

HOUSE BILL No. 5327

October 30, 1997, Introduced by Reps. Richner, Baird, Kaza, Horton, Jellema, Birkholz, Scranton, Dalman, Thomas and Raczkowski and referred to the Committee on Commerce.

A bill to amend 1962 PA 174, entitled
"Uniform commercial code,"
by amending sections 5101, 5102, 5103, 5104, 5105, 5106, 5107,
5108, 5109, 5110, 5111, 5112, 5113, 5114, 5115, 5116, and 5117
(MCL 440.5101, 440.5102, 440.5103, 440.5104, 440.5105, 440.5106,
440.5107, 440.5108, 440.5109, 440.5110, 440.5111, 440.5112,
440.5113, 440.5114, 440.5115, 440.5116, and 440.5117), section
5114 as amended by 1987 PA 16.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 5101. This article ~~shall be known and~~ may be cited
2 as uniform commercial code--letters of credit.
- 3 Sec. 5102. ~~(1) This article applies~~
4 ~~(a) to a credit issued by a bank if the credit requires a~~
5 ~~documentary draft or a documentary demand for payment; and~~

1 ~~(b) to a credit issued by a person other than a bank if the~~
2 ~~credit requires that the draft or demand for payment be~~
3 ~~accompanied by a document of title; and~~

4 ~~(c) to a credit issued by a bank or other person if the~~
5 ~~credit is not within subparagraphs (a) or (b) but conspicuously~~
6 ~~states that it is a letter of credit or is conspicuously so~~
7 ~~entitled.~~

8 ~~(2) Unless the engagement meets the requirements of subsec-~~
9 ~~tion (1), this article does not apply to engagements to make~~
10 ~~advances or to honor drafts or demands for payment, to authori-~~
11 ~~ties to pay or purchase, to guarantees or to general agreements.~~

12 ~~(3) This article deals with some but not all of the rules~~
13 ~~and concepts of letters of credit as such rules or concepts have~~
14 ~~developed prior to this act or may hereafter develop. The fact~~
15 ~~that this article states a rule does not by itself require, imply~~
16 ~~or negate application of the same or a converse rule to a situa-~~
17 ~~tion not provided for or to a person not specified by this~~
18 ~~article.~~

19 (1) AS USED IN THIS ARTICLE:

20 (A) "ADVISER" MEANS A PERSON WHO, AT THE REQUEST OF THE
21 ISSUER, A CONFIRMER, OR ANOTHER ADVISER, NOTIFIES OR REQUESTS
22 ANOTHER ADVISER TO NOTIFY THE BENEFICIARY THAT A LETTER OF CREDIT
23 HAS BEEN ISSUED, CONFIRMED, OR AMENDED.

24 (B) "APPLICANT" MEANS A PERSON AT WHOSE REQUEST OR FOR WHOSE
25 ACCOUNT A LETTER OF CREDIT IS ISSUED. THE TERM INCLUDES A PERSON
26 WHO REQUESTS AN ISSUER TO ISSUE A LETTER OF CREDIT ON BEHALF OF

1 ANOTHER IF THE PERSON MAKING THE REQUEST UNDERTAKES AN OBLIGATION
2 TO REIMBURSE THE ISSUER.

3 (C) "BENEFICIARY" MEANS A PERSON WHO UNDER THE TERMS OF A
4 LETTER OF CREDIT IS ENTITLED TO HAVE ITS COMPLYING PRESENTATION
5 HONORED. THE TERM INCLUDES A PERSON TO WHOM DRAWING RIGHTS HAVE
6 BEEN TRANSFERRED UNDER A TRANSFERABLE LETTER OF CREDIT.

7 (D) "CONFIRMER" MEANS A NOMINATED PERSON WHO UNDERTAKES, AT
8 THE REQUEST OR WITH THE CONSENT OF THE ISSUER, TO HONOR A PRESEN-
9 TATION UNDER A LETTER OF CREDIT ISSUED BY ANOTHER.

10 (E) "DISHONOR" OF A LETTER OF CREDIT MEANS FAILURE TIMELY TO
11 HONOR OR TO TAKE AN INTERIM ACTION, SUCH AS ACCEPTANCE OF A
12 DRAFT, THAT MAY BE REQUIRED BY THE LETTER OF CREDIT.

13 (F) "DOCUMENT" MEANS A DRAFT OR OTHER DEMAND, DOCUMENT OF
14 TITLE, INVESTMENT SECURITY, CERTIFICATE, INVOICE, OR OTHER
15 RECORD, STATEMENT, OR REPRESENTATION OF FACT, LAW, RIGHT, OR
16 OPINION THAT IS NOT ORAL WHICH IS BOTH OF THE FOLLOWING:

17 (i) PRESENTED IN A WRITTEN OR OTHER PROHIBITED BY THE LETTER
18 OF CREDIT, BY THE STANDARD PRACTICE REFERRED TO IN SECTION
19 5108(5).

20 (ii) CAPABLE OF BEING EXAMINED FOR COMPLIANCE WITH THE TERMS
21 AND CONDITIONS OF THE LETTER OF CREDIT.

22 (G) "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR
23 TRANSACTION CONCERNED.

24 (H) "HONOR" OF A LETTER OF CREDIT MEANS PERFORMANCE OF THE
25 ISSUER'S UNDERTAKING IN THE LETTER OF CREDIT TO PAY OR DELIVER AN
26 ITEM OF VALUE. UNLESS THE LETTER OF CREDIT OTHERWISE PROVIDES,
27 "HONOR" OCCURS:

- 1 (i) UPON PAYMENT.
- 2 (ii) IF THE LETTER OF CREDIT PROVIDES FOR ACCEPTANCE, UPON
3 ACCEPTANCE OF A DRAFT AND, AT MATURITY, ITS PAYMENT.
- 4 (iii) IF THE LETTER OF CREDIT PROVIDES FOR INCURRING A
5 DEFERRED OBLIGATION, UPON INCURRING THE OBLIGATION AND, AT MATU-
6 RITY, ITS PERFORMANCE.
- 7 (I) "ISSUER" MEANS A BANK OR OTHER PERSON THAT ISSUES A
8 LETTER OF CREDIT, BUT DOES NOT INCLUDE AN INDIVIDUAL WHO MAKES AN
9 ENGAGEMENT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.
- 10 (J) "LETTER OF CREDIT" MEANS A DEFINITE UNDERTAKING THAT
11 SATISFIES THE REQUIREMENTS OF SECTION 5104 BY AN ISSUER TO A BEN-
12 EFICIARY AT THE REQUEST OR FOR THE ACCOUNT OF AN APPLICANT OR, IN
13 THE CASE OF A FINANCIAL INSTITUTION, TO ITSELF OR FOR ITS OWN
14 ACCOUNT, TO HONOR A DOCUMENTARY PRESENTATION BY PAYMENT OR DELIV-
15 ERY OF AN ITEM OF VALUE.
- 16 (K) "NOMINATED PERSON" MEANS BOTH OF THE FOLLOWING:
- 17 (i) A PERSON WHOM THE ISSUER DESIGNATES OR AUTHORIZES TO
18 PAY, ACCEPT, NEGOTIATE, OR OTHERWISE GIVE VALUE UNDER A LETTER OF
19 CREDIT.
- 20 (ii) A PERSON WHOM THE ISSUER UNDERTAKES BY AGREEMENT OR
21 CUSTOM AND PRACTICE TO REIMBURSE.
- 22 (l) "PRESENTATION" MEANS DELIVERY OF A DOCUMENT TO AN ISSUER
23 OR NOMINATED PERSON FOR HONOR OR GIVING OF VALUE UNDER A LETTER
24 OF CREDIT.
- 25 (M) "PRESENTER" MEANS A PERSON MAKING A PRESENTATION AS OR
26 ON BEHALF OF A BENEFICIARY OR NOMINATED PERSON.

1 (N) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
 2 TANGIBLE MEDIUM, OR THAT IS STORED IN AN ELECTRONIC OR OTHER
 3 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

4 (O) "SUCCESSOR OF A BENEFICIARY" MEANS A PERSON WHO SUCCEEDS
 5 TO SUBSTANTIALLY ALL OF THE RIGHTS OF A BENEFICIARY BY OPERATION
 6 OF LAW, INCLUDING A CORPORATION WITH OR INTO WHICH THE BENEFI-
 7 CIARY HAS BEEN MERGED OR CONSOLIDATED, AN ADMINISTRATOR, EXECU-
 8 TOR, PERSONAL REPRESENTATIVE, TRUSTEE IN BANKRUPTCY, DEBTOR IN
 9 POSSESSION, LIQUIDATOR, AND RECEIVER.

10 (2) DEFINITIONS IN OTHER ARTICLES APPLYING TO THIS ARTICLE
 11 AND THE SECTIONS IN WHICH THEY APPEAR ARE:

12 "ACCEPT" OR "ACCEPTANCE" SECTION 3409.

13 "VALUE" SECTIONS 3303 AND 4211.

14 (3) ARTICLE 1 CONTAINS CERTAIN ADDITIONAL GENERAL DEFINI-
 15 TIONS AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICA-
 16 BLE THROUGHOUT THIS ARTICLE.

17 Sec. 5103. ~~-(1) In this article unless the context other-~~
 18 ~~wise requires~~

19 ~~(a) "Credit" or "letter of credit" means an engagement by a~~
 20 ~~bank or other person made at the request of a customer and of a~~
 21 ~~kind within the scope of this article (section 5102) that the~~
 22 ~~issuer will honor drafts or other demands for payment upon com-~~
 23 ~~pliance with the conditions specified in the credit. A credit~~
 24 ~~may be either revocable or irrevocable. The engagement may be~~
 25 ~~either an agreement to honor or a statement that the bank or~~
 26 ~~other person is authorized to honor.~~

1 ~~(b) A "documentary draft" or a "documentary demand for~~
 2 ~~payment" is one honor of which is conditioned upon the~~
 3 ~~presentation of a document or documents. "Document" means any~~
 4 ~~paper including document of title, security, invoice, certifi-~~
 5 ~~cate, notice of default and the like.~~

6 ~~(c) An "issuer" is a bank or other person issuing a credit.~~

7 ~~(d) A "beneficiary" of a credit is a person who is entitled~~
 8 ~~under its terms to draw or demand payment.~~

9 ~~(e) An "advising bank" is a bank which gives notification of~~
 10 ~~the issuance of a credit by another bank.~~

11 ~~(f) A "confirming bank" is a bank which engages either that~~
 12 ~~it will itself honor a credit already issued by another bank or~~
 13 ~~that such a credit will be honored by the issuer or a third~~
 14 ~~bank.~~

15 ~~(g) A "customer" is a buyer or other person who causes an~~
 16 ~~issuer to issue a credit. The term also includes a bank which~~
 17 ~~procures issuance or confirmation on behalf of that bank's~~
 18 ~~customer.~~

19 ~~(2) Other definitions applying to this article and the sec-~~
 20 ~~tions in which they appear are:~~

21

22 ~~"Notation of credit".~~ _____ ~~Section 5108.~~

23 ~~"Presenter".~~ _____ ~~Section 5112(3).~~

24 ~~(3) Definitions in other articles applying to this article~~
 25 ~~and the sections in which they appear are:~~

26

~~1 "Accept" or "Acceptance". Section 3410.~~

~~2 "Contract for sale". Section 2106.~~

3 ~~"Draft".~~ ~~Section 3104.~~

~~4 "Holder in due course". Section 3302.~~

~~5 "Midnight deadline". Section 4104.~~

6 ~~"Security".~~ ~~Section 8102.~~

~~7 (4) In addition, article 1 contains general definitions and~~
~~8 principles of construction and interpretation applicable through-~~
~~9 out this article.—~~

10 (1) THIS ARTICLE APPLIES TO LETTERS OF CREDIT AND TO CERTAIN
11 RIGHTS AND OBLIGATIONS ARISING OUT OF TRANSACTIONS INVOLVING LET-
12 TERS OF CREDIT.

13 (2) THE STATEMENT OF A RULE IN THIS ARTICLE DOES NOT BY
14 ITSELF REQUIRE, IMPLY, OR NEGATE APPLICATION OF THE SAME OR A
15 DIFFERENT RULE TO A SITUATION NOT PROVIDED FOR, OR TO A PERSON
16 NOT SPECIFIED, IN THIS ARTICLE.

17 (3) WITH THE EXCEPTION OF THIS SUBSECTION, SUBSECTIONS (1)
18 AND (4), SECTIONS 5102(1)(I) AND (J), 5106(4), AND 5114(4), AND
19 EXCEPT TO THE EXTENT PROHIBITED IN SECTIONS 1102(3) AND 5117(4),
20 THE EFFECT OF THIS ARTICLE MAY BE VARIED BY AGREEMENT OR BY A
21 PROVISION STATED OR INCORPORATED BY REFERENCE IN AN UNDERTAKING.
22 A TERM IN AN AGREEMENT OR UNDERTAKING GENERALLY EXCUSING LIABIL-
23 ITY OR GENERALLY LIMITING REMEDIES FOR FAILURE TO PERFORM OBLIGA-
24 TIONS IS NOT SUFFICIENT TO VARY OBLIGATIONS PRESCRIBED BY THIS
25 ARTICLE.

26 (4) RIGHTS AND OBLIGATIONS OF AN ISSUER TO A BENEFICIARY OR
27 A NOMINATED PERSON UNDER A LETTER OF CREDIT ARE INDEPENDENT OF

1 THE EXISTENCE, PERFORMANCE, OR NONPERFORMANCE OF A CONTRACT OR
2 ARRANGEMENT OUT OF WHICH THE LETTER OF CREDIT ARISES OR WHICH
3 UNDERLIES IT, INCLUDING CONTRACTS OR ARRANGEMENTS BETWEEN THE
4 ISSUER AND THE APPLICANT AND BETWEEN THE APPLICANT AND THE
5 BENEFICIARY.

6 Sec. 5104. ~~-(1) Except as otherwise required in subsection~~
7 ~~(1) (c) of section 5102 on scope, no particular form of phrasing~~
8 ~~is required for a credit. A credit must be in writing and signed~~
9 ~~by the issuer and a confirmation must be in writing and signed by~~
10 ~~the confirming bank. A modification of the terms of a credit or~~
11 ~~confirmation must be signed by the issuer or confirming bank.~~

12 ~~(2) A telegram may be a sufficient signed writing if it~~
13 ~~identifies its sender by an authorized authentication. The~~
14 ~~authentication may be in code and the authorized naming of the~~
15 ~~issuer in an advice of credit is a sufficient signing. A LETTER~~
16 ~~OF CREDIT, CONFIRMATION, ADVICE, TRANSFER, AMENDMENT, OR CANCEL-~~
17 ~~LATION MAY BE ISSUED IN ANY FORM THAT IS A RECORD AND IS AUTHEN-~~
18 ~~TICATED BY 1 OR MORE OF THE FOLLOWING:~~

19 (A) A SIGNATURE.

20 (B) IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES OR THE
21 STANDARD PRACTICE REFERRED TO IN SECTION 5108(5).

22 Sec. 5105. ~~No consideration is necessary to establish a~~
23 ~~credit or to enlarge or otherwise modify its terms.~~

24 CONSIDERATION IS NOT REQUIRED TO ISSUE, AMEND, TRANSFER, OR
25 CANCEL A LETTER OF CREDIT, ADVICE, OR CONFIRMATION.

26 Sec. 5106. ~~-(1) Unless otherwise agreed a credit is~~
27 ~~established~~

~~(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and~~

~~(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.~~

~~(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.~~

~~(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.~~

~~(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.~~

(1) A LETTER OF CREDIT IS ISSUED AND BECOMES ENFORCEABLE ACCORDING TO ITS TERMS AGAINST THE ISSUER WHEN THE ISSUER SENDS OR OTHERWISE TRANSMITS IT TO THE PERSON REQUESTED TO ADVISE OR TO THE BENEFICIARY. A LETTER OF CREDIT IS REVOCABLE ONLY IF IT SO PROVIDES.

(2) AFTER A LETTER OF CREDIT IS ISSUED, RIGHTS AND OBLIGATIONS OF A BENEFICIARY, APPLICANT, CONFIRMER, AND ISSUER

1 ARE NOT AFFECTED BY AN AMENDMENT OR CANCELLATION TO WHICH THAT
2 PERSON HAS NOT CONSENTED EXCEPT TO THE EXTENT THE LETTER OF
3 CREDIT PROVIDES THAT IT IS REVOCABLE OR THAT THE ISSUER MAY AMEND
4 OR CANCEL THE LETTER OF CREDIT WITHOUT THAT CONSENT.

5 (3) IF THERE IS NO STATED EXPIRATION DATE OR OTHER PROVISION
6 THAT DETERMINES ITS DURATION, A LETTER OF CREDIT EXPIRES 1 YEAR
7 AFTER ITS STATED DATE OF ISSUANCE OR, IF NONE IS STATED, AFTER
8 THE DATE ON WHICH IT IS ISSUED.

9 (4) A LETTER OF CREDIT THAT STATES THAT IT IS PERPETUAL
10 EXPIRES 5 YEARS AFTER ITS STATED DATE OF ISSUANCE, OR IF NONE IS
11 STATED, AFTER THE DATE ON WHICH IT IS ISSUED.

12 Sec. 5107. ~~(1) Unless otherwise specified an advising bank~~
13 ~~by advising a credit issued by another bank does not assume any~~
14 ~~obligation to honor drafts drawn or demands for payment made~~
15 ~~under the credit but it does assume obligation for the accuracy~~
16 ~~of its own statement.~~

17 ~~(2) A confirming bank by confirming a credit becomes~~
18 ~~directly obligated on the credit to the extent of its confirma-~~
19 ~~tion as though it were its issuer and acquires the rights of an~~
20 ~~issuer.~~

21 ~~(3) Even though an advising bank incorrectly advises the~~
22 ~~terms of a credit it has been authorized to advise the credit is~~
23 ~~established as against the issuer to the extent of its original~~
24 ~~terms.~~

25 ~~(4) Unless otherwise specified the customer bears as against~~
26 ~~the issuer all risks of transmission and reasonable translation~~
27 ~~or interpretation of any message relating to a credit.~~

1 (1) A CONFIRMER IS DIRECTLY OBLIGATED ON A LETTER OF CREDIT
2 AND HAS THE RIGHTS AND OBLIGATIONS OF AN ISSUER TO THE EXTENT OF
3 ITS CONFIRMATION. THE CONFIRMER ALSO HAS RIGHTS AGAINST AND
4 OBLIGATIONS TO THE ISSUER AS IF THE ISSUER WERE AN APPLICANT AND
5 THE CONFIRMER HAD ISSUED THE LETTER OF CREDIT AT THE REQUEST AND
6 FOR THE ACCOUNT OF THE ISSUER.

7 (2) A NOMINATED PERSON WHO IS NOT A CONFIRMER IS NOT OBLI-
8 GATED TO HONOR OR OTHERWISE GIVE VALUE FOR A PRESENTATION.

9 (3) A PERSON REQUESTED TO ADVISE MAY DECLINE TO ACT AS AN
10 ADVISER. AN ADVISER THAT IS NOT A CONFIRMER IS NOT OBLIGATED TO
11 HONOR OR GIVE VALUE FOR A PRESENTATION. AN ADVISER UNDERTAKES TO
12 THE ISSUER AND TO THE BENEFICIARY ACCURATELY TO ADVISE THE TERMS
13 OF THE LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE
14 RECEIVED BY THAT PERSON AND UNDERTAKES TO THE BENEFICIARY TO
15 CHECK THE APPARENT AUTHENTICITY OF THE REQUEST TO ADVISE. EVEN
16 IF THE ADVICE IS INACCURATE, THE LETTER OF CREDIT, CONFIRMATION,
17 OR AMENDMENT IS ENFORCEABLE AS ISSUED.

18 (4) A PERSON WHO NOTIFIES A TRANSFEREE BENEFICIARY OF THE
19 TERMS OF A LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE
20 HAS THE RIGHTS AND OBLIGATIONS OF AN ADVISER UNDER SUBSECTION
21 (3). THE TERMS IN THE NOTICE TO THE TRANSFEREE BENEFICIARY MAY
22 DIFFER FROM THE TERMS IN ANY NOTICE TO THE TRANSFEROR BENEFICIARY
23 TO THE EXTENT PERMITTED BY THE LETTER OF CREDIT, CONFIRMATION,
24 AMENDMENT, OR ADVICE RECEIVED BY THE PERSON WHO SO NOTIFIES.

25 Sec. 5108. ~~-(1) A credit which specifies that any person~~
26 ~~purchasing or paying drafts drawn or demands for payment made~~

~~1 under it must note the amount of the draft or demand on the
2 letter or advice of credit is a "notation of credit".~~

~~3 (2) Under a notation credit~~

~~4 (a) a person paying the beneficiary or purchasing a draft or
5 demand for payment from him acquires a right to honor only if the
6 appropriate notation is made and by transferring or forwarding
7 for honor the documents under the credit such a person warrants
8 to the issuer that the notation has been made; and~~

~~9 (b) unless the credit or a signed statement that an appro-
10 priate notation has been made accompanies the draft or demand for
11 payment the issuer may delay honor until evidence of notation has
12 been procured which is satisfactory to it but its obligation and
13 that of its customer continue for a reasonable time not exceeding
14 30 days to obtain such evidence.~~

~~15 (3) If the credit is not a notation credit~~

~~16 (a) the issuer may honor complying drafts or demands for
17 payment presented to it in the order in which they are presented
18 and is discharged pro tanto by honor of any such draft or demand;~~

~~19 (b) as between competing good faith purchasers of complying
20 drafts or demands the person first purchasing has priority over a
21 subsequent purchaser even though the later purchased draft or
22 demand has been first honored.~~

~~23 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 5109, AN ISSUER
24 SHALL HONOR A PRESENTATION THAT, AS DETERMINED BY THE STANDARD
25 PRACTICE REFERRED TO IN SUBSECTION (5), APPEARS ON ITS FACE
26 STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF
27 CREDIT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 5113 AND UNLESS~~

1 OTHERWISE AGREED WITH THE APPLICANT, AN ISSUER SHALL DISHONOR A
2 PRESENTATION THAT DOES NOT APPEAR TO COMPLY.

3 (2) AN ISSUER HAS A REASONABLE TIME AFTER PRESENTATION, BUT
4 NOT BEYOND THE END OF THE SEVENTH BUSINESS DAY OF THE ISSUER
5 AFTER THE DAY OF ITS RECEIPT OF DOCUMENTS TO DO 1 OR MORE OF THE
6 FOLLOWING:

7 (A) TO HONOR.

8 (B) IF THE LETTER OF CREDIT PROVIDES FOR HONOR TO BE COM-
9 PLETED MORE THAN 7 BUSINESS DAYS AFTER PRESENTATION, TO ACCEPT A
10 DRAFT OR INCUR A DEFERRED OBLIGATION.

11 (C) TO GIVE NOTICE TO THE PRESENTER OF DISCREPANCIES IN THE
12 PRESENTATION.

13 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), AN
14 ISSUER IS PRECLUDED FROM ASSERTING AS A BASIS FOR DISHONOR ANY
15 DISCREPANCY IF TIMELY NOTICE IS NOT GIVEN, OR ANY DISCREPANCY NOT
16 STATED IN THE NOTICE IF TIMELY NOTICE IS GIVEN.

17 (4) FAILURE TO GIVE THE NOTICE SPECIFIED IN SUBSECTION (2)
18 OR TO MENTION FRAUD, FORGERY, OR EXPIRATION IN THE NOTICE DOES
19 NOT PRECLUDE THE ISSUER FROM ASSERTING AS A BASIS FOR DISHONOR
20 FRAUD OR FORGERY AS DESCRIBED IN SECTION 5109(1) OR EXPIRATION OF
21 THE LETTER OF CREDIT BEFORE PRESENTATION.

22 (5) AN ISSUER SHALL OBSERVE STANDARD PRACTICE OF FINANCIAL
23 INSTITUTIONS THAT REGULARLY ISSUE LETTERS OF CREDIT.
24 DETERMINATION OF THE ISSUER'S OBSERVANCE OF THE STANDARD PRACTICE
25 IS A MATTER OF INTERPRETATION FOR THE COURT. THE COURT SHALL
26 OFFER THE PARTIES A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE OF
27 THE STANDARD PRACTICE.

1 (6) AN ISSUER IS NOT RESPONSIBLE FOR:

2 (A) THE PERFORMANCE OR NONPERFORMANCE OF THE UNDERLYING CON-
3 TRACT, ARRANGEMENT, OR TRANSACTION.

4 (B) AN ACT OR OMISSION OF OTHERS.

5 (C) OBSERVANCE OR KNOWLEDGE OF THE USAGE OF A PARTICULAR
6 TRADE OTHER THAN THE STANDARD PRACTICE REFERRED TO IN SUBSECTION
7 (5).

8 (7) IF AN UNDERTAKING CONSTITUTING A LETTER OF CREDIT UNDER
9 SECTION 5102(1)(J) CONTAINS NONDOCUMENTARY CONDITIONS, AN ISSUER
10 SHALL DISREGARD THE NONDOCUMENTARY CONDITIONS AND TREAT THEM AS
11 IF THEY WERE NOT STATED.

12 (8) AN ISSUER THAT HAS DISHONORED A PRESENTATION SHALL
13 RETURN THE DOCUMENTS OR HOLD THEM AT THE DISPOSAL OF, AND SEND
14 ADVICE TO THAT EFFECT TO, THE PRESENTER.

15 (9) AN ISSUER THAT HAS HONORED A PRESENTATION AS PERMITTED
16 OR REQUIRED BY THIS ARTICLE:

17 (A) IS ENTITLED TO BE REIMBURSED BY THE APPLICANT IN IMMEDI-
18 ATELY AVAILABLE FUNDS NOT LATER THAN THE DATE OF ITS PAYMENT OF
19 FUNDS.

20 (B) TAKES THE DOCUMENTS FREE OF CLAIMS OF THE BENEFICIARY OR
21 PRESENTER.

22 (C) IS PRECLUDED FROM ASSERTING A RIGHT OF RECOURSE ON A
23 DRAFT UNDER SECTIONS 3414 AND 3415.

24 (D) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 5110 AND 5117,
25 IS PRECLUDED FROM RESTITUTION OF MONEY PAID OR OTHER VALUE GIVEN
26 BY MISTAKE TO THE EXTENT THE MISTAKE CONCERNS DISCREPANCIES IN

1 THE DOCUMENTS OR TENDER WHICH ARE APPARENT ON THE FACE OF THE
2 PRESENTATION.

3 (E) IS DISCHARGED TO THE EXTENT OF ITS PERFORMANCE UNDER THE
4 LETTER OF CREDIT UNLESS THE ISSUER HONORED A PRESENTATION IN
5 WHICH A REQUIRED SIGNATURE OF A BENEFICIARY WAS FORGED.

6 Sec. 5109. ~~(1) An issuer's obligation to its customer~~
7 ~~includes good faith and observance of any general banking usage~~
8 ~~but unless otherwise agreed does not include liability or respon-~~
9 ~~sibility~~

10 ~~(a) for performance of the underlying contract for sale or~~
11 ~~other transaction between the customer and the beneficiary; or~~

12 ~~(b) for any act or omission of any person other than itself~~
13 ~~or its own branch or for loss or destruction of a draft, demand~~
14 ~~or document in transit or in the possession of others; or~~

15 ~~(c) based on knowledge or lack of knowledge of any usage of~~
16 ~~any particular trade.~~

17 ~~(2) An issuer must examine documents with care so as to~~
18 ~~ascertain that on their face they appear to comply with the terms~~
19 ~~of the credit but unless otherwise agreed assumes no liability or~~
20 ~~responsibility for the genuineness, falsification or effect of~~
21 ~~any document which appears on such examination to be regular on~~
22 ~~its face.~~

23 ~~(3) A non-bank issuer is not bound by any banking usage of~~
24 ~~which it has no knowledge.~~

25 (1) IF A PRESENTATION IS MADE THAT APPEARS ON ITS FACE
26 STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF
27 CREDIT, BUT A REQUIRED DOCUMENT IS FORGED OR MATERIALLY

1 FRAUDULENT, OR HONOR OF THE PRESENTATION WOULD FACILITATE A
2 MATERIAL FRAUD BY THE BENEFICIARY ON THE ISSUER OR APPLICANT:

3 (A) THE ISSUER SHALL HONOR THE PRESENTATION, IF HONOR IS
4 DEMANDED BY 1 OR MORE OF THE FOLLOWING:

5 (i) A NOMINATED PERSON WHO HAS GIVEN VALUE IN GOOD FAITH AND
6 WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD.

7 (ii) A CONFIRMER WHO HAS HONORED ITS CONFIRMATION IN GOOD
8 FAITH.

9 (iii) A HOLDER IN DUE COURSE OF A DRAFT DRAWN UNDER THE
10 LETTER OF CREDIT WHICH WAS TAKEN AFTER ACCEPTANCE BY THE ISSUER
11 OR NOMINATED PERSON.

12 (iv) AN ASSIGNEE OF THE ISSUER'S OR NOMINATED PERSON'S
13 DEFERRED OBLIGATION THAT WAS TAKEN FOR VALUE AND WITHOUT NOTICE
14 OF FORGERY OR MATERIAL FRAUD AFTER THE OBLIGATION WAS INCURRED BY
15 THE ISSUER OR NOMINATED PERSON.

16 (B) THE ISSUER, ACTING IN GOOD FAITH, MAY HONOR OR DISHONOR
17 THE PRESENTATION IN ANY OTHER CAUSE.

18 (2) IF AN APPLICANT CLAIMS THAT A REQUIRED DOCUMENT IS
19 FORGED OR MATERIALLY FRAUDULENT OR THAT HONOR OF THE PRESENTATION
20 WOULD FACILITATE A MATERIAL FRAUD BY THE BENEFICIARY ON THE
21 ISSUER OR APPLICANT, A COURT OF COMPETENT JURISDICTION MAY TEMPO-
22 RARILY OR PERMANENTLY ENJOIN THE ISSUER FROM HONORING A PRESENTA-
23 TION OR GRANT SIMILAR RELIEF AGAINST THE ISSUER OR OTHER PERSONS
24 ONLY IF THE COURT FINDS ALL OF THE FOLLOWING:

25 (A) THE RELIEF IS NOT PROHIBITED UNDER THE LAW APPLICABLE TO
26 AN ACCEPTED DRAFT OR DEFERRED OBLIGATION INCURRED BY THE ISSUER.

1 (B) A BENEFICIARY, ISSUER, OR NOMINATED PERSON WHO MAY BE
2 ADVERSELY AFFECTED IS ADEQUATELY PROTECTED AGAINST LOSS THAT IT
3 MAY SUFFER BECAUSE THE RELIEF IS GRANTED.

4 (C) ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE RELIEF
5 UNDER THE LAW OF THIS STATE HAVE BEEN MET.

6 (D) ON THE BASIS OF THE INFORMATION SUBMITTED TO THE COURT,
7 THE APPLICANT IS MORE LIKELY THAN NOT TO SUCCEED UNDER ITS CLAIM
8 OF FORGERY OR MATERIAL FRAUD AND THE PERSON DEMANDING HONOR DOES
9 NOT QUALIFY FOR PROTECTION UNDER SUBSECTION (1)(A).

10 Sec. 5110. ~~-(1) Unless otherwise specified a credit may be~~
11 ~~used in portions in the discretion of the beneficiary.~~

12 ~~-(2) Unless otherwise specified a person by presenting a doc-~~
13 ~~umentary draft or demand for payment under a credit relinquishes~~
14 ~~upon its honor all claims to the documents and a person by trans-~~
15 ~~ferring such draft or demand or causing such presentment autho-~~
16 ~~rizes such relinquishment. An explicit reservation of claim~~
17 ~~makes the draft or demand noncomplying.~~

18 (1) IF PRESENTATION IS HONORED, THE BENEFICIARY WARRANTS:

19 (A) TO THE ISSUER, ANY OTHER PERSON TO WHOM PRESENTATION IS
20 MADE, AND THE APPLICANT THAT THERE IS NO FRAUD OR FORGERY OF THE
21 KIND DESCRIBED IN SECTION 5109(1).

22 (B) TO THE APPLICANT THAT THE DRAWING DOES NOT VIOLATE ANY
23 AGREEMENT BETWEEN THE APPLICANT AND BENEFICIARY OR ANY OTHER
24 AGREEMENT INTENDED BY THEM TO BE AUGMENTED BY THE LETTER OF
25 CREDIT.

26 (2) THE WARRANTIES IN SUBSECTION (1) ARE IN ADDITION TO
27 WARRANTIES ARISING UNDER ARTICLES 3, 4, 7, AND 8 BECAUSE OF THE

1 PRESENTATION OR TRANSFER OF DOCUMENTS COVERED BY ANY OF THOSE
2 ARTICLES.

3 Sec. 5111. ~~-(1) Unless otherwise agreed the beneficiary by~~
4 ~~transferring or presenting a documentary draft or demand for pay-~~
5 ~~ment warrants to all interested parties that the necessary condi-~~
6 ~~tions of the credit have been complied with. This is in addition~~
7 ~~to any warrants arising under articles 3, 4, 7 and 8.~~

8 ~~(2) Unless otherwise agreed a negotiating, advising, con-~~
9 ~~firming, collecting or issuing bank presenting or transferring a~~
10 ~~draft or demand for payment under a credit warrants only the mat-~~
11 ~~ters warranted by a collecting bank under article 4 and any such~~
12 ~~bank transferring a document warrants only the matters warranted~~
13 ~~by an intermediary under articles 7 and 8.~~

14 (1) IF AN ISSUER WRONGFULLY DISHONORS OR REPUDIATES ITS
15 OBLIGATION TO PAY MONEY UNDER A LETTER OF CREDIT BEFORE PRESENTA-
16 TION, THE BENEFICIARY, SUCCESSOR, OR NOMINATED PERSON PRESENTING
17 ON ITS OWN BEHALF MAY RECOVER FROM THE ISSUER THE AMOUNT THAT IS
18 THE SUBJECT OF THE DISHONOR OR REPUDIATION. IF THE ISSUER'S
19 OBLIGATION UNDER THE LETTER OF CREDIT IS NOT FOR THE PAYMENT OF
20 MONEY, THE CLAIMANT MAY OBTAIN SPECIFIC PERFORMANCE OR, AT THE
21 CLAIMANT'S ELECTION, RECOVER AN AMOUNT EQUAL TO THE VALUE OF PER-
22 FORMANCE FROM THE ISSUER. IN EITHER CASE, THE CLAIMANT MAY ALSO
23 RECOVER INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES. THE CLAIMANT
24 IS NOT OBLIGATED TO TAKE ACTION TO AVOID DAMAGES THAT MIGHT BE
25 DUE FROM THE ISSUER UNDER THIS SUBSECTION. IF, ALTHOUGH NOT
26 OBLIGATED TO DO SO, THE CLAIMANT AVOIDS DAMAGES, THE CLAIMANT'S
27 RECOVERY FROM THE ISSUER MUST BE REDUCED BY THE AMOUNT OF DAMAGES

1 AVOIDED. THE ISSUER HAS THE BURDEN OF PROVING THE AMOUNT OF
2 DAMAGES AVOIDED. IN THE CASE OF REPUDIATION THE CLAIMANT NEED
3 NOT PRESENT ANY DOCUMENT.

4 (2) IF AN ISSUER WRONGFULLY DISHONORS A DRAFT OR DEMAND
5 PRESENTED UNDER A LETTER OF CREDIT OR HONORS A DRAFT OR DEMAND IN
6 BREACH OF ITS OBLIGATION TO THE APPLICANT, THE APPLICANT MAY
7 RECOVER DAMAGES RESULTING FROM THE BREACH, INCLUDING INCIDENTAL
8 BUT NOT CONSEQUENTIAL DAMAGES, LESS ANY AMOUNT SAVED AS A RESULT
9 OF THE BREACH.

10 (3) IF AN ADVISER OR NOMINATED PERSON OTHER THAN A CONFIRMER
11 BREACHES AN OBLIGATION UNDER THIS ARTICLE OR AN ISSUER BREACHES
12 AN OBLIGATION NOT COVERED IN SUBSECTION (1) OR (2), A PERSON TO
13 WHOM THE OBLIGATION IS OWED MAY RECOVER DAMAGES RESULTING FROM
14 THE BREACH, INCLUDING INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES,
15 LESS ANY AMOUNT SAVED AS A RESULT OF THE BREACH. TO THE EXTENT
16 OF THE CONFIRMATION, A CONFIRMER HAS THE LIABILITY OF AN ISSUER
17 SPECIFIED IN THIS SUBSECTION AND SUBSECTIONS (1) AND (2).

18 (4) AN ISSUER, NOMINATED PERSON, OR ADVISER WHO IS FOUND
19 LIABLE UNDER SUBSECTION (1), (2), OR (3) SHALL PAY INTEREST ON
20 THE AMOUNT OWED FROM THE DATE OF WRONGFUL DISHONOR OR OTHER
21 APPROPRIATE DATE.

22 (5) REASONABLE ATTORNEY'S FEES AND OTHER EXPENSES OF LITIGA-
23 TION SHALL BE AWARDED TO THE PREVAILING PARTY IN AN ACTION IN
24 WHICH A REMEDY IS SOUGHT UNDER THIS ARTICLE.

25 (6) DAMAGES THAT WOULD OTHERWISE BE PAYABLE BY A PARTY FOR
26 BREACH OF AN OBLIGATION UNDER THIS ARTICLE MAY BE LIQUIDATED BY

1 AGREEMENT OR UNDERTAKING, BUT ONLY IN AN AMOUNT OR BY A FORMULA
2 THAT IS REASONABLE IN LIGHT OF THE HARM ANTICIPATED.

3 Sec. 5112. ~~-(1) A bank to which a documentary draft or~~
4 ~~demand for payment is presented under a credit may without dis-~~
5 ~~honor of the draft, demand or credit~~

6 ~~(a) defer honor until the close of the third banking day~~
7 ~~following receipt of the documents; and~~

8 ~~(b) further defer honor if the presenter has expressly or~~
9 ~~impliedly consented thereto. Failure to honor within the time~~
10 ~~here specified constitutes dishonor of the draft or demand and of~~
11 ~~the credit except as otherwise provided in subsection (4) of sec-~~
12 ~~tion 5114 on conditional payment.~~

13 ~~(2) Upon dishonor the bank may unless otherwise instructed~~
14 ~~fulfill its duty to return the draft or demand and the documents~~
15 ~~by holding them at the disposal of the presenter and sending him~~
16 ~~an advice to that effect.~~

17 ~~(3) "Presenter" means any person presenting a draft or~~
18 ~~demand for payment for honor under a credit even though that~~
19 ~~person is a confirming bank or other correspondent which is~~
20 ~~acting under an issuer's authorization.~~

21 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 5113, UNLESS A
22 LETTER OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE RIGHT OF A
23 BENEFICIARY TO DRAW OR OTHERWISE DEMAND PERFORMANCE UNDER A
24 LETTER OF CREDIT MAY NOT BE TRANSFERRED.

25 (2) EVEN IF A LETTER OF CREDIT PROVIDES THAT IT IS TRANSFER-
26 ABLE, THE ISSUER MAY REFUSE TO RECOGNIZE OR CARRY OUT A TRANSFER
27 IF EITHER OF THE FOLLOWING APPLIES:

1 (A) THE TRANSFER WOULD VIOLATE APPLICABLE LAW.

2 (B) THE TRANSFEROR OR TRANSFEREE HAS FAILED TO COMPLY WITH
3 ANY REQUIREMENT STATED IN THE LETTER OF CREDIT OR ANY OTHER
4 REQUIREMENT RELATING TO TRANSFER IMPOSED BY THE ISSUER WHICH IS
5 WITHIN THE STANDARD PRACTICE REFERRED TO IN SECTION 5108(5) OR IS
6 OTHERWISE REASONABLE UNDER THE CIRCUMSTANCES.

7 Sec. 5113. ~~(1) A bank seeking to obtain (whether for~~
8 ~~itself or another) honor, negotiation or reimbursement under a~~
9 ~~credit may give an indemnity to induce such honor, negotiation or~~
10 ~~reimbursement.~~

11 ~~(2) An indemnity agreement inducing honor, negotiation or~~
12 ~~reimbursement~~

13 ~~(a) unless otherwise explicitly agreed applies to defects in~~
14 ~~the documents but not in the goods; and~~

15 ~~(b) unless a longer time is explicitly agreed expires at the~~
16 ~~end of 10 business days following receipt of the documents by the~~
17 ~~ultimate customer unless notice of objection is sent before such~~
18 ~~expiration date. The ultimate customer may send notice of objec-~~
19 ~~tion to the person from whom he received the documents and any~~
20 ~~bank receiving such notice is under a duty to send notice to its~~
21 ~~transferor before its midnight deadline.~~

22 (1) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS,
23 SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF
24 VALUE IN THE NAME OF THE BENEFICIARY WITHOUT DISCLOSING ITS
25 STATUS AS A SUCCESSOR.

26 (2) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS,
27 SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF

1 VALUE IN ITS OWN NAME AS THE DISCLOSED SUCCESSOR OF THE
2 BENEFICIARY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), AN
3 ISSUER SHALL RECOGNIZE A DISCLOSED SUCCESSOR OF A BENEFICIARY AS
4 BENEFICIARY IN FULL SUBSTITUTION FOR ITS PREDECESSOR UPON COMPLI-
5 ANCE WITH THE REQUIREMENTS FOR RECOGNITION BY THE ISSUER OF A
6 TRANSFER OF DRAWING RIGHTS BY OPERATION OF LAW UNDER THE STANDARD
7 PRACTICE REFERRED TO IN SECTION 5108(5) OR, IN THE ABSENCE OF
8 SUCH A PRACTICE, COMPLIANCE WITH OTHER REASONABLE PROCEDURES SUFFI-
9 FICIENT TO PROTECT THE ISSUER.

10 (3) AN ISSUER IS NOT OBLIGED TO DETERMINE WHETHER A PUR-
11 PORTED SUCCESSOR IS A SUCCESSOR OF A BENEFICIARY OR WHETHER THE
12 SIGNATURE OF A PURPORTED SUCCESSOR IS GENUINE OR AUTHORIZED.

13 (4) HONOR OF A PURPORTED SUCCESSOR'S APPARENTLY COMPLYING
14 PRESENTATION UNDER SUBSECTION (1) OR (2) HAS THE CONSEQUENCES
15 SPECIFIED IN SECTION 5108(9) EVEN IF THE PURPORTED SUCCESSOR IS
16 NOT THE SUCCESSOR OF A BENEFICIARY. DOCUMENTS SIGNED IN THE NAME
17 OF THE BENEFICIARY OR OF A DISCLOSED SUCCESSOR BY A PERSON WHO IS
18 NEITHER THE BENEFICIARY NOR THE SUCCESSOR OF THE BENEFICIARY ARE
19 FORGED DOCUMENTS FOR THE PURPOSES OF SECTION 5109.

20 (5) AN ISSUER WHOSE RIGHTS OF REIMBURSEMENT ARE NOT COVERED
21 BY SUBSECTION (4) OR SUBSTANTIALLY SIMILAR LAW AND ANY CONFIRMER
22 OR NOMINATED PERSON MAY DECLINE TO RECOGNIZE A PRESENTATION UNDER
23 SUBSECTION (2).

24 (6) A BENEFICIARY WHOSE NAME IS CHANGED AFTER THE ISSUANCE
25 OF A LETTER OF CREDIT HAS THE SAME RIGHTS AND OBLIGATIONS AS A
26 SUCCESSOR OF A BENEFICIARY UNDER THIS SECTION.

1 Sec. 5114. ~~-(1) An issuer must honor a draft or demand for~~
2 ~~payment which complies with the terms of the relevant credit~~
3 ~~regardless of whether the goods or documents conform to the~~
4 ~~underlying contract for sale or other contract between the cus-~~
5 ~~tomers and the beneficiary. The issuer is not excused from honor~~
6 ~~of such a draft or demand by reason of an additional general term~~
7 ~~that all documents must be satisfactory to the issuer, but an~~
8 ~~issuer may require that specified documents must be satisfactory~~
9 ~~to it.~~

10 ~~-(2) Unless otherwise agreed when documents appear on their~~
11 ~~face to comply with the terms of a credit, but a required docu-~~
12 ~~ment does not in fact conform to the warranties made on negotia-~~
13 ~~tion or transfer of a document of title (section 7507) or of a~~
14 ~~certificated security (section 8306) or is forged or fraudulent~~
15 ~~or there is fraud in the transaction:~~

16 ~~-(a) the issuer must honor the draft on demand for payment if~~
17 ~~honor is demanded by a negotiating bank or other holder of the~~
18 ~~draft or demand which has taken the draft or demand under the~~
19 ~~credit and under circumstances which would make it a holder in~~
20 ~~due course (section 3302) and in an appropriate case would make~~
21 ~~it a person to whom a document of title has been duly negotiated~~
22 ~~(section 7502) or a bona fide purchaser of a certificated secur-~~
23 ~~ity (section 8302); and~~

24 ~~-(b) in all other cases as against its customer, an issuer~~
25 ~~acting in good faith may honor the draft or demand for payment~~
26 ~~despite notification from the customer of fraud, forgery or other~~

1 ~~defect not apparent on the face of the documents but a court of~~
2 ~~appropriate jurisdiction may enjoin such honor.~~

3 ~~(3) Unless otherwise agreed an issuer which has duly honored~~
4 ~~a draft or demand for payment is entitled to immediate reimburse-~~
5 ~~ment of any payment made under the credit and to be put in effec-~~
6 ~~tively available funds not later than the day before maturity of~~
7 ~~any acceptance made under the credit.~~

8 ~~(4) When a credit provides for payment by the issuer on~~
9 ~~receipt of notice that the required documents are in the posses-~~
10 ~~sion of a correspondent or other agent of the issuer~~

11 ~~(a) any payment made on receipt of the notice is condition-~~
12 ~~al; and~~

13 ~~(b) the issuer may reject documents which do not comply with~~
14 ~~the credit if it does so within 3 banking days following its~~
15 ~~receipt of the documents; and~~

16 ~~(c) in the event of such rejection, the issuer is entitled~~
17 ~~by charge back or otherwise to return of the payment made.~~

18 ~~(5) In the case covered by subsection (4) failure to reject~~
19 ~~documents within the time specified in subdivision (b) consti-~~
20 ~~tutes acceptance of the documents and makes the payment final in~~
21 ~~favor of the beneficiary.~~

22 (1) IN THIS SECTION, "PROCEEDS OF A LETTER OF CREDIT" MEANS
23 THE CASH, CHECK, ACCEPTED DRAFT, OR OTHER ITEM OF VALUE PAID OR
24 DELIVERED UPON HONOR OR GIVING OF VALUE BY THE ISSUER OR ANY NOM-
25 INATED PERSON UNDER THE LETTER OF CREDIT. THE TERM DOES NOT
26 INCLUDE A BENEFICIARY'S DRAWING RIGHTS OR DOCUMENTS PRESENTED BY
27 THE BENEFICIARY.

1 (2) A BENEFICIARY MAY ASSIGN ITS RIGHT TO PART OR ALL OF THE
2 PROCEEDS OF A LETTER OF CREDIT. THE BENEFICIARY MAY DO SO BEFORE
3 PRESENTATION AS A PRESENT ASSIGNMENT OF ITS RIGHT TO RECEIVE PRO-
4 CEEDS CONTINGENT UPON ITS COMPLIANCE WITH THE TERMS AND CONDI-
5 TIONS OF THE LETTER OF CREDIT.

6 (3) AN ISSUER OR NOMINATED PERSON NEED NOT RECOGNIZE AN
7 ASSIGNMENT OF PROCEEDS OF A LETTER OF CREDIT UNTIL IT CONSENTS TO
8 THE ASSIGNMENT.

9 (4) AN ISSUER OR NOMINATED PERSON HAS NO OBLIGATION TO GIVE
10 OR WITHHOLD ITS CONSENT TO AN ASSIGNMENT OF PROCEEDS OF A LETTER
11 OF CREDIT, BUT CONSENT MAY NOT BE UNREASONABLY WITHHELD IF THE
12 ASSIGNEE POSSESSES AND EXHIBITS THE LETTER OF CREDIT AND PRESEN-
13 TATION OF THE LETTER OF CREDIT IS A CONDITION TO HONOR.

14 (5) RIGHTS OF A TRANSFEREE BENEFICIARY OR NOMINATED PERSON
15 ARE INDEPENDENT OF THE BENEFICIARY'S ASSIGNMENT OF THE PROCEEDS
16 OF A LETTER OF CREDIT AND ARE SUPERIOR TO THE ASSIGNEE'S RIGHT TO
17 THE PROCEEDS.

18 (6) THE RIGHTS RECOGNIZED BY THIS SECTION BETWEEN AN
19 ASSIGNEE AND AN ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED
20 PERSON OR THE ISSUER'S OR NOMINATED PERSON'S PAYMENT OF PROCEEDS
21 TO AN ASSIGNEE OR A THIRD PERSON DO NOT AFFECT THE RIGHTS BETWEEN
22 THE ASSIGNEE AND ANY PERSON OTHER THAN THE ISSUER, TRANSFEREE
23 BENEFICIARY, OR NOMINATED PERSON. THE MODE OF CREATING AND PER-
24 FECTING A SECURITY INTEREST IN OR GRANTING AN ASSIGNMENT OF A
25 BENEFICIARY'S RIGHTS TO PROCEEDS IS GOVERNED BY ARTICLE 9 OR
26 OTHER LAW. AGAINST PERSONS OTHER THAN THE ISSUER, TRANSFEREE
27 BENEFICIARY, OR NOMINATED PERSON, THE RIGHTS AND OBLIGATIONS

1 ARISING UPON THE CREATION OF A SECURITY INTEREST OR OTHER
2 ASSIGNMENT OF A BENEFICIARY'S RIGHT TO PROCEEDS AND ITS PERFEC-
3 TION ARE GOVERNED BY ARTICLE 9 OR OTHER LAW.

4 Sec. 5115. ~~-(1) When an issuer wrongfully dishonors a draft~~
5 ~~or demand for payment presented under a credit the person enti-~~
6 ~~tled to honor has with respect to any documents the rights of a~~
7 ~~person in the position of a seller (section 2707) and may recover~~
8 ~~from the issuer the face amount of the draft or demand together~~
9 ~~with incidental damages under section 2710 on seller's incidental~~
10 ~~damages and interest but less any amount realized by resale or~~
11 ~~other use or disposition of the subject matter of the~~
12 ~~transaction. In the event no resale or other utilization is made~~
13 ~~the documents, goods or other subject matter involved in the~~
14 ~~transaction must be turned over to the issuer on payment of~~
15 ~~judgment.~~

16 ~~-(2) When an issuer wrongfully cancels or otherwise repudi-~~
17 ~~ates a credit before presentment of a draft or demand for payment~~
18 ~~drawn under it the beneficiary has the rights of a seller after~~
19 ~~anticipatory repudiation by the buyer under section 2610 if he~~
20 ~~learns of the repudiation in time reasonably to avoid procurement~~
21 ~~of the required documents. Otherwise the beneficiary has an~~
22 ~~immediate right of action for wrongful dishonor.~~ AN ACTION TO
23 ENFORCE A RIGHT OR OBLIGATION ARISING UNDER THIS ARTICLE MUST BE
24 COMMENCED WITHIN 1 YEAR AFTER THE EXPIRATION DATE OF THE RELEVANT
25 LETTER OF CREDIT OR 1 YEAR AFTER THE CAUSE OF ACTION ACCRUES,
26 WHICHEVER OCCURS LATER. A CAUSE OF ACTION ACCRUES WHEN THE

1 BREACH OCCURS, REGARDLESS OF THE AGGRIEVED PARTY'S LACK OF
2 KNOWLEDGE OF THE BREACH.

3 Sec. 5116. ~~-(1) The right to draw under a credit can be~~
4 ~~transferred or assigned only when the credit is expressly desig-~~
5 ~~nated as transferable or assignable.~~

6 ~~(2) Even though the credit specifically states that it is~~
7 ~~nontransferable or nonassignable the beneficiary may before per-~~
8 ~~formance of the conditions of the credit assign his right to~~
9 ~~proceeds. Such an assignment is an assignment of an account~~
10 ~~under article 9 on secured transactions and is governed by that~~
11 ~~article except that:~~

12 ~~(a) The assignment is ineffective until the letter of credit~~
13 ~~or advice of credit is delivered to the assignee which delivery~~
14 ~~constitutes perfection of the security interest under article 9;~~
15 ~~and~~

16 ~~(b) The issuer may honor drafts or demands for payment drawn~~
17 ~~under the credit until it receives a notification of the assign-~~
18 ~~ment signed by the beneficiary which reasonably identifies the~~
19 ~~credit involved in the assignment and contains a request to pay~~
20 ~~the assignee; and~~

21 ~~(c) After what reasonably appears to be such a notification~~
22 ~~has been received the issuer may without dishonor refuse to~~
23 ~~accept or pay even to a person otherwise entitled to honor until~~
24 ~~the letter of credit or advice of credit is exhibited to the~~
25 ~~issuer.~~

26 ~~(3) Except where the beneficiary has effectively assigned~~
27 ~~his right to draw or his right to proceeds, nothing in this~~

~~1 section limits his right to transfer or negotiate drafts or
2 demands drawn under the credit.~~

3 (1) THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER
4 FOR ACTION OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION
5 CHOSEN BY AN AGREEMENT IN THE FORM OF A RECORD SIGNED OR OTHER-
6 WISE AUTHENTICATED BY THE AFFECTED PARTIES IN THE MANNER PROVIDED
7 IN SECTION 5104 OR BY A PROVISION IN THE PERSON'S LETTER OF
8 CREDIT, CONFIRMATION, OR OTHER UNDERTAKING. THE JURISDICTION
9 WHOSE LAW IS CHOSEN NEED NOT BEAR ANY RELATION TO THE
10 TRANSACTION.

11 (2) UNLESS SUBSECTION (1) APPLIES, THE LIABILITY OF AN
12 ISSUER, NOMINATED PERSON, OR ADVISER FOR ACTION OR OMISSION IS
13 GOVERNED BY THE LAW OF THE JURISDICTION IN WHICH THE PERSON IS
14 LOCATED. THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS
15 INDICATED IN THE PERSON'S UNDERTAKING. IF MORE THAN 1 ADDRESS IS
16 INDICATED, THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS
17 FROM WHICH THE PERSON'S UNDERTAKING WAS ISSUED. FOR THE PURPOSE
18 OF JURISDICTION, CHOICE OF LAW, AND RECOGNITION OF INTERBRANCH
19 LETTERS OF CREDIT, BUT NOT ENFORCEMENT OF A JUDGMENT, ALL
20 BRANCHES OF A BANK ARE CONSIDERED SEPARATE JURIDICAL ENTITIES AND
21 A BANK IS CONSIDERED TO BE LOCATED AT THE PLACE WHERE ITS RELE-
22 VANT BRANCH IS CONSIDERED TO BE LOCATED UNDER THIS SUBSECTION.

23 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
24 LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER IS GOVERNED
25 BY ANY RULES OF CUSTOM OR PRACTICE, SUCH AS THE UNIFORM CUSTOMS
26 AND PRACTICE FOR DOCUMENTARY CREDITS, TO WHICH THE LETTER OF
27 CREDIT, CONFIRMATION, OR OTHER UNDERTAKING IS EXPRESSLY MADE

1 SUBJECT. IF THIS ARTICLE WOULD GOVERN THE LIABILITY OF AN
 2 ISSUER, NOMINATED PERSON, OR ADVISER UNDER SUBSECTION (1) OR (2),
 3 OR THE RELEVANT UNDERTAKING INCORPORATES RULES OF CUSTOM OR PRAC-
 4 TICE, OR THERE IS CONFLICT BETWEEN THIS ARTICLE AND THOSE RULES
 5 AS APPLIED TO THAT UNDERTAKING, THOSE RULES GOVERN EXCEPT TO THE
 6 EXTENT OF ANY CONFLICT WITH THE NONVARIABLE PROVISIONS SPECIFIED
 7 IN SECTION 5103(3).

8 (4) IF THERE IS CONFLICT BETWEEN THIS ARTICLE AND ARTICLE 3,
 9 4, 4A, OR 9, THIS ARTICLE GOVERNS.

10 (5) THE FORUM FOR SETTling DISPUTES ARISING OUT OF AN UNDER-
 11 TAKING WITHIN THIS ARTICLE MAY BE CHOSEN IN THE MANNER AND WITH
 12 THE BINDING EFFECT THAT GOVERNING LAW MAY BE CHOSEN IN ACCORDANCE
 13 WITH SUBSECTION (1).

14 Sec. 5117. ~~(1) Where an issuer or an advising or confirm-~~
 15 ~~ing bank or a bank which has for a customer procured issuance of~~
 16 ~~a credit by another bank becomes insolvent before final payment~~
 17 ~~under the credit and the credit is one to which this article is~~
 18 ~~made applicable by paragraphs (a) or (b) of section 5102(1) on~~
 19 ~~scope, the receipt or allocation of funds or collateral to secure~~
 20 ~~or meet obligations under the credit shall have the following~~
 21 ~~results:~~

22 ~~(a) to the extent of any funds or collateral turned over~~
 23 ~~after or before the insolvency as indemnity against or specifi-~~
 24 ~~cally for the purpose of payment of drafts or demands for payment~~
 25 ~~drawn under the designated credit, the drafts or demands are~~
 26 ~~entitled to payment in preference over depositors or other~~
 27 ~~general creditors of the issuer or bank; and~~

1 ~~(b) on expiration of the credit or surrender of the~~
2 ~~beneficiary's rights under it unused any person who has given~~
3 ~~such funds or collateral is similarly entitled to return thereof;~~
4 and

5 ~~(c) a charge to a general or current account with a bank if~~
6 ~~specifically consented to for the purpose of indemnity against or~~
7 ~~payment of drafts or demands for payment drawn under the desig-~~
8 ~~nated credit falls under the same rules as if the funds had been~~
9 ~~drawn out in cash and then turned over with specific~~
10 ~~instructions.~~

11 ~~(2) After honor or reimbursement under this section the cus-~~
12 ~~tomers or other person for whose account the insolvent bank has~~
13 ~~acted is entitled to receive the documents involved.~~

14 (1) AN ISSUER THAT HONORS A BENEFICIARY'S PRESENTATION IS
15 SUBROGATED TO THE RIGHTS OF THE BENEFICIARY TO THE SAME EXTENT AS
16 IF THE ISSUER WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGA-
17 TION OWED TO THE BENEFICIARY AND OF THE APPLICANT TO THE SAME
18 EXTENT AS IF THE ISSUER WERE THE SECONDARY OBLIGOR OF THE UNDER-
19 LYING OBLIGATION OWED TO THE APPLICANT.

20 (2) AN APPLICANT THAT REIMBURSES AN ISSUER IS SUBROGATED TO
21 THE RIGHTS OF THE ISSUER AGAINST ANY BENEFICIARY, PRESENTER, OR
22 NOMINATED PERSON TO THE SAME EXTENT AS IF THE APPLICANT WERE THE
23 SECONDARY OBLIGOR OF THE OBLIGATIONS OWED TO THE ISSUER AND HAS
24 THE RIGHTS OF SUBROGATION OF THE ISSUER TO THE RIGHTS OF THE BEN-
25 EFICIARY STATED IN SUBSECTION (1).

1 (3) A NOMINATED PERSON WHO PAYS OR GIVES VALUE AGAINST A
2 DRAFT OR DEMAND PRESENTED UNDER A LETTER OF CREDIT IS SUBROGATED
3 TO THE RIGHTS OF ALL OF THE FOLLOWING:

4 (A) THE ISSUER AGAINST THE APPLICANT TO THE SAME EXTENT AS
5 IF THE NOMINATED PERSON WERE A SECONDARY OBLIGOR OF THE OBLIGA-
6 TION OWED TO THE ISSUER BY THE APPLICANT.

7 (B) THE BENEFICIARY TO THE SAME EXTENT AS IF THE NOMINATED
8 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED
9 TO THE BENEFICIARY.

10 (C) THE APPLICANT TO THE SAME EXTENT AS IF THE NOMINATED
11 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED
12 TO THE APPLICANT.

13 (4) NOTWITHSTANDING ANY AGREEMENT OR TERM TO THE CONTRARY,
14 THE RIGHTS OF SUBROGATION STATED IN SUBSECTIONS (1) AND (2) DO
15 NOT ARISE UNTIL THE ISSUER HONORS THE LETTER OF CREDIT OR OTHER-
16 WISE PAYS AND THE RIGHTS IN SUBSECTION (3) DO NOT ARISE UNTIL THE
17 NOMINATED PERSON PAYS OR OTHERWISE GIVES VALUE. UNTIL THEN, THE
18 ISSUER, NOMINATED PERSON, AND THE APPLICANT DO NOT DERIVE UNDER
19 THIS SECTION PRESENT OR PROSPECTIVE RIGHTS FORMING THE BASIS OF A
20 CLAIM, DEFENSE, OR EXCUSE.

21 Enacting section 1. This amendatory act takes effect
22 January 1, 1998.