect the security interest; and

10 (3) the security interest has priority over conflicting perfected security interests in the  
11 item, accompanying documents, or proceeds.

12  
13 **SECTION 4-501. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR**  
14 **PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.**

15 \* \* \* \*

16 **OFFICIAL COMMENT**

17 This section states the duty of a bank handling a documentary draft for a customer. "Documentary draft" is  
18 defined in Section 4-104. The duty stated exists even if the bank has bought the draft. This is because to the  
19 customer the draft normally represents an underlying commercial transaction, and if that is not going through as  
20 planned the customer should know it promptly. An electronic document of title may be presented through allowing  
21 access to the document or delivery of the document. Article 1, Section 1-201 (definition of "delivery").

22 **SECTION 4-503. RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS**  
23 **AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF**  
24 **NEED.**

25 \* \* \* \*

1 **OFFICIAL COMMENT**

2 1. This section states the rules governing, in the absence of instructions, the duty of the presenting bank in case  
3 either of honor or of dishonor of a documentary draft. The section should be read in connection with Section 2-514  
4 on when documents are deliverable on acceptance, when on payment. In the case of a dishonor of the draft, the  
5 bank, subject to Section 4-504, must return possession or control of the documents to its principal.  
6 2. If the draft is drawn under a letter of credit, Article 5 controls. See Sections 5-109 through 5-114.

7  
8 **Amendments to Uniform Commercial Code Article 5**

9 **SECTION 5-102. DEFINITIONS.**

10 \* \* \* \*

11 **OFFICIAL COMMENT**

12 \* \* \* \*

13 2. The definition of "document" contemplates and facilitates the growing recognition of electronic and other  
14 nonpaper media as "documents," however, for the time being, data in those media constitute documents only in  
15 certain circumstances. For example, a facsimile received by an issuer would be a document only if the letter of  
16 credit explicitly permitted it, if the standard practice authorized it and the letter did not prohibit it, or the agreement  
17 of the issuer and beneficiary permitted it. The fact that data transmitted in a nonpaper (unwritten) medium can be  
18 recorded on paper by a recipient's computer printer, facsimile machine, or the like does not under current practice  
19 render the data so transmitted a "document." A facsimile or S.W.I.F.T. message received directly by the issuer is in  
20 an electronic medium when it crosses the boundary of the issuer's place of business. One wishing to make a  
21 presentation by facsimile (an electronic medium) will have to procure the explicit agreement of the issuer (assuming  
22 that the standard practice does not authorize it). Article 5 contemplates that electronic documents may be presented  
23 under a letter of credit and the provisions of this Article should be read to apply to electronic documents as well as  
24 tangible documents. An electronic document of title is delivered through the voluntary transfer of control. Article 1,  
25 Section 1-201 (definition of "delivery"). See Article 7, Section 7-106 on control of an electronic document. Where  
26 electronic transmissions are authorized neither by the letter of credit nor by the practice, the beneficiary may transmit  
27 the data electronically to its agent who may be able to put it in written form and make a conforming presentation.  
28 Cf. Article 7, Section 7-105 on reissuing an electronic document in a tangible medium.  
29

\* \* \* \*

30 **SECTION 5-108. ISSUER'S RIGHTS AND OBLIGATIONS.**

31 \* \* \* \*

32 **OFFICIAL COMMENT**

33 \* \* \* \*

34 2. Section 5-108(a) balances the need of the issuer for time to examine the documents against the possibility  
35 that the examiner (at the urging of the applicant or for fear that it will not be reimbursed) will take excessive time to  
36 search for defects. What is a "reasonable time" is not extended to accommodate an issuer's procuring a waiver from  
37 the applicant. See Article 14c of the UCP.

38 Under both the UCC and the UCP the issuer has a reasonable time to honor or give notice. The outside limit of  
39 that time is measured in business days under the UCC and in banking days under the UCP, a difference that will



1 rarely be significant. Neither business nor banking days are defined in Article 5, but a court may find useful  
2 analogies in Regulation CC, 12 CFR 229.2, in state law outside of the Uniform Commercial Code, and in Article 4.

3 Examiners must note that the seven-day period is not a safe harbor. The time within which the issuer must give  
4 notice is the lesser of a reasonable time or seven business days. Where there are few documents (as, for example,  
5 with the mine run standby letter of credit), the reasonable time would be less than seven days. If more than a  
6 reasonable time is consumed in examination, no timely notice is possible. What is a "reasonable time" is to be  
7 determined by examining the behavior of those in the business of examining documents, mostly banks. Absent prior  
8 agreement of the issuer, one could not expect a bank issuer to examine documents while the beneficiary waited in  
9 the lobby if the normal practice was to give the documents to a person who had the opportunity to examine those  
10 together with many others in an orderly process. That the applicant has not yet paid the issuer or that the applicant's  
11 account with the issuer is insufficient to cover the amount of the draft is not a basis for extension of the time period.

12 This section does not preclude the issuer from contacting the applicant during its examination; however, the  
13 decision to honor rests with the issuer, and it has no duty to seek a waiver from the applicant or to notify the  
14 applicant of receipt of the documents. If the issuer dishonors a conforming presentation, the beneficiary will be  
15 entitled to the remedies under Section 5-111, irrespective of the applicant's views.

16 Even though the person to whom presentation is made cannot conduct a reasonable examination of documents  
17 within the time after presentation and before the expiration date, presentation establishes the parties' rights. The  
18 beneficiary's right to honor or the issuer's right to dishonor arises upon presentation at the place provided in the letter  
19 of credit even though it might take the person to whom presentation has been made several days to determine  
20 whether honor or dishonor is the proper course. The issuer's time for honor or giving notice of dishonor may be  
21 extended or shortened by a term in the letter of credit. The time for the issuer's performance may be otherwise  
22 modified or waived in accordance with Section 5-106.

23 The issuer's time to inspect runs from the time of its "receipt of documents." Documents are considered to be  
24 received only when they are received at the place specified for presentation by the issuer or other party to whom  
25 presentation is made. "Receipt of documents" when documents of title are presented must be read in light of the  
26 definition of "delivery" in Article 1, Section 1-201 and the definition of "presentment" in Section 5-102(a)(12).

27 Failure of the issuer to act within the time permitted by subsection (b) constitutes dishonor. Because of the  
28 preclusion in subsection (c) and the liability that the issuer may incur under Section 5-111 for wrongful dishonor, the  
29 effect of such a silent dishonor may ultimately be the same as though the issuer had honored, i.e., it may owe  
30 damages in the amount drawn but unpaid under the letter of credit.

31 \* \* \* \*

32 13. The last clause of Section 5-108(i)(5) deals with a special case in which the fraud is not committed by the  
33 beneficiary, but is committed by a stranger to the transaction who forges the beneficiary's signature. If the issuer  
34 pays against documents on which a required signature of the beneficiary is forged, it remains liable to the true  
35 beneficiary. This principal is applicable to both electronic and tangible documents.

36 \* \* \* \*

## 37 SECTION 5-113. TRANSFER BY OPERATION OF LAW.

38 \* \* \* \*

### 39 OFFICIAL COMMENT

40 This section affirms the result in *Pastor v. Nat. Republic Bank of Chicago*, 76 Ill.2d 139, 390 N.E.2d 894 (Ill.  
41 1979) and *Federal Deposit Insurance Co. v. Bank of Boulder*, 911 F.2d 1466 (10th Cir. 1990). Both electronic and  
42 tangible documents may be signed.

43 An issuer's requirements for recognition of a successor's status might include presentation of a certificate of  
44 merger, a court order appointing a bankruptcy trustee or receiver, a certificate of appointment as bankruptcy trustee,  
45 or the like. The issuer is entitled to rely upon such documents which on their face demonstrate that presentation is  
46 made by a successor of a beneficiary. It is not obliged to make an independent investigation to determine the fact of  
47 succession.