



2007 ASSEMBLY BILL 481

August 7, 2007 - Introduced by Representatives CULLEN and GUNDRUM, cosponsored by Senators RISSER and GROTHMAN. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to amend* 99.01 (2), 137.24 (1), 401.201 (5), 401.201 (6), 401.201 (14),
2 401.201 (25), 401.201 (26) (a), 401.201 (45), 402.104 (2), 402.310 (3), 402.323 (2)
3 (intro.), 402.401 (3) (a), 402.401 (3) (b), 402.503 (4) (b), 402.503 (5) (b), 402.505
4 (1) (b), 402.505 (2), 402.506 (2), 402.509 (2) (a), 402.509 (2) (c), 402.605 (2),
5 402.705 (2) (c), 402.705 (3) (c), 404.210 (3) (intro.), 409.203 (2) (c) 4., 409.207 (3)
6 (intro.), 409.208 (2) (d), 409.208 (2) (e), 409.301 (3) (intro.), 409.310 (2) (e),
7 409.310 (2) (h), 409.312 (5), 409.313 (1), 409.314 (1), 409.314 (2), 409.317 (2),
8 409.317 (4), 409.338 (2), 409.601 (2), 411.103 (1) (a), 411.103 (1) (o), 411.514 (2)
9 and 411.526 (2) (c); **to repeal and recreate** 401.201 (10), 401.201 (15), 401.201
10 (20), 401.201 (38) and chapter 407; and **to create** 137.12 (6), 402.103 (3) (dm),
11 404.104 (3) (fc), 408.103 (7), 409.102 (2) (df) and 409.208 (2) (f) of the statutes;

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- 1 **relating to:** adopting revised Article 7 of the Uniform Commercial Code,
2 concerning documents of title.
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Analysis by the Legislative Reference Bureau

Article 7 of the Uniform Commercial Code (UCC) regulates the transfer of goods in interstate commerce, specifically dealing with the transfer of title to goods that are moved or shipped from one location to another. Wisconsin had earlier enacted article 7 of the UCC, but in 2003 the National Conference of Commissioners on Uniform State Laws adopted a revised version of article 7 of the UCC and recommended its enactment in all of the states. This bill enacts the revised version of article 7 of the UCC into Wisconsin law.

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

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

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

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

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

2 99.01 (2) "Property" means goods as defined in s. 407.102 (1) ~~(f)~~ (g). "Property"
3 includes food; agricultural and commercial products, commodities or equipment;
4 household furnishings; automobiles, boats, snowmobiles or other vehicles and
5 conveyances; and all other items of a personal, family, household, agricultural,
6 business or commercial nature which may be the subject of a contract of storage.

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

8 137.12 (6) To the extent there is a conflict between this subchapter and ch. 407,
9 ch. 407 governs.

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

11 137.24 (1) In this section, "transferable record" means an electronic record that
12 would be a note under ch. 403 or a record under ch. 407 ~~if the electronic record were~~
13 ~~in writing.~~

14 **SECTION 4.** 401.201 (5) of the statutes is amended to read:

15 401.201 (5) "Bearer" means ~~the~~ a person in control of a negotiable electronic
16 document of title or person in possession of an instrument, negotiable tangible
17 document of title, or certificated security payable to bearer or endorsed in blank.

18 **SECTION 5.** 401.201 (6) of the statutes is amended to read:

19 401.201 (6) "Bill of lading" means a document of title evidencing the receipt of
20 goods for shipment issued by a person engaged in the business of directly or

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1 ~~indirectly~~ transporting or forwarding goods, ~~and includes an airbill.~~ “Airbill” means
2 a document serving for air transportation as a bill of lading does for marine or rail
3 transportation, ~~and includes an air consignment note or air waybill.~~ The term does
4 not include a warehouse receipt.

5 **SECTION 6.** 401.201 (10) of the statutes is repealed and recreated to read:

6 401.201 (10) “Conspicuous,” with reference to a term, means so written,
7 displayed, or presented that a reasonable person against which it is to operate ought
8 to have noticed it. Whether a term is “conspicuous” or not is a decision for the court.
9 Conspicuous terms include the following:

10 (a) A heading in capitals equal to or greater in size than the surrounding text,
11 or in contrasting type, font, or color to the surrounding text of the same or lesser size.

12 (b) Language in the body of a record or display in larger type than the
13 surrounding text, or in contrasting type, font, or color to the surrounding text of the
14 same size, or set off from surrounding text of the same size by symbols or other marks
15 that call attention to the language.

16 **SECTION 7.** 401.201 (14) of the statutes is amended to read:

17 401.201 (14) “Delivery” with respect to electronic documents of title means
18 voluntary transfer of control and with respect to instruments, tangible documents
19 of title, chattel paper, or certificated securities means voluntary transfer of
20 possession.

21 **SECTION 8.** 401.201 (15) of the statutes is repealed and recreated to read:

22 401.201 (15) “Document of title” means a record that in the regular course of
23 business or financing is treated as adequately evidencing that the person in
24 possession or control of the record is entitled to receive, control, hold, and dispose of
25 the record and the goods the record covers; and that purports to be issued by or

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1 addressed to a bailee and to cover goods in the bailee's possession which are either
2 identified or are fungible portions of an identified mass. The term includes a bill of
3 lading, transport document, dock warrant, dock receipt, warehouse receipt, and
4 order for delivery of goods. An electronic document of title is evidenced by a record
5 consisting of information stored in an electronic medium. A tangible document of
6 title is evidenced by a record consisting of information that is inscribed on a tangible
7 medium.

8 **SECTION 9.** 401.201 (20) of the statutes is repealed and recreated to read:

9 401.201 (20) "Holder" means any of the following:

10 (a) The person in possession of a negotiable instrument that is payable either
11 to bearer or to an identified person that is the person in possession.

12 (b) The person in possession of a negotiable tangible document of title if the
13 goods are deliverable either to bearer or to the order of the person in possession.

14 (c) A person in control of a negotiable electronic document of title.

15 **SECTION 10.** 401.201 (25) of the statutes is amended to read:

16 401.201 (25) ~~A Subject to sub. (26) (b), a person has "notice" of a fact when any~~
17 of the following are satisfied:

18 (a) The person has actual knowledge of it; ~~or,~~

19 (b) The person has received a notice or notification of it; ~~or,~~

20 (c) From all the facts and circumstances known to the person at the time in
21 question, the person has reason to know that it exists.

22 **SECTION 11.** 401.201 (26) (a) of the statutes is amended to read:

23 401.201 (26) (a) A person "notifies" or "gives" a notice or notification to another
24 person by taking such steps as may be reasonably required to inform the other person
25 in ordinary course, whether or not such the other person actually comes to know of

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1 it. ~~A~~ Subject to par. (b), a person “receives” a notice or notification when any of the
2 following are satisfied:

3 1. It comes to ~~the~~ that person’s attention; ~~or,~~

4 2. It is duly delivered in a form reasonable under the circumstances at the place
5 of business through which the contract was made or at ~~any other place~~ another
6 location held out by ~~the~~ that person as the place for receipt of such communications.

7 **SECTION 12.** 401.201 (38) of the statutes is repealed and recreated to read:

8 401.201 (38) “Send,” in connection with a writing, record, or notice, means any
9 of the following:

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

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

17 **SECTION 13.** 401.201 (45) of the statutes is amended to read:

18 401.201 (45) “Warehouse receipt” means a receipt document of title issued by
19 a person engaged in the business of storing goods for hire.

20 **SECTION 14.** 402.103 (3) (dm) of the statutes is created to read:

21 402.103 (3) (dm) “Control” — s. 407.106.

22 **SECTION 15.** 402.104 (2) of the statutes is amended to read:

23 402.104 (2) “Financing agency” means a bank, finance company or other person
24 who in the ordinary course of business makes advances against goods or documents
25 of title or who by arrangement with either the seller or the buyer intervenes in

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

7 **SECTION 16.** 402.310 (3) of the statutes is amended to read:

8 402.310 (3) If delivery is authorized and made by way of documents of title
9 otherwise than by sub. (2) then payment is due regardless of where the goods are to
10 be received at the time and place at which the buyer is to receive the documents
11 regardless of where the goods are to be received; or at the time the buyer is to receive
12 delivery of the electronic documents and at the seller's place of business or, if none,
13 the seller's residence; and

14 **SECTION 17.** 402.323 (2) (intro.) of the statutes is amended to read:

15 402.323 (2) (intro.) Where in a case within sub. (1) a tangible bill of lading has
16 been issued in a set of parts, unless otherwise agreed if the documents are not to be
17 sent from abroad the buyer may demand tender of the full set; otherwise only one
18 part of the bill of lading need be tendered. Even if the agreement expressly requires
19 a full set:

20 **SECTION 18.** 402.401 (3) (a) of the statutes is amended to read:

21 402.401 (3) (a) If the seller is to deliver a tangible document of title, title passes
22 at the time when and the place where the seller delivers such documents and, if the
23 seller is to deliver an electronic document of title, title passes when the seller delivers
24 the document; or

25 **SECTION 19.** 402.401 (3) (b) of the statutes is amended to read:

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1 402.401 (3) (b) If the goods are at the time of contracting already identified and
2 no documents of title are to be delivered, title passes at the time and place of
3 contracting.

4 **SECTION 20.** 402.503 (4) (b) of the statutes is amended to read:

5 402.503 (4) (b) Tender to the buyer of a nonnegotiable document of title or of
6 a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless
7 the buyer seasonably objects, and except as otherwise provided in ch. 409 receipt by
8 the bailee of notification of the buyer's rights fixes those rights as against the bailee
9 and all 3rd persons; but risk of loss of the goods and of any failure by the bailee to
10 honor the nonnegotiable document of title or to obey the direction remains on the
11 seller until the buyer has had a reasonable time to present the document or direction,
12 and a refusal by the bailee to honor the document or to obey the direction defeats the
13 tender.

14 **SECTION 21.** 402.503 (5) (b) of the statutes is amended to read:

15 402.503 (5) (b) Tender through customary banking channels is sufficient and
16 dishonor of a draft accompanying or associated with the documents constitutes
17 nonacceptance or rejection.

18 **SECTION 22.** 402.505 (1) (b) of the statutes is amended to read:

19 402.505 (1) (b) A nonnegotiable bill of lading to the seller or the seller's nominee
20 reserves possession of the goods as security but except in a case of conditional
21 delivery (s. 402.507 (2)) a nonnegotiable bill of lading naming the buyer as consignee
22 reserves no security interest even though the seller retains possession or control of
23 the bill of lading.

24 **SECTION 23.** 402.505 (2) of the statutes is amended to read:

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1 402.505 (2) When shipment by the seller with reservation of a security interest
2 is in violation of the contract for sale it constitutes an improper contract for
3 transportation within s. 402.504 but impairs neither the rights given to the buyer by
4 shipment and identification of the goods to the contract nor the seller's powers as a
5 holder of a negotiable document of title.

6 **SECTION 24.** 402.506 (2) of the statutes is amended to read:

7 402.506 (2) The right to reimbursement of a financing agency which has in good
8 faith honored or purchased the draft under commitment to or authority from the
9 buyer is not impaired by subsequent discovery of defects with reference to any
10 relevant document which was apparently regular ~~on its face~~.

11 **SECTION 25.** 402.509 (2) (a) of the statutes is amended to read:

12 402.509 (2) (a) On the buyer's receipt of possession or control of a negotiable
13 document of title covering the goods; or

14 **SECTION 26.** 402.509 (2) (c) of the statutes is amended to read:

15 402.509 (2) (c) After the buyer's receipt of possession or control of a
16 nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as
17 provided in s. 402.503 (4) (b).

18 **SECTION 27.** 402.605 (2) of the statutes is amended to read:

19 402.605 (2) Payment against documents made without reservation of rights
20 precludes recovery of the payment for defects apparent ~~on the face of~~ in the
21 documents.

22 **SECTION 28.** 402.705 (2) (c) of the statutes is amended to read:

23 402.705 (2) (c) Such acknowledgment to the buyer by a carrier by reshipment
24 or as a warehouse keeper; or

25 **SECTION 29.** 402.705 (3) (c) of the statutes is amended to read:

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

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

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

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

10 (g) "Goods" means all things that are treated as movable for the purposes of a
11 contract for storage or transportation.

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

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

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

24 (k) "Shipper" means a person that enters into a contract of transportation with
25 a carrier.

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1 (L) “Sign” means, with present intent to authenticate or adopt a record, any of
2 the following:

3 1. To execute or adopt a tangible symbol.

4 2. To attach to or logically associate with the record an electronic sound, symbol,
5 or process.

6 (m) “Warehouse” means a person engaged in the business of storing goods for
7 hire.

8 **(2)** Definitions in other chapters applying to this chapter and the sections in
9 which they appear are:

10 (a) “Contract for sale,” s. 402.106.

11 (b) “Lessee in ordinary course of business,” s. 411.103.

12 (c) “Receipt” of goods, s. 402.103.

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

15 **407.103 Relation of chapter to treaty or statute.** **(1)** This chapter is
16 subject to any treaty or statute of the United States or a regulatory statute of this
17 state to the extent the treaty, statute, or regulatory statute is applicable.

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

23 **(3)** This chapter modifies, limits, and supersedes the federal Electronic
24 Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not
25 modify, limit, or supersede section 101 (c) of that act, 15 USC 7001(c), or authorize

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1 electronic delivery of any of the notices described in section 103 (b) of that act, 15 USC
2 7003 (b).

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

5 **407.104 Negotiable and nonnegotiable document of title. (1)** A
6 document of title is negotiable if by its terms the goods are to be delivered to bearer
7 or to the order of a named person.

8 (2) A document of title other than one described in sub. (1) is nonnegotiable.
9 A bill of lading that states that the goods are consigned to a named person is not made
10 negotiable by a provision that the goods are to be delivered only against an order in
11 a record signed by the same or another named person.

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

14 **407.105 Reissuance in alternative medium. (1)** Upon request of a person
15 entitled under an electronic document of title, the issuer of the electronic document
16 may issue a tangible document of title as a substitute for the electronic document if
17 all of the following apply:

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

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

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

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

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1 (b) The person that procured issuance of the tangible document warrants to all
2 subsequent persons entitled under the tangible document that the warrantor was a
3 person entitled under the electronic document when the warrantor surrendered
4 control of the electronic document to the issuer.

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

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

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

12 (4) Upon issuance of the electronic document of title in substitution for a
13 tangible document of title in accordance with sub. (3), all of the following apply:

14 (a) The tangible document ceases to have any effect or validity.

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

19 **407.106 Control of electronic document of title. (1)** A person has control
20 of an electronic document of title if a system employed for evidencing the transfer of
21 interests in the electronic document reliably establishes that person as the person
22 to which the electronic document was issued or transferred.

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

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1 (a) A single authoritative copy of the document exists which is unique,
2 identifiable, and, except as otherwise provided in pars. (d), (e), and (f), unalterable.

3 (b) The authoritative copy identifies the person asserting control as one of the
4 following:

5 1. The person to which the document was issued.

6 2. If the authoritative copy indicates that the document has been transferred,
7 the person to which the document was most recently transferred.

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

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

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

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

16 SUBCHAPTER II

17 WAREHOUSE RECEIPTS: SPECIAL

18 PROVISIONS

19 **407.201 Person that may issue a warehouse receipt; storage under**
20 **bond. (1)** A warehouse receipt may be issued by any warehouse.

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

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1 **407.202 Form of warehouse receipt. (1)** A warehouse receipt need not be
2 in any particular form.

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

5 (a) The location of the warehouse facility where the goods are stored.

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

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

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

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

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

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

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

17 (i) A statement of the amount of advances made and of liabilities incurred for
18 which the warehouse claims a lien or security interest, but if the precise amount of
19 advances made or of liabilities incurred is, at the time of the issue of the receipt,
20 unknown to the warehouse or to its agent that issued the receipt, a statement of the
21 fact that advances have been made or liabilities incurred and the purpose of the
22 advances or liabilities is sufficient.

23 **(3)** A warehouse may insert in its receipt any terms that are not contrary to chs.
24 401 to 411 and do not impair its obligation of delivery under s. 407.403 or its duty of
25 care under s. 407.204. Any contrary provisions are ineffective.

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1 **407.203 Liability for nonreceipt or misdescription.** A party to or
2 purchaser for value in good faith of a document of title, other than a bill of lading,
3 that relies upon the description of the goods in the document may recover from the
4 issuer damages caused by the nonreceipt or misdescription of the goods, except to the
5 extent that any of the following apply:

6 (1) The document conspicuously indicates that the issuer does not know
7 whether all or part of the goods in fact were received or conform to the description,
8 such as a case in which the description is in terms of marks or labels or kind, quantity,
9 or condition, or the receipt or description is qualified by “contents, condition, and
10 quality unknown,” “said to contain,” or words of similar import, if the indication is
11 true.

12 (2) The party or purchaser otherwise has notice of the nonreceipt or
13 misdescription.

14 **407.204 Duty of care; contractual limitation of warehouse’s liability.**

15 (1) A warehouse is liable for damages for loss of or injury to the goods caused by its
16 failure to exercise care with regard to the goods that a reasonably careful person
17 would exercise under similar circumstances. However, unless otherwise agreed, the
18 warehouse is not liable for damages that could not have been avoided by the exercise
19 of that care.

20 (2) Damages may be limited by a term in the warehouse receipt or storage
21 agreement limiting the amount of liability in case of loss or damage beyond which
22 the warehouse is not liable. Such a limitation is not effective with respect to the
23 warehouse’s liability for conversion to its own use. The warehouse’s liability, on
24 request of the bailor in a record at the time of signing such storage agreement or
25 within a reasonable time after receipt of the warehouse receipt, may be increased on

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1 part or all of the goods covered by the storage agreement or the warehouse receipt.
2 In this event, increased rates may be charged based on an increased valuation of the
3 goods.

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

7 **407.205 Title under warehouse receipt defeated in certain cases.** A
8 buyer in ordinary course of business of fungible goods sold and delivered by a
9 warehouse that is also in the business of buying and selling such goods takes the
10 goods free of any claim under a warehouse receipt even if the receipt is negotiable
11 and has been duly negotiated.

12 **407.206 Termination of storage at warehouse's option.** (1) A warehouse,
13 by giving notice to the person on whose account the goods are held and any other
14 person known to claim an interest in the goods, may require payment of any charges
15 and removal of the goods from the warehouse at the termination of the period of
16 storage fixed by the document of title or, if a period is not fixed, within a stated period
17 not less than 30 days after the warehouse gives notice. If the goods are not removed
18 before the date specified in the notice, the warehouse may sell them pursuant to s.
19 407.210.

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

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

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

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

14 **407.207 Goods must be kept separate; fungible goods.** **(1)** Unless the
15 warehouse receipt provides otherwise, a warehouse shall keep separate the goods
16 covered by each receipt so as to permit at all times identification and delivery of those
17 goods. However, different lots of fungible goods may be commingled.

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

23 **407.208 Altered warehouse receipts.** If a blank in a negotiable tangible
24 warehouse receipt has been filled in without authority, a good faith purchaser for
25 value and without notice of the lack of authority may treat the insertion as

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1 authorized. Any other unauthorized alteration leaves any tangible or electronic
2 warehouse receipt enforceable against the issuer according to its original tenor.

3 **407.209 Lien of warehouse. (1)** A warehouse has a lien against the bailor
4 on the goods covered by a warehouse receipt or storage agreement or on the proceeds
5 thereof in its possession for charges for storage or transportation, including
6 demurrage and terminal charges, insurance, labor, or other charges, present or
7 future, in relation to the goods, and for expenses necessary for preservation of the
8 goods or reasonably incurred in their sale pursuant to law. If the person on whose
9 account the goods are held is liable for similar charges or expenses in relation to other
10 goods whenever deposited, and it is stated in the warehouse receipt or storage
11 agreement that a lien is claimed for charges and expenses in relation to other goods,
12 the warehouse also has a lien against the goods covered by the warehouse receipt or
13 storage agreement or on the proceeds thereof in its possession for those charges and
14 expenses, whether or not the other goods have been delivered by the warehouse.
15 However, as against a person to which a negotiable warehouse receipt is duly
16 negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified
17 in the warehouse receipt or, if no charges are so specified, to a reasonable charge for
18 storage of the specific goods covered by the receipt subsequent to the date of the
19 receipt.

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

24 **(3)** A warehouse's lien for charges and expenses under sub. (1) or a security
25 interest under sub. (2) is also effective against any person that so entrusted the bailor

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1 with possession of the goods that a pledge of them by the bailor to a good faith
2 purchaser for value would have been valid. However, the lien or security interest is
3 not effective against a person that before issuance of a document of title had a legal
4 interest or a perfected security interest in the goods and that did not do any of the
5 following:

6 (a) Deliver or entrust the goods or any document covering the goods to the bailor
7 or the bailor's nominee with actual or apparent authority to ship, store, or sell; or
8 with power to obtain delivery under s. 407.403; or with power of disposition under
9 s. 402.403, 409.320, 411.304 (2), or 411.305 (2), or other statute or rule of law.

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

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

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

18 **407.210 Enforcement of warehouse's lien.** (1) Except as otherwise
19 provided in sub. (2), a warehouse's lien may be enforced by public or private sale of
20 the goods, in bulk or in packages, at any time or place and on any terms that are
21 commercially reasonable, after notifying all persons known to claim an interest in
22 the goods. The notification must include a statement of the amount due, the nature
23 of the proposed sale, and the time and place of any public sale. The fact that a better
24 price could have been obtained by a sale at a different time or in a different method
25 from that selected by the warehouse is not of itself sufficient to establish that the sale

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

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

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

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

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

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

20 (e) After the expiration of the time given in the notification, an advertisement
21 of the sale must be published once a week for 2 weeks consecutively in a newspaper
22 of general circulation where the sale is to be held. The advertisement must include
23 a description of the goods, the name of the person on whose account the goods are
24 being held, and the time and place of the sale. The sale must take place at least 15
25 days after the first publication. If there is no newspaper of general circulation where

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1 the sale is to be held, the advertisement must be posted at least 10 days before the
2 sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.

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

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

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

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

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

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

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

22 SUBCHAPTER III

23 BILLS OF LADING: SPECIAL

24 PROVISIONS

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1 **407.301 Liability for nonreceipt or misdescription; “said to contain”;**
2 **“shipper’s load and count”; improper handling.** (1) A consignee of a
3 nonnegotiable bill of lading which has given value in good faith, or a holder to which
4 a negotiable bill has been duly negotiated, relying upon the description of the goods
5 in the bill or upon the date shown in the bill, may recover from the issuer damages
6 caused by the misdating of the bill or the nonreceipt or misdescription of the goods,
7 except to the extent that the document of title indicates that the issuer does not know
8 whether any part or all of the goods in fact were received or conform to the
9 description, such as in a case in which the description is in terms of marks or labels
10 or kind, quantity, or condition or the receipt or description is qualified by “contents
11 or condition of contents of packages unknown,” “said to contain,” “shipper’s weight,
12 load, and count,” or words of similar import, if that indication is true.

13 (2) If goods are loaded by the issuer of the bill of lading, the issuer shall count
14 the packages of goods if shipped in packages and ascertain the kind and quantity if
15 shipped in bulk and words such as “shipper’s weight, load, and count,” or words of
16 similar import indicating that the description was made by the shipper are
17 ineffective except as to goods concealed by packages.

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

23 (4) The issuer, by including in the bill of lading the words “shipper’s weight,
24 load, and count,” or words of similar import, may indicate that the goods were loaded
25 by the shipper, and, if that statement is true, the issuer is not liable for damages

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1 caused by the improper loading. However, omission of such words does not imply
2 liability for damages caused by improper loading.

3 (5) A shipper guarantees to the issuer the accuracy at the time of shipment of
4 the description, marks, labels, number, kind, quantity, condition, and weight, as
5 furnished by the shipper, and the shipper shall indemnify the issuer against damage
6 caused by inaccuracies in those particulars. This right of the issuer to that indemnity
7 does not limit its responsibility or liability under the contract of carriage to any
8 person other than the shipper.

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

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

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

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

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

11 **407.303 Diversion; reconsignment; change of instructions.** (1) Unless
12 the bill of lading otherwise provides, a carrier may deliver the goods to a person or
13 destination other than that stated in the bill or may otherwise dispose of the goods,
14 without liability for misdelivery, on instructions from any of the following:

15 (a) The holder of a negotiable bill.

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

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

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

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

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

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

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

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

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

17 **407.305 Destination bills.** (1) Instead of issuing a bill of lading to the
18 consignor at the place of shipment, a carrier, at the request of the consignor, may
19 procure the bill to be issued at destination or at any other place designated in the
20 request.

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

ASSEMBLY BILL 481**SECTION 32**

1 **407.306 Altered bills of lading.** An unauthorized alteration or filling in of
2 a blank in a bill of lading leaves the bill enforceable according to its original tenor.

3 **407.307 Lien of carrier. (1)** A carrier has a lien on the goods covered by a
4 bill of lading or on the proceeds thereof in its possession for charges after the date
5 of the carrier's receipt of the goods for storage or transportation, including
6 demurrage and terminal charges, and for expenses necessary for preservation of the
7 goods incident to their transportation or reasonably incurred in their sale pursuant
8 to law. However, against a purchaser for value of a negotiable bill of lading, a
9 carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no
10 charges are stated, a reasonable charge.

11 **(2)** A lien for charges and expenses under sub. (1) on goods that the carrier was
12 required by law to receive for transportation is effective against the consignor or any
13 person entitled to the goods unless the carrier had notice that the consignor lacked
14 authority to subject the goods to those charges and expenses. Any other lien under
15 sub. (1) is effective against the consignor and any person that permitted the bailor
16 to have control or possession of the goods unless the carrier had notice that the bailor
17 lacked authority.

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

20 **407.308 Enforcement of carrier's lien. (1)** A carrier's lien on goods may
21 be enforced by public or private sale of the goods, in bulk or in packages, at any time
22 or place and on any terms that are commercially reasonable, after notifying all
23 persons known to claim an interest in the goods. The notification must include a
24 statement of the amount due, the nature of the proposed sale, and the time and place
25 of any public sale. The fact that a better price could have been obtained by a sale at

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

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

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

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

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

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

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

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

407.309 Duty of care; contractual limitation of carrier's liability. (1)

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

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

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

SUBCHAPTER IV

WAREHOUSE RECEIPTS AND BILLS OF

LADING: GENERAL OBLIGATIONS

407.401 Irregularities in issue of receipt or bill or conduct of issuer.

22 The obligations imposed by this chapter on an issuer apply to a document of title even
23 if any of the following are satisfied:
24

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

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

4 (3) The goods covered by the document were owned by the bailee when the
5 document was issued.

6 (4) The person issuing the document is not a warehouse but the document
7 purports to be a warehouse receipt.

8 **407.402 Duplicate document of title; overissue.** A duplicate or any other
9 document of title purporting to cover goods already represented by an outstanding
10 document of the same issuer does not confer any right in the goods, except as
11 provided in the case of tangible bills of lading in a set of parts, overissue of documents
12 for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute
13 documents issued pursuant to s. 407.105. The issuer is liable for damages caused by
14 its overissue or failure to identify a duplicate document by a conspicuous notation.

15 **407.403 Obligation of warehouse or carrier to deliver; excuse.** (1) A
16 bailee shall deliver the goods to a person entitled under a document of title if the
17 person complies with subs. (2) and (3), unless and to the extent that the bailee
18 establishes any of the following:

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

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

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

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

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

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

6 (g) Any other lawful excuse.

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

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

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

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

18 **407.404 No liability for good faith delivery pursuant to document of**
19 **title.** A bailee that in good faith has received goods and delivered or otherwise
20 disposed of the goods according to the terms of a document of title or pursuant to this
21 chapter is not liable for the goods even if any of the following apply:

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

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

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SUBCHAPTER V

WAREHOUSE RECEIPTS AND BILLS OF
LADING: NEGOTIATION AND TRANSFER**407.501 Form of negotiation and requirements of due negotiation. (1)**

The following rules apply to a negotiable tangible document of title:

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

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

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

(d) Negotiation of the document after it has been endorsed to a named person requires endorsement by the named person as well as delivery.

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

(2) The following rules apply to a negotiable electronic document of title:

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

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

4 (c) A document is duly negotiated if it is negotiated in the manner stated in this
5 subsection to a holder that purchases it in good faith, without notice of any defense
6 against or claim to it on the part of any person, and for value, unless it is established
7 that the negotiation is not in the regular course of business or financing or involves
8 taking delivery of the document in settlement or payment of a monetary obligation.

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

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

14 **407.502 Rights acquired by due negotiation.** (1) Subject to ss. 407.205
15 and 407.503, a holder to which a negotiable document of title has been duly
16 negotiated acquires thereby all of the following:

17 (a) Title to the document.

18 (b) Title to the goods.

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

21 (d) The direct obligation of the issuer to hold or deliver the goods according to
22 the terms of the document free of any defense or claim by the issuer except those
23 arising under the terms of the document or under this chapter. In the case of a
24 delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the

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1 delivery order and the obligation acquired by the holder is that the issuer and any
2 endorser will procure the acceptance of the bailee.

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

7 (a) The due negotiation or any prior due negotiation constituted a breach of
8 duty.

9 (b) Any person has been deprived of possession of a negotiable tangible
10 document or control of a negotiable electronic document by misrepresentation, fraud,
11 accident, mistake, duress, loss, theft, or conversion.

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

14 **407.503 Document of title to goods defeated in certain cases.** (1) A
15 document of title confers no right in goods against a person that before issuance of
16 the document had a legal interest or a perfected security interest in the goods and
17 that did not do any of the following:

18 (a) Deliver or entrust the goods or any document covering the goods to the bailor
19 or the bailor's nominee with actual or apparent authority to ship, store, or sell; with
20 power to obtain delivery under s. 407.403; or with power of disposition under s.
21 402.403, 409.320, 411.304 (2), or 411.305 (2), or other statute or rule of law.

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

23 (2) Title to goods based upon an unaccepted delivery order is subject to the
24 rights of any person to which a negotiable warehouse receipt or bill of lading covering

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1 the goods has been duly negotiated. That title may be defeated under s. 407.504 to
2 the same extent as the rights of the issuer or a transferee from the issuer.

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

7 **407.504 Rights acquired in absence of due negotiation; effect of**
8 **diversion; stoppage of delivery.** (1) A transferee of a document of title, whether
9 negotiable or nonnegotiable, to which the document has been delivered but not duly
10 negotiated, acquires the title and rights that its transferor had or had actual
11 authority to convey.

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

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

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

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

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

22 (3) A diversion or other change of shipping instructions by the consignor in a
23 nonnegotiable bill of lading which causes the bailee not to deliver the goods to the
24 consignee defeats the consignee's title to the goods if the goods have been delivered

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1 to a buyer in ordinary course of business or a lessee in ordinary course of business
2 and in any event defeats the consignee's rights against the bailee.

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

8 **407.505 Endorser not guarantor for other parties.** The endorsement of
9 a tangible document of title issued by a bailee does not make the endorser liable for
10 any default by the bailee or previous endorsers.

11 **407.506 Delivery without endorsement; right to compel endorsement.**
12 The transferee of a negotiable tangible document of title has a specifically
13 enforceable right to have its transferor supply any necessary endorsement, but the
14 transfer becomes a negotiation only as of the time the endorsement is supplied.

15 **407.507 Warranties on negotiation or delivery of document of title.** If
16 a person negotiates or delivers a document of title for value, otherwise than as a mere
17 intermediary under s. 407.508, unless otherwise agreed, the transferor warrants to
18 its immediate purchaser only in addition to any warranty made in selling or leasing
19 the goods that all of the following apply:

20 (1) The document is genuine.

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

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

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1 **407.508 Warranties of collecting bank as to documents of title.** A
2 collecting bank or other intermediary known to be entrusted with documents of title
3 on behalf of another or with collection of a draft or other claim against delivery of
4 documents warrants by the delivery of the documents only its own good faith and
5 authority even if the collecting bank or other intermediary has purchased or made
6 advances against the claim or draft to be collected.

7 **407.509 Adequate compliance with commercial contract.** Whether a
8 document of title is adequate to fulfill the obligations of a contract for sale, a contract
9 for lease, or the conditions of a letter of credit is determined by ch. 402, 405, or 411.

SUBCHAPTER VI

WAREHOUSE RECEIPTS AND BILLS OF

LADING: MISCELLANEOUS PROVISIONS

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

23 (2) A bailee that without court order delivers goods to a person claiming under
24 a missing negotiable document of title is liable to any person injured thereby. If the
25 delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith

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1 is not conversion if the claimant posts security with the bailee in an amount at least
2 double the value of the goods at the time of posting to indemnify any person injured
3 by the delivery which files a notice of claim within one year after the delivery.

407.602 Attachment of goods covered by negotiable document of title.

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

407.603 Conflicting claims; interpleader.

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

SECTION 33. 408.103 (7) of the statutes is created to read:

19
20 408.103 (7) A document of title, as defined in s. 401.201 (15), is not a financial
21 asset unless s. 408.102 (1) (i) 1. c. applies.

SECTION 34. 409.102 (2) (df) of the statutes is created to read:

22
23 409.102 (2) (df) "Control" (with respect to a document of title) — s. 407.106.

SECTION 35. 409.203 (2) (c) 4. of the statutes is amended to read:

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1 409.203 (2) (c) 4. The collateral is deposit accounts, electronic chattel paper,
2 investment property, ~~or~~ letter-of-credit rights, or electronic documents, and the
3 secured party has control under s. 407.106, 409.104, 409.105, 409.106, or 409.107
4 pursuant to the debtor's security agreement.

5 **SECTION 36.** 409.207 (3) (intro.) of the statutes is amended to read:

6 409.207 (3) DUTIES AND RIGHTS WHEN SECURED PARTY IN POSSESSION OR CONTROL.
7 (intro.) Except as otherwise provided in sub. (4), a secured party having possession
8 of collateral or control of collateral under s. 407.106, 409.104, 409.105, 409.106, or
9 409.107:

10 **SECTION 37.** 409.208 (2) (d) of the statutes is amended to read:

11 409.208 (2) (d) A secured party having control of investment property under
12 s. 408.106 (4) (b) or 409.106 (2) shall send to the securities intermediary or
13 commodity intermediary with which the security entitlement or commodity contract
14 is maintained an authenticated record that releases the securities intermediary or
15 commodity intermediary from any further obligation to comply with entitlement
16 orders or directions originated by the secured party; ~~and~~

17 **SECTION 38.** 409.208 (2) (e) of the statutes is amended to read:

18 409.208 (2) (e) A secured party having control of a letter-of-credit right under
19 s. 409.107 shall send to each person having an unfulfilled obligation to pay or deliver
20 proceeds of the letter of credit to the secured party an authenticated release from any
21 further obligation to pay or deliver proceeds of the letter of credit to the secured party.
22 ; and

23 **SECTION 39.** 409.208 (2) (f) of the statutes is created to read:

24 409.208 (2) (f) A secured party having control of an electronic document shall
25 do all of the following:

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

3 2. If the debtor designates a custodian that is the designated custodian with
4 which the authoritative copy of the electronic document is maintained for the
5 secured party, communicate to the custodian an authenticated record releasing the
6 designated custodian from any further obligation to comply with instructions
7 originated by the secured party and instructing the custodian to comply with
8 instructions originated by the debtor.

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

12 **SECTION 40.** 409.301 (3) (intro.) of the statutes is amended to read:

13 409.301 (3) LOCATION OF PROPERTY. (intro.) Except as otherwise provided in sub.
14 (4), while tangible negotiable documents, goods, instruments, money, or tangible
15 chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

16 **SECTION 41.** 409.310 (2) (e) of the statutes is amended to read:

17 409.310 (2) (e) In certificated securities, documents, goods, or instruments
18 which is perfected without filing, control, or possession under s. 409.312 (5), (6), or
19 (7);

20 **SECTION 42.** 409.310 (2) (h) of the statutes is amended to read:

21 409.310 (2) (h) In deposit accounts, electronic chattel paper, electronic
22 documents, investment property, or letter-of-credit rights which is perfected by
23 control under s. 409.314;

24 **SECTION 43.** 409.312 (5) of the statutes is amended to read:

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1 409.312 (5) TEMPORARY PERFECTION: NEW VALUE. A security interest in
2 certificated securities, negotiable documents, or instruments is perfected without
3 filing or the taking of possession or control for a period of 20 days from the time it
4 attaches to the extent that it arises for new value given under an authenticated
5 security agreement.

6 **SECTION 44.** 409.313 (1) of the statutes is amended to read:

7 409.313 (1) PERFECTION BY POSSESSION OR DELIVERY. Except as otherwise
8 provided in sub. (2), a secured party may perfect a security interest in tangible
9 negotiable documents, goods, instruments, money, or tangible chattel paper by
10 taking possession of the collateral. A secured party may perfect a security interest
11 in certificated securities by taking delivery of the certificated securities under s.
12 408.301.

13 **SECTION 45.** 409.314 (1) of the statutes is amended to read:

14 409.314 (1) PERFECTION BY CONTROL. A security interest in investment property,
15 deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic
16 documents may be perfected by control of the collateral under s. 407.106, 409.104,
17 409.105, 409.106, or 409.107.

18 **SECTION 46.** 409.314 (2) of the statutes is amended to read:

19 409.314 (2) SPECIFIED COLLATERAL: TIME OF PERFECTION BY CONTROL;
20 CONTINUATION OF PERFECTION. A security interest in deposit accounts, electronic
21 chattel paper, ~~or~~ letter-of-credit rights, or electronic documents is perfected by
22 control under s. 407.106, 409.104, 409.105, or 409.107 when the secured party
23 obtains control and remains perfected by control only while the secured party retains
24 control.

25 **SECTION 47.** 409.317 (2) of the statutes is amended to read:

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1 409.317 (2) BUYERS THAT RECEIVE DELIVERY. Except as otherwise provided in
2 sub. (5), a buyer, other than a secured party, of tangible chattel paper, tangible
3 documents, goods, instruments, or a security certificate takes free of a security
4 interest or agricultural lien if the buyer gives value and receives delivery of the
5 collateral without knowledge of the security interest or agricultural lien and before
6 it is perfected.

7 **SECTION 48.** 409.317 (4) of the statutes is amended to read:

8 409.317 (4) LICENSEES AND BUYERS OF CERTAIN COLLATERAL. A licensee of a
9 general intangible or a buyer, other than a secured party, of accounts, electronic
10 chattel paper, electronic documents, general intangibles, or investment property
11 other than a certificated security takes free of a security interest if the licensee or
12 buyer gives value without knowledge of the security interest and before it is
13 perfected.

14 **SECTION 49.** 409.338 (2) of the statutes is amended to read:

15 409.338 (2) A purchaser, other than a secured party, of the collateral takes free
16 of the security interest or agricultural lien to the extent that, in reasonable reliance
17 upon the incorrect information, the purchaser gives value and, in the case of tangible
18 chattel paper, tangible documents, goods, instruments, or a security certificate,
19 receives delivery of the collateral.

20 **SECTION 50.** 409.601 (2) of the statutes is amended to read:

21 409.601 (2) RIGHTS AND DUTIES OF SECURED PARTY IN POSSESSION OR CONTROL. A
22 secured party in possession of collateral or control of collateral under s. 407.106,
23 409.104, 409.105, 409.106, or 409.107 has the rights and duties provided in s.
24 409.207.

25 **SECTION 51.** 411.103 (1) (a) of the statutes is amended to read:

ASSEMBLY BILL 481**SECTION 51**

1 411.103 (1) (a) “Buyer in ordinary course of business” means a person who, in
2 good faith and without knowledge that the sale to him or her is in violation of the
3 ownership rights or security interest or leasehold interest of a 3rd party in the goods,
4 buys in ordinary course from a person in the business of selling goods of that kind
5 but does not include a pawnbroker. “Buying” may be for cash or by exchange of other
6 property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or
7 documents of title under a preexisting contract for sale but does not include a
8 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

9 **SECTION 52.** 411.103 (1) (o) of the statutes is amended to read:

10 411.103 (1) (o) “Lessee in ordinary course of business” means a person who in
11 good faith and without knowledge that the lease to him or her is in violation of the
12 ownership rights or security interest or leasehold interest of a 3rd party in the goods
13 leases in ordinary course from a person in the business of selling or leasing goods of
14 that kind but does not include a pawnbroker. “Leasing” may be for cash or by
15 exchange of other property or on secured or unsecured credit and includes ~~receiving~~
16 acquiring goods or documents of title under a preexisting lease contract but does not
17 include a transfer in bulk or as security for or in total or partial satisfaction of a
18 money debt.

19 **SECTION 53.** 411.514 (2) of the statutes is amended to read:

20 411.514 (2) A lessee’s failure to reserve rights when paying rent or other
21 consideration against documents precludes recovery of the payment for defects
22 apparent ~~on the face of~~ in the documents.

23 **SECTION 54.** 411.526 (2) (c) of the statutes is amended to read:

24 411.526 (2) (c) Acknowledgment to the lessee by a carrier via reshipment or as
25 a warehouse keeper that the carrier holds the goods for the lessee.

