

**SUBSTITUTE FOR  
HOUSE BILL NO. 5081**

A bill to amend 1962 PA 174, entitled  
"Uniform commercial code,"  
by amending the heading for part 1 and sections 1101, 1102, 1103,  
1106, 1202, 1203, 1204, 1205, 1206, 2202, 2A501, 2A518, 2A519,  
2A527, 2A528, 3103, 4A105, 4A106, 4A204, 5103, and 8102 (MCL  
440.1101, 440.1102, 440.1103, 440.1106, 440.1202, 440.1203,  
440.1204, 440.1205, 440.1206, 440.2202, 440.2951, 440.2968,  
440.2969, 440.2977, 440.2978, 440.3103, 440.4605, 440.4606,  
440.4704, 440.5103, and 440.8102), sections 1206 and 8102 as  
amended by 1998 PA 278, sections 2A501, 2A518, 2A519, 2A527, and  
2A528 as added by 1992 PA 101, section 3103 as amended by 1993 PA  
130, sections 4A105, 4A106, and 4A204 as added by 1992 PA 100,  
and section 5103 as amended by 1998 PA 488, and by adding a  
heading for part 3 and sections 1108, 1301, 1302, 1303, 1304,

1305, 1306, 1307, 1308, 1309, and 1310; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1

## PART 1

2

~~SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE~~

3

~~ACT—GENERAL PROVISIONS~~

4

Sec. 1101. (1) This act shall be known and may be cited as

5

~~THE~~ "uniform commercial code".

6

(2) ~~THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE~~

7

~~"UNIFORM COMMERCIAL CODE - GENERAL PROVISIONS".~~

8

Sec. 1102. ~~(1) This act shall be liberally construed and~~

9

~~applied to promote its underlying purposes and policies.~~

10

~~—— (2) Underlying purposes and policies of this act are~~

11

~~—— (a) to simplify, clarify and modernize the law governing~~

12

~~commercial transactions;~~

13

~~—— (b) to permit the continued expansion of commercial~~

14

~~practices through custom, usage and agreement of the parties;~~

15

~~—— (c) to make uniform the law among the various jurisdictions.~~

16

~~—— (3) The effect of provisions of this act may be varied by~~

17

~~agreement, except as otherwise provided in this act and except~~

18

~~that the obligations of good faith, diligence, reasonableness and~~

19

~~care prescribed by this act may not be disclaimed by agreement~~

20

~~but the parties may by agreement determine the standards by which~~

21

~~the performance of such obligations is to be measured if such~~

22

~~standards are not manifestly unreasonable.~~

23

~~—— (4) The presence in certain provisions of this act of the~~

24

~~words "unless otherwise agreed" or words of similar import does~~

1 ~~not imply that the effect of other provisions may not be varied~~  
 2 ~~by agreement under subsection (3).~~

3 ~~—— (5) In this act unless the context otherwise requires~~

4 ~~—— (a) words in the singular number include the plural, and in~~  
 5 ~~the plural include the singular,~~

6 ~~—— (b) words of the masculine gender include the feminine and~~  
 7 ~~the neuter, and when the sense so indicates words of the neuter~~  
 8 ~~gender may refer to any gender. THIS ARTICLE APPLIES TO A~~

9 ~~TRANSACTION TO THE EXTENT THAT IT IS GOVERNED BY ANOTHER ARTICLE~~  
 10 ~~OF THIS ACT.~~

11       Sec. 1103. (1) **THIS ACT MUST BE LIBERALLY CONSTRUED AND**  
 12 **APPLIED TO PROMOTE THE FOLLOWING UNDERLYING PURPOSES AND**  
 13 **POLICIES:**

14       **(A) TO SIMPLIFY, CLARIFY, AND MODERNIZE THE LAW GOVERNING**  
 15 **COMMERCIAL TRANSACTIONS.**

16       **(B) TO PERMIT THE CONTINUED EXPANSION OF COMMERCIAL**  
 17 **PRACTICES THROUGH CUSTOM, USAGE, AND AGREEMENT OF THE PARTIES.**

18       **(C) TO MAKE UNIFORM THE LAW AMONG THE VARIOUS JURISDICTIONS.**

19       (2) Unless displaced by the particular provisions of this  
 20 act, the principles of law and equity, including the law merchant  
 21 and the law relative to capacity to contract, principal and  
 22 agent, estoppel, fraud, misrepresentation, duress, coercion,  
 23 mistake, bankruptcy, or other validating or invalidating cause  
 24 shall supplement its provisions.

25       Sec. 1106. ~~(1) The remedies provided by this act shall be~~  
 26 ~~liberally administered to the end that the aggrieved party may be~~  
 27 ~~put in as good a position as if the other party had fully~~

1 ~~performed but neither consequential or special nor penal damages~~  
2 ~~may be had except as specifically provided in this act or by~~  
3 ~~other rule of law.~~

4 ~~—— (2) Any right or obligation declared by this act is~~  
5 ~~enforceable by action unless the provision declaring it specifies~~  
6 ~~a different and limited effect. ALL OF THE FOLLOWING APPLY IN~~

7 ~~THIS ACT, UNLESS THE STATUTORY CONTEXT OTHERWISE REQUIRES:~~

8 (A) WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL, AND  
9 THOSE IN THE PLURAL INCLUDE THE SINGULAR.

10 (B) WORDS OF ANY GENDER ALSO REFER TO ANY OTHER GENDER.

11 SEC. 1108. THIS ARTICLE MODIFIES, LIMITS, AND SUPERSEDES THE  
12 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 USC  
13 7001 TO 7031, EXCEPT THAT NOTHING IN THIS ARTICLE MODIFIES,  
14 LIMITS, OR SUPERSEDES SECTION 7001(C) OF THAT ACT, 15 USC 7001,  
15 OR AUTHORIZES ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED  
16 IN SECTION 7003(B) OF THAT ACT, 15 USC 7003.

17 Sec. 1202. ~~A document in due form purporting to be a bill of~~  
18 ~~lading, policy or certificate of insurance, official weigher's or~~  
19 ~~inspector's certificate, consular invoice, or any other document~~  
20 ~~authorized or required by the contract to be issued by a third~~  
21 ~~party shall be prima facie evidence of its own authenticity and~~  
22 ~~genuineness and of the fact stated in the document by the third~~  
23 ~~party. FOR PURPOSES OF THIS ACT:~~

24 (A) SUBJECT TO SUBDIVISION (F), A PERSON HAS "NOTICE" OF A  
25 FACT IF THE PERSON HAS ANY OF THE FOLLOWING:

26 (i) ACTUAL KNOWLEDGE OF IT.

27 (ii) RECEIVED A NOTICE OR NOTIFICATION OF IT.

1           (iii) FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON  
2 AT THE TIME IN QUESTION, REASON TO KNOW THAT IT EXISTS.

3           (B) "KNOWLEDGE" MEANS ACTUAL KNOWLEDGE. "KNOWS" HAS A  
4 CORRESPONDING MEANING.

5           (C) "DISCOVER", "LEARN", OR WORDS OF SIMILAR IMPORT REFER TO  
6 KNOWLEDGE RATHER THAN TO REASON TO KNOW.

7           (D) A PERSON "NOTIFIES" OR "GIVES" A NOTICE OR NOTIFICATION  
8 TO ANOTHER PERSON BY TAKING THOSE STEPS AS MAY BE REASONABLY  
9 REQUIRED TO INFORM THE OTHER PERSON IN ORDINARY COURSE, WHETHER  
10 OR NOT THE OTHER PERSON ACTUALLY COMES TO KNOW OF IT.

11           (E) SUBJECT TO SUBDIVISION (F), A PERSON "RECEIVES" A NOTICE  
12 OR NOTIFICATION WHEN EITHER OF THE FOLLOWING OCCURS:

13           (i) IT COMES TO THAT PERSON'S ATTENTION.

14           (ii) IT IS DULY DELIVERED IN A FORM REASONABLE UNDER THE  
15 CIRCUMSTANCES AT THE PLACE OF BUSINESS THROUGH WHICH THE CONTRACT  
16 WAS MADE OR AT ANOTHER LOCATION HELD OUT BY THAT PERSON AS THE  
17 PLACE FOR RECEIPT OF THOSE COMMUNICATIONS.

18           (F) NOTICE, KNOWLEDGE, OR A NOTICE OR NOTIFICATION RECEIVED  
19 BY AN ORGANIZATION IS EFFECTIVE FOR A PARTICULAR TRANSACTION FROM  
20 THE TIME IT IS BROUGHT TO THE ATTENTION OF THE INDIVIDUAL  
21 CONDUCTING THAT TRANSACTION AND, IN ANY EVENT, FROM THE TIME IT  
22 WOULD HAVE BEEN BROUGHT TO THE INDIVIDUAL'S ATTENTION IF THE  
23 ORGANIZATION HAD EXERCISED DUE DILIGENCE. AN ORGANIZATION  
24 EXERCISES DUE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR  
25 COMMUNICATING SIGNIFICANT INFORMATION TO THE PERSON CONDUCTING  
26 THE TRANSACTION AND THERE IS REASONABLE COMPLIANCE WITH THE  
27 ROUTINES. DUE DILIGENCE DOES NOT REQUIRE AN INDIVIDUAL ACTING FOR

1 THE ORGANIZATION TO COMMUNICATE INFORMATION UNLESS THE  
2 COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR DUTIES OR THE  
3 INDIVIDUAL HAS REASON TO KNOW OF THE TRANSACTION AND THAT THE  
4 TRANSACTION WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.

5 Sec. 1203. ~~Every contract or duty within this act imposes an~~  
6 ~~obligation of good faith in its performance or enforcement.~~

7 (1) WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A  
8 LEASE OR SECURITY INTEREST IS DETERMINED BY THE FACTS OF EACH  
9 CASE.

10 (2) A TRANSACTION IN THE FORM OF A LEASE CREATES A SECURITY  
11 INTEREST IF THE CONSIDERATION THAT THE LESSEE IS TO PAY THE  
12 LESSOR FOR THE RIGHT TO POSSESSION AND USE OF THE GOODS IS AN  
13 OBLIGATION FOR THE TERM OF THE LEASE AND IS NOT SUBJECT TO  
14 TERMINATION BY THE LESSEE, AND ANY OF THE FOLLOWING ARE MET:

15 (A) THE ORIGINAL TERM OF THE LEASE IS EQUAL TO OR GREATER  
16 THAN THE REMAINING ECONOMIC LIFE OF THE GOODS.

17 (B) THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE REMAINING  
18 ECONOMIC LIFE OF THE GOODS OR IS BOUND TO BECOME THE OWNER OF THE  
19 GOODS.

20 (C) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE  
21 REMAINING ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL  
22 CONSIDERATION OR FOR NOMINAL ADDITIONAL CONSIDERATION UPON  
23 COMPLIANCE WITH THE LEASE AGREEMENT.

24 (D) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE  
25 GOODS FOR NO ADDITIONAL CONSIDERATION OR FOR NOMINAL ADDITIONAL  
26 CONSIDERATION UPON COMPLIANCE WITH THE LEASE AGREEMENT.

27 (3) A TRANSACTION IN THE FORM OF A LEASE DOES NOT CREATE A

1 SECURITY INTEREST MERELY BECAUSE ANY OF THE FOLLOWING ARE MET:

2 (A) THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS  
3 OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE  
4 OF THE GOODS IS SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE  
5 FAIR MARKET VALUE OF THE GOODS AT THE TIME THE LEASE IS ENTERED  
6 INTO.

7 (B) THE LESSEE ASSUMES RISK OF LOSS OF THE GOODS.

8 (C) THE LESSEE AGREES TO PAY, WITH RESPECT TO THE GOODS,  
9 TAXES, INSURANCE, FILING, RECORDING, OR REGISTRATION FEES, OR  
10 SERVICE OR MAINTENANCE COSTS.

11 (D) THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO BECOME  
12 THE OWNER OF THE GOODS.

13 (E) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR A FIXED  
14 RENT THAT IS EQUAL TO OR GREATER THAN THE REASONABLY PREDICTABLE  
15 FAIR MARKET RENT FOR THE USE OF THE GOODS FOR THE TERM OF THE  
16 RENEWAL AT THE TIME THE OPTION IS TO BE PERFORMED.

17 (F) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE  
18 GOODS FOR A FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE  
19 REASONABLY PREDICTABLE FAIR MARKET VALUE OF THE GOODS AT THE TIME  
20 THE OPTION IS TO BE PERFORMED.

21 (4) ADDITIONAL CONSIDERATION IS NOMINAL IF IT IS LESS THAN  
22 THE LESSEE'S REASONABLY PREDICTABLE COST OF PERFORMING UNDER THE  
23 LEASE AGREEMENT IF THE OPTION IS NOT EXERCISED. ADDITIONAL  
24 CONSIDERATION IS NOT NOMINAL IF EITHER OF THE FOLLOWING ARE MET:

25 (A) WHEN THE OPTION TO RENEW THE LEASE IS GRANTED TO THE  
26 LESSEE, THE RENT IS STATED TO BE THE FAIR MARKET RENT FOR THE USE  
27 OF THE GOODS FOR THE TERM OF THE RENEWAL DETERMINED AT THE TIME

1 THE OPTION IS TO BE PERFORMED.

2 (B) WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS IS  
3 GRANTED TO THE LESSEE, THE PRICE IS STATED TO BE THE FAIR MARKET  
4 VALUE OF THE GOODS DETERMINED AT THE TIME THE OPTION IS TO BE  
5 PERFORMED.

6 (5) THE "REMAINING ECONOMIC LIFE OF THE GOODS" AND  
7 "REASONABLY PREDICTABLE" FAIR MARKET RENT, FAIR MARKET VALUE, OR  
8 COST OF PERFORMING UNDER THE LEASE AGREEMENT MUST BE DETERMINED  
9 WITH REFERENCE TO THE FACTS AND CIRCUMSTANCES AT THE TIME THE  
10 TRANSACTION IS ENTERED INTO.

11 Sec. 1204. ~~(1) Whenever this act requires any action to be~~  
12 ~~taken within a reasonable time, any time which is not manifestly~~  
13 ~~unreasonable may be fixed by agreement.~~

14 ~~—— (2) What is a reasonable time for taking any action depends~~  
15 ~~on the nature, purpose and circumstances of such action.~~

16 ~~—— (3) An action is taken "seasonably" when it is taken at or~~  
17 ~~within the time agreed or if no time is agreed at or within a~~  
18 ~~reasonable time. EXCEPT AS OTHERWISE PROVIDED IN ARTICLES 3, 4,~~  
19 ~~AND 5, A PERSON GIVES VALUE FOR RIGHTS IF THE PERSON ACQUIRES~~  
20 ~~THEM FOR ANY OF THE FOLLOWING:~~

21 (A) IN RETURN FOR A BINDING COMMITMENT TO EXTEND CREDIT OR  
22 FOR THE EXTENSION OF IMMEDIATELY AVAILABLE CREDIT, WHETHER OR NOT  
23 DRAWN UPON AND WHETHER OR NOT A CHARGE-BACK IS PROVIDED FOR IN  
24 THE EVENT OF DIFFICULTIES IN COLLECTION.

25 (B) AS SECURITY FOR, OR IN TOTAL OR PARTIAL SATISFACTION OF,  
26 A PREEXISTING CLAIM.

27 (C) BY ACCEPTING DELIVERY UNDER A PREEXISTING CONTRACT FOR



## 1 PURCHASE.

2 (D) IN RETURN FOR ANY CONSIDERATION SUFFICIENT TO SUPPORT A  
3 SIMPLE CONTRACT.

4 Sec. 1205. ~~(1) A course of dealing is a sequence of previous~~  
5 ~~conduct between the parties to a particular transaction which is~~  
6 ~~fairly to be regarded as establishing a common basis of~~  
7 ~~understanding for interpreting their expressions and other~~  
8 ~~conduct.~~

9 ~~—— (2) A usage of trade is any practice or method of dealing~~  
10 ~~having such regularity of observance in a place, vocation or~~  
11 ~~trade as to justify an expectation that it will be observed with~~  
12 ~~respect to the transaction in question. The existence and scope~~  
13 ~~of such a usage are to be proved as facts. If it is established~~  
14 ~~that such a usage is embodied in a written trade code or similar~~  
15 ~~writing the interpretation of the writing is for the court.~~

16 ~~—— (3) A course of dealing between parties and any usage of~~  
17 ~~trade in the vocation or trade in which they are engaged or of~~  
18 ~~which they are or should be aware give particular meaning to and~~  
19 ~~supplement or qualify terms of an agreement.~~

20 ~~—— (4) The express terms of an agreement and an applicable~~  
21 ~~course of dealing or usage of trade shall be construed wherever~~  
22 ~~reasonable as consistent with each other; but when such~~  
23 ~~construction is unreasonable express terms control both course of~~  
24 ~~dealing and usage of trade and course of dealing controls usage~~  
25 ~~of trade.~~

26 ~~—— (5) An applicable usage of trade in the place where any part~~  
27 ~~of performance is to occur shall be used in interpreting the~~

1 ~~agreement as to that part of the performance.~~

2 ~~—— (6) Evidence of a relevant usage of trade offered by one~~  
3 ~~party is not admissible unless and until he has given the other~~  
4 ~~party such notice as the court finds sufficient to prevent unfair~~  
5 ~~surprise to the latter.~~

6 (1) WHETHER A TIME FOR TAKING AN ACTION REQUIRED BY THIS ACT  
7 IS REASONABLE DEPENDS ON THE NATURE, PURPOSE, AND CIRCUMSTANCES  
8 OF THE ACTION.

9 (2) AN ACTION IS TAKEN SEASONABLY IF IT IS TAKEN AT OR  
10 WITHIN THE TIME AGREED OR, IF NO TIME IS AGREED, AT OR WITHIN A  
11 REASONABLE TIME.

12 Sec. 1206. ~~(1) Except in the cases described in subsection~~  
13 ~~(2) of this section, a contract for the sale of personal property~~  
14 ~~is not enforceable by way of action or defense beyond \$5,000.00~~  
15 ~~in amount or value of remedy unless there is some writing which~~  
16 ~~indicates that a contract for sale has been made between the~~  
17 ~~parties at a defined or stated price, reasonably identifies the~~  
18 ~~subject matter, and is signed by the party against whom~~  
19 ~~enforcement is sought or by his or her authorized agent.~~

20 ~~—— (2) Subsection (1) of this section does not apply to~~  
21 ~~contracts for the sale of goods (section 2201) nor of securities~~  
22 ~~(section 8113) nor to security agreements (section 9203).~~

23 WHENEVER THIS ACT CREATES A "PRESUMPTION" WITH RESPECT TO A FACT,  
24 OR PROVIDES THAT A FACT IS "PRESUMED", THE TRIER OF FACT MUST  
25 FIND THE EXISTENCE OF THE FACT UNLESS AND UNTIL EVIDENCE IS  
26 INTRODUCED THAT SUPPORTS A FINDING OF ITS NONEXISTENCE.

27

PART 3

## 1 TERRITORIAL APPLICABILITY AND GENERAL RULES

2 SEC. 1301. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,  
3 WHEN A TRANSACTION BEARS A REASONABLE RELATION TO THIS STATE AND  
4 ALSO TO ANOTHER STATE OR NATION, THE PARTIES MAY AGREE THAT THE  
5 LAW EITHER OF THIS STATE OR OF THAT OTHER STATE OR NATION SHALL  
6 GOVERN THEIR RIGHTS AND DUTIES.

7 (2) IN THE ABSENCE OF AN AGREEMENT EFFECTIVE UNDER  
8 SUBSECTION (1), AND EXCEPT AS PROVIDED IN SUBSECTION (3), THIS  
9 ACT APPLIES TO TRANSACTIONS BEARING AN APPROPRIATE RELATION TO  
10 THIS STATE.

11 (3) IF 1 OF THE FOLLOWING PROVISIONS OF THIS ACT SPECIFIES  
12 THE APPLICABLE LAW, THAT PROVISION GOVERNS AND A CONTRARY  
13 AGREEMENT IS EFFECTIVE ONLY TO THE EXTENT PERMITTED BY THE LAW SO  
14 SPECIFIED:

15 (A) SECTION 2402.

16 (B) SECTIONS 2A105 AND 2A106.

17 (C) SECTION 4102.

18 (D) SECTION 4A507.

19 (E) SECTION 5116.

20 (F) SECTION 8110.

21 (G) SECTIONS 9301 THROUGH 9307.

22 SEC. 1302. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
23 (2) OR ELSEWHERE IN THIS ACT, THE EFFECT OF ANY PROVISION OF THIS  
24 ACT MAY BE VARIED BY AGREEMENT.

25 (2) THE OBLIGATIONS OF GOOD FAITH, DILIGENCE,  
26 REASONABLENESS, AND CARE PRESCRIBED BY THIS ACT MAY NOT BE  
27 DISCLAIMED BY AGREEMENT. THE PARTIES, BY AGREEMENT, MAY DETERMINE

1 THE STANDARDS BY WHICH THE PERFORMANCE OF THOSE OBLIGATIONS IS TO  
2 BE MEASURED IF THOSE STANDARDS ARE NOT MANIFESTLY UNREASONABLE.  
3 WHENEVER THIS ACT REQUIRES AN ACTION TO BE TAKEN WITHIN A  
4 REASONABLE TIME, A TIME THAT IS NOT MANIFESTLY UNREASONABLE MAY  
5 BE FIXED BY AGREEMENT.

6 (3) THE PRESENCE IN CERTAIN PROVISIONS OF THIS ACT OF THE  
7 PHRASE "UNLESS OTHERWISE AGREED", OR WORDS OF SIMILAR IMPORT,  
8 DOES NOT IMPLY THAT THE EFFECT OF OTHER PROVISIONS MAY NOT BE  
9 VARIED BY AGREEMENT UNDER THIS SECTION.

10 SEC. 1303. (1) FOR PURPOSES OF THIS ACT, A "COURSE OF  
11 PERFORMANCE" IS A SEQUENCE OF CONDUCT BETWEEN THE PARTIES TO A  
12 PARTICULAR TRANSACTION THAT EXISTS IF BOTH OF THE FOLLOWING ARE  
13 MET:

14 (A) THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE  
15 TRANSACTION INVOLVES REPEATED OCCASIONS FOR PERFORMANCE BY A  
16 PARTY.

17 (B) THE OTHER PARTY, WITH KNOWLEDGE OF THE NATURE OF THE  
18 PERFORMANCE AND OPPORTUNITY FOR OBJECTION TO IT, ACCEPTS THE  
19 PERFORMANCE OR ACQUIESCES IN IT WITHOUT OBJECTION.

20 (2) FOR PURPOSES OF THIS ACT, A "COURSE OF DEALING" IS A  
21 SEQUENCE OF CONDUCT CONCERNING PREVIOUS TRANSACTIONS BETWEEN THE  
22 PARTIES TO A PARTICULAR TRANSACTION THAT IS FAIRLY TO BE REGARDED  
23 AS ESTABLISHING A COMMON BASIS OF UNDERSTANDING FOR INTERPRETING  
24 THEIR EXPRESSIONS AND OTHER CONDUCT.

25 (3) FOR PURPOSES OF THIS ACT, A "USAGE OF TRADE" IS ANY  
26 PRACTICE OR METHOD OF DEALING HAVING SUCH REGULARITY OF  
27 OBSERVANCE IN A PLACE, VOCATION, OR TRADE AS TO JUSTIFY AN

1 EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT TO THE  
2 TRANSACTION IN QUESTION. THE EXISTENCE AND SCOPE OF A USAGE OF  
3 TRADE MUST BE PROVED AS FACTS. IF IT IS ESTABLISHED THAT A USAGE  
4 OF TRADE IS EMBODIED IN A TRADE CODE OR SIMILAR RECORD, THE  
5 INTERPRETATION OF THE RECORD IS A QUESTION OF LAW.

6 (4) A COURSE OF PERFORMANCE OR COURSE OF DEALING BETWEEN THE  
7 PARTIES OR USAGE OF TRADE IN THE VOCATION OR TRADE IN WHICH THEY  
8 ARE ENGAGED OR OF WHICH THEY ARE OR SHOULD BE AWARE IS RELEVANT  
9 IN ASCERTAINING THE MEANING OF THE PARTIES' AGREEMENT, MAY GIVE  
10 PARTICULAR MEANING TO SPECIFIC TERMS OF THE AGREEMENT, AND MAY  
11 SUPPLEMENT OR QUALIFY THE TERMS OF THE AGREEMENT. A USAGE OF  
12 TRADE APPLICABLE IN THE PLACE IN WHICH PART OF THE PERFORMANCE  
13 UNDER THE AGREEMENT IS TO OCCUR MAY BE SO UTILIZED AS TO THAT  
14 PART OF THE PERFORMANCE.

15 (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), THE  
16 EXPRESS TERMS OF AN AGREEMENT AND ANY APPLICABLE COURSE OF  
17 PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE MUST BE  
18 CONSTRUED WHENEVER REASONABLE AS CONSISTENT WITH EACH OTHER. ALL  
19 OF THE FOLLOWING APPLY IF THAT CONSTRUCTION IS UNREASONABLE:

20 (A) EXPRESS TERMS PREVAIL OVER COURSE OF PERFORMANCE, COURSE  
21 OF DEALING, AND USAGE OF TRADE.

22 (B) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING  
23 AND USAGE OF TRADE.

24 (C) COURSE OF DEALING PREVAILS OVER USAGE OF TRADE.

25 (6) SUBJECT TO SECTION 2209, A COURSE OF PERFORMANCE IS  
26 RELEVANT TO SHOW A WAIVER OR MODIFICATION OF ANY TERM  
27 INCONSISTENT WITH THE COURSE OF PERFORMANCE.

1           (7) EVIDENCE OF A RELEVANT USAGE OF TRADE OFFERED BY 1 PARTY  
2 IS NOT ADMISSIBLE UNLESS THAT PARTY HAS GIVEN THE OTHER PARTY  
3 NOTICE THAT THE COURT FINDS SUFFICIENT TO PREVENT UNFAIR SURPRISE  
4 TO THE OTHER PARTY.

5           SEC. 1304. EVERY CONTRACT OR DUTY WITHIN THIS ACT IMPOSES AN  
6 OBLIGATION OF GOOD FAITH IN ITS PERFORMANCE AND ENFORCEMENT.

7           SEC. 1305. (1) THE REMEDIES PROVIDED IN THIS ACT MUST BE  
8 LIBERALLY ADMINISTERED TO THE END THAT THE AGGRIEVED PARTY MAY BE  
9 PUT IN AS GOOD A POSITION AS IF THE OTHER PARTY HAD FULLY  
10 PERFORMED BUT NEITHER CONSEQUENTIAL OR SPECIAL DAMAGES NOR PENAL  
11 DAMAGES MAY BE HAD EXCEPT AS SPECIFICALLY PROVIDED IN THIS ACT OR  
12 BY OTHER RULE OF LAW.

13           (2) ANY RIGHT OR OBLIGATION DECLARED BY THIS ACT IS  
14 ENFORCEABLE BY ACTION UNLESS THE PROVISION DECLARING IT SPECIFIES  
15 A DIFFERENT AND LIMITED EFFECT.

16           SEC. 1306. A CLAIM OR RIGHT ARISING OUT OF AN ALLEGED BREACH  
17 MAY BE DISCHARGED IN WHOLE OR IN PART WITHOUT CONSIDERATION BY  
18 AGREEMENT OF THE AGGRIEVED PARTY IN AN AUTHENTICATED RECORD.

19           SEC. 1307. A DOCUMENT IN DUE FORM PURPORTING TO BE A BILL OF  
20 LADING, POLICY OR CERTIFICATE OF INSURANCE, OFFICIAL WEIGHER'S OR  
21 INSPECTOR'S CERTIFICATE, CONSULAR INVOICE, OR ANY OTHER DOCUMENT  
22 AUTHORIZED OR REQUIRED BY THE CONTRACT TO BE ISSUED BY A THIRD  
23 PARTY IS PRIMA FACIE EVIDENCE OF ITS OWN AUTHENTICITY AND  
24 GENUINENESS AND OF THE FACTS STATED IN THE DOCUMENT BY THE THIRD  
25 PARTY.

26           SEC. 1308. (1) A PARTY THAT WITH EXPLICIT RESERVATION OF  
27 RIGHTS PERFORMS OR PROMISES PERFORMANCE OR ASSENTS TO PERFORMANCE

1 IN A MANNER DEMANDED OR OFFERED BY THE OTHER PARTY DOES NOT  
2 PREJUDICE THE RIGHTS RESERVED BY THAT PERFORMANCE, PROMISE, OR  
3 ASSENT. WORDS SUCH AS "WITHOUT PREJUDICE", "UNDER PROTEST", OR  
4 THE LIKE ARE SUFFICIENT.

5 (2) SUBSECTION (1) DOES NOT APPLY TO AN ACCORD AND  
6 SATISFACTION.

7 SEC. 1309. A TERM PROVIDING THAT 1 PARTY OR THAT PARTY'S  
8 SUCCESSOR IN INTEREST MAY ACCELERATE PAYMENT OR PERFORMANCE OR  
9 REQUIRE COLLATERAL OR ADDITIONAL COLLATERAL "AT WILL" OR WHEN THE  
10 PARTY "DEEMS ITSELF INSECURE", OR WORDS OF SIMILAR IMPORT, MEANS  
11 THAT THE PARTY HAS POWER TO DO SO ONLY IF THAT PARTY IN GOOD  
12 FAITH BELIEVES THAT THE PROSPECT OF PAYMENT OR PERFORMANCE IS  
13 IMPAIRED. THE BURDEN OF ESTABLISHING LACK OF GOOD FAITH IS ON THE  
14 PARTY AGAINST WHICH THE POWER HAS BEEN EXERCISED.

15 SEC. 1310. AN OBLIGATION MAY BE ISSUED AS SUBORDINATED TO  
16 PERFORMANCE OF ANOTHER OBLIGATION OF THE PERSON OBLIGATED, OR A  
17 CREDITOR MAY SUBORDINATE ITS RIGHT TO PERFORMANCE OF AN  
18 OBLIGATION BY AGREEMENT WITH EITHER THE PERSON OBLIGATED OR  
19 ANOTHER CREDITOR OF THE PERSON OBLIGATED. SUBORDINATION DOES NOT  
20 CREATE A SECURITY INTEREST AS AGAINST EITHER THE COMMON DEBTOR OR  
21 A SUBORDINATED CREDITOR.

22 Sec. 2202. Terms with respect to which the confirmatory  
23 memoranda of the parties agree or which are otherwise set forth  
24 in a writing intended by the parties as a final expression of  
25 their agreement with respect to ~~such~~ **THOSE** terms as are included  
26 ~~therein~~ **IN THAT MEMORANDA OR WRITING** may not be contradicted by  
27 evidence of any prior agreement or of a contemporaneous oral

1 agreement but may be explained or supplemented **BY ANY OF THE**  
2 **FOLLOWING:**

3 (a) ~~by~~**BY COURSE OF PERFORMANCE**, course of dealing, or usage  
4 of trade ~~(section 1205) or by course of performance (section~~  
5 ~~2208)~~, ~~and~~**UNDER SECTION 1303.**

6 (b) ~~by~~**BY** evidence of consistent additional terms unless the  
7 court finds the writing to have been intended also as a complete  
8 and exclusive statement of the terms of the agreement.

9 Sec. 2A501. (1) Whether the lessor or the lessee is in  
10 default under a lease contract is determined by the lease  
11 agreement and this article.

12 (2) If the lessor or the lessee is in default under the  
13 lease contract, the party seeking enforcement has rights and  
14 remedies as provided in this article and, except as limited by  
15 this article, as provided in the lease agreement.

16 (3) If the lessor or the lessee is in default under the  
17 lease contract, the party seeking enforcement may reduce the  
18 party's claim to judgment, or otherwise enforce the lease  
19 contract by self-help or any available judicial procedure or  
20 nonjudicial procedure, including administrative proceeding,  
21 arbitration, or the like, in accordance with this article.

22 (4) Except as otherwise provided in section ~~1106(1)~~**1305(1)**  
23 or this article or the lease agreement, the rights and remedies  
24 referred to in subsections (2) and (3) are cumulative.

25 (5) If the lease agreement covers both real property and  
26 goods, the party seeking enforcement may proceed under this part  
27 as to the goods, or under other applicable law as to both the



1 real property and the goods in accordance with that party's  
2 rights and remedies in respect of the real property, in which  
3 case this part does not apply.

4       Sec. 2A518. (1) After default by a lessor under the lease  
5 contract of the type described in section 2A508(1) or, if agreed,  
6 after other default by the lessor, the lessee may cover by making  
7 any purchase or lease of or contract to purchase or lease goods  
8 in substitution for those due from the lessor.

9       (2) Except as otherwise provided with respect to damages  
10 liquidated in the lease agreement **UNDER** ~~(section 2A504 )~~ or  
11 otherwise determined pursuant to agreement of the parties **UNDER** ~~(~~  
12 ~~sections 1102(3)–1302~~ and 2A503, ~~)~~, if a lessee's cover is by a  
13 lease agreement substantially similar to the original lease  
14 agreement and the new lease agreement is made in good faith and  
15 in a commercially reasonable manner, the lessee may recover from  
16 the lessor as damages (i) the present value, as of the date of the  
17 commencement of the term of the new lease agreement, of the rent  
18 under the new lease agreement applicable to that period of the  
19 new lease term which is comparable to the then remaining term of  
20 the original lease agreement minus the present value as of the  
21 same date of the total rent for the then remaining lease term of  
22 the original lease agreement and (ii) any incidental or  
23 consequential damages less expenses saved in consequence of the  
24 lessor's default.

25       (3) If a lessee's cover is by lease agreement that for any  
26 reason does not qualify for treatment under subsection (2), or is  
27 by purchase or otherwise, the lessee may recover from the lessor

1 as if the lessee had elected not to cover and section 2A519  
2 governs.

3       Sec. 2A519. (1) Except as otherwise provided with respect to  
4 damages liquidated in the lease agreement **UNDER** ~~(section 2A504 )~~  
5 or otherwise determined pursuant to agreement of the parties  
6 **UNDER** ~~(sections 1102(3)-1302 and 2A503, )~~, if a lessee elects  
7 not to cover or a lessee elects to cover and the cover is by  
8 lease agreement that for any reason does not qualify for  
9 treatment under section 2A518(2), or is by purchase or otherwise,  
10 the measure of damages for nondelivery or repudiation by the  
11 lessor or for rejection or revocation of acceptance by the lessee  
12 is the present value, as of the date of the default, of the then  
13 market rent minus the present value as of the same date of the  
14 original rent, computed for the remaining lease term of the  
15 original lease agreement together with incidental and  
16 consequential damages, less expenses saved in consequence of the  
17 lessor's default.

18       (2) Market rent is to be determined as of the place for  
19 tender or, in cases of rejection after arrival or revocation of  
20 acceptance, as of the place of arrival.

21       (3) Except as otherwise agreed, if the lessee has accepted  
22 goods and given notification **UNDER** ~~(section 2A516(3), )~~, the  
23 measure of damages for nonconforming tender or delivery or other  
24 default by a lessor is the loss resulting in the ordinary course  
25 of events from the lessor's default as determined in any manner  
26 that is reasonable together with incidental and consequential  
27 damages, less expenses saved in consequence of the lessor's

1 default.

2 (4) Except as otherwise agreed, the measure of damages for  
3 breach of warranty is the present value at the time and place of  
4 acceptance of the difference between the value of the use of the  
5 goods accepted and the value if they had been as warranted for  
6 the lease term, unless special circumstances show proximate  
7 damages of a different amount, together with incidental and  
8 consequential damages, less expenses saved in consequence of the  
9 lessor's default or breach of warranty.

10 Sec. 2A527. (1) After a default by a lessee under the lease  
11 contract of the type described in section 2A523(1) or ~~2A523(3)(a)~~  
12 **2A523(3)**, or after the lessor refuses to deliver or takes  
13 possession of goods **UNDER** ~~(section 2A525 or 2A526, )~~, or, if  
14 agreed, after other default by a lessee, the lessor may dispose  
15 of the goods concerned or the undelivered balance thereof by  
16 lease, sale, or otherwise.

17 (2) Except as otherwise provided with respect to damages  
18 liquidated in the lease agreement **UNDER** ~~(section 2A504 )~~ or  
19 otherwise determined pursuant to agreement of the parties **UNDER** ~~(~~  
20 ~~sections ~~1102(3)~~1302 and 2A503, )~~, if the disposition is by  
21 lease agreement substantially similar to the original lease  
22 agreement and the new lease agreement is made in good faith and  
23 in a commercially reasonable manner, the lessor may recover from  
24 the lessee as damages (i) accrued and unpaid rent as of the date  
25 of the commencement of the term of the new lease agreement, (ii)  
26 the present value, as of the same date, of the total rent for the  
27 then remaining lease term of the original lease agreement minus

1 the present value, as of the same date, of the rent under the new  
2 lease agreement applicable to that period of the new lease term  
3 which is comparable to the then remaining term of the original  
4 lease agreement, and (iii) any incidental damages allowed under  
5 section 2A530, less expenses saved in consequence of the lessee's  
6 default.

7 (3) If the lessor's disposition is by lease agreement that  
8 for any reason does not qualify for treatment under subsection  
9 (2), or is by sale or otherwise, the lessor may recover from the  
10 lessee as if the lessor had elected not to dispose of the goods  
11 and section 2A528 governs.

12 (4) A subsequent buyer or lessee who buys or leases from the  
13 lessor in good faith for value as a result of a disposition under  
14 this section takes the goods free of the original lease contract  
15 and any rights of the original lessee even though the lessor  
16 fails to comply with 1 or more of the requirements of this  
17 article.

18 (5) The lessor is not accountable to the lessee for any  
19 profit made on any disposition. A lessee who has rightfully  
20 rejected or justifiably revoked acceptance shall account to the  
21 lessor for any excess over the amount of the lessee's security  
22 interest (section 2A508(5)).

23 Sec. 2A528. (1) Except as otherwise provided with respect to  
24 damages liquidated in the lease agreement **UNDER** ~~(section 2A504 )~~  
25 or otherwise determined pursuant to agreement of the parties  
26 **UNDER** ~~(sections 1102(3)–1302 and 2A503, )~~, if a lessor elects to  
27 retain the goods or a lessor elects to dispose of the goods and

1 disposition is by lease agreement that for any reason does not  
2 qualify for treatment under section 2A527(2), or is by sale or  
3 otherwise, the lessor may recover from the lessee as damages for  
4 a default of the type described in section 2A523(1) or  
5 2A523(3)(a), or, if agreed, for other default of the lessee, (i)  
6 accrued and unpaid rent as of the date of default if the lessee  
7 has never taken possession of the goods, or, if the lessee has  
8 taken possession of the goods, as of the date the lessor  
9 repossesses the goods or an earlier date on which the lessee  
10 makes a tender of the goods to the lessor, (ii) the present value  
11 as of the date determined under this subsection of the total rent  
12 for the then remaining lease term of the original lease agreement  
13 minus the present value as of the same date of the market rent at  
14 the place where the goods are located computed for the same lease  
15 term, and any incidental damages allowed under section 2A530,  
16 less expenses saved in consequence of the lessee's default.

17 (2) If the measure of damages provided in subsection (1) is  
18 inadequate to put a lessor in as good a position as performance  
19 would have, the measure of damages is the present value of the  
20 profit, including reasonable overhead, the lessor would have made  
21 from full performance by the lessee, together with any incidental  
22 damages allowed under section 2A530, due allowance for costs  
23 reasonably incurred and due credit for payments or proceeds of  
24 disposition.

25 Sec. 3103. (1) As used in this article:

26 (a) "Acceptor" means a drawee who has accepted a draft.

27 (b) "Drawee" means a person ordered in a draft to make

1 payment.

2 (c) "Drawer" means a person who signs or is identified in a  
3 draft as a person ordering payment.

4 ~~—— (d) "Good faith" means honesty in fact and the observance of~~  
5 ~~reasonable commercial standards of fair dealing.~~

6 (D) ~~(e)~~ "Maker" means a person who signs or is identified in  
7 a note as a person undertaking to pay.

8 (E) ~~(f)~~ "Order" means a written instruction to pay money  
9 signed by the person giving the instruction. The instruction may  
10 be addressed to any person, including the person giving the  
11 instruction, or to 1 or more persons jointly or in the alternative  
12 but not in succession. An authorization to pay is not an order  
13 unless the person authorized to pay is also instructed to pay.

14 (F) ~~(g)~~ "Ordinary care" in the case of a person engaged in  
15 business means observance of reasonable commercial standards,  
16 prevailing in the area in which the person is located, with  
17 respect to the business in which the person is engaged. In the  
18 case of a bank that takes an instrument for processing for  
19 collection or payment by automated means, reasonable commercial  
20 standards do not require the bank to examine the instrument if  
21 the failure to examine does not violate the bank's prescribed  
22 procedures and the bank's procedures do not vary unreasonably  
23 from general banking usage not disapproved by this article or  
24 article 4.

25 (G) ~~(h)~~ "Party" means a party to an instrument.

26 (H) ~~(i)~~ "Promise" means a written undertaking to pay money  
27 signed by the person undertaking to pay. An acknowledgment of an

1 obligation by the obligor is not a promise unless the obligor  
2 also undertakes to pay the obligation.

3 (I) ~~(j)~~—"Prove" with respect to a fact means to meet the  
4 burden of establishing the fact ~~(section 1201(8))~~ **UNDER SECTION**  
5 **1201(2)(H)** .

6 (J) ~~(k)~~—"Remitter" means a person who purchases an  
7 instrument from its issuer if the instrument is payable to an  
8 identified person other than the purchaser.

9 (2) Other definitions applying to this article and the  
10 sections in which they appear are as follows:

11 "Acceptance"	section 3409.
12 "Accommodated party"	section 3419.
13 "Accommodation party"	section 3419.
14 "Alteration"	section 3407.
15 "Anomalous endorsement"	section 3205.
16 "Blank endorsement"	section 3205.
17 "Cashier's check"	section 3104.
18 "Certificate of deposit"	section 3104.
19 "Certified check"	section 3409.
20 "Check"	section 3104.
21 "Consideration"	section 3303.
22 "Draft"	section 3104.
23 "Endorsement"	section 3204.
24 "Endorser"	section 3204.
25 "Holder in due course"	section 3304.
26 "Incomplete instrument"	section 3115.
27 "Instrument"	section 3104.
28 "Issue"	section 3105.

1	"Issuer"	section 3105.
2	"Negotiable instrument"	section 3104.
3	"Negotiation"	section 3201.
4	"Note"	section 3104.
5	"Payable at a definite time"	section 3108.
6	"Payable on demand"	section 3108.
7	"Payable to bearer"	section 3109.
8	"Payable to order"	section 3109.
9	"Payment"	section 3602.
10	"Person entitled to enforce"	section 3301.
11	"Presentment"	section 3501.
12	"Reacquisition"	section 3207.
13	"Special endorsement"	section 3205.
14	"Teller's check"	section 3104.
15	"Transfer of instrument"	section 3203.
16	"Traveler's check"	section 3104.
17	"Value"	section 3303.

18           (3) The following definitions in other articles apply to  
19 this article:

20	"Bank"	section 4105.
21	"Banking day"	section 4104.
22	"Clearing house"	section 4104.
23	"Collecting bank"	section 4105.
24	"Depositary bank"	section 4105.
25	"Documentary draft"	section 4104.
26	"Intermediary bank"	section 4105.
27	"Item"	section 4104.
28	"Payor bank"	section 4105.
29	"Suspends payments"	section 4104.



1 (4) In addition, article 1 contains general definitions and  
2 principles of construction and interpretation applicable  
3 throughout this article.

4 Sec. 4A105. (1) As used in this article:

5 (a) "Authorized account" means a deposit account of a  
6 customer in a bank designated by the customer as a source of  
7 payment of payment orders issued by the customer to the bank. If  
8 a customer does not so designate an account, any account of the  
9 customer is an authorized account if payment of a payment order  
10 from that account is not inconsistent with a restriction on the  
11 use of that account.

12 (b) "Bank" means a person engaged in the business of banking  
13 and includes a savings bank, savings and loan association, credit  
14 union, and trust company. A branch or separate office of a bank  
15 is a separate bank for purposes of this article.

16 (c) "Customer" means a person, including a bank, having an  
17 account with a bank or from whom a bank has agreed to receive  
18 payment orders.

19 (d) "Funds-transfer business day" of a receiving bank means  
20 the part of a day during which the receiving bank is open for the  
21 receipt, processing, and transmittal of payment orders and  
22 cancellations and amendments of payment orders.

23 (e) "Funds-transfer system" means a wire transfer network,  
24 automated clearinghouse, or other communication system of a  
25 clearinghouse or other association of banks through which a  
26 payment order by a bank may be transmitted to the bank to which

1 the order is addressed.

2 ~~—— (f) "Good faith" means honesty in fact and the observance of~~  
 3 ~~reasonable commercial standards of fair dealing.~~

4 (F) ~~(g)~~ "Prove" with respect to a fact means to meet the  
 5 burden of establishing the fact **AS DEFINED IN** ~~(section 1201(8))~~  
 6 **1201(2)(H)**.

7 (2) Other definitions applying to this article and the  
 8 sections in which they appear are as follows:

9	"Acceptance".	Section 4A209.
10	"Beneficiary".	Section 4A103.
11	"Beneficiary's bank".	Section 4A103.
12	"Executed".	Section 4A301.
13	"Execution date".	Section 4A301.
14	"Funds transfer".	Section 4A104.
15	"Funds-transfer system rule".	Section 4A501.
16	"Intermediary bank".	Section 4A104.
17	"Originator".	Section 4A104.
18	"Originator's bank".	Section 4A104.
19	"Payment by beneficiary's bank to beneficiary".	Section 4A405.
20	"Payment by originator to beneficiary".	Section 4A406.
21	"Payment by sender to receiving bank".	Section 4A403.
22	"Payment date".	Section 4A401.
23	"Payment order".	Section 4A103.
24	"Receiving bank".	Section 4A103.
25	"Security procedure".	Section 4A201.
26	"Sender".	Section 4A103.

27 (3) The following definitions in article 4 apply to this  
 28 article:

1 "Clearinghouse". Section 4104.  
 2 "Item". Section 4104.  
 3 "Suspends payments". Section 4104.

4 (4) In addition, article 1 contains general definitions and  
 5 principles of construction and interpretation applicable  
 6 throughout this article.

7 Sec. 4A106. (1) The time of receipt of a payment order or  
 8 communication canceling or amending a payment order is determined  
 9 by the rules applicable to receipt of a notice stated in section  
 10 ~~1201(27)~~ **1202**. A receiving bank may fix a ~~cut-off~~ **CUT OFF** time or  
 11 times on a ~~funds-transfer~~ **FUNDS TRANSFER** business day for the  
 12 receipt and processing of payment orders and communications  
 13 canceling or amending payment orders. Different ~~cut-off~~ **CUT OFF**  
 14 times may apply to payment orders, cancellations, or amendments,  
 15 or to different categories of payment orders, cancellations, or  
 16 amendments. A ~~cut-off~~ **CUT OFF** time may apply to senders generally  
 17 or different ~~cut-off~~ **CUT OFF** times may apply to different senders  
 18 or categories of payment orders. If a payment order or  
 19 communication canceling or amending a payment order is received  
 20 after the close of a ~~funds-transfer~~ **FUNDS TRANSFER** business day  
 21 or after the appropriate ~~cut-off~~ **CUT OFF** time on a ~~funds-transfer~~  
 22 **FUNDS TRANSFER** business day, the receiving bank may treat the  
 23 payment order or communication as received at the opening of the  
 24 next ~~funds-transfer~~ **FUNDS TRANSFER** business day.

25 (2) If this article refers to an execution date or payment  
 26 date or states a day on which a receiving bank is required to

1 take action, and the date or day does not fall on a ~~funds-~~  
2 ~~transfer~~**FUNDS TRANSFER** business day, the next day that is a  
3 ~~funds-transfer~~**FUNDS TRANSFER** business day is treated as the date  
4 or day stated, unless the contrary is stated in this article.

5       Sec. 4A204. (1) If a receiving bank accepts a payment order  
6 issued in the name of its customer as sender which is (i) not  
7 authorized and not effective as the order of the customer under  
8 section 4A202, or (ii) not enforceable, in whole or in part,  
9 against the customer under section 4A203, the bank shall refund  
10 any payment of the payment order received from the customer to  
11 the extent the bank is not entitled to enforce payment and shall  
12 pay interest on the refundable amount calculated from the date  
13 the bank received payment to the date of the refund. However, the  
14 customer is not entitled to interest from the bank on the amount  
15 to be refunded if the customer fails to exercise ordinary care to  
16 determine that the order was not authorized by the customer and  
17 to notify the bank of the relevant facts within a reasonable time  
18 not exceeding 90 days after the date the customer received  
19 notification from the bank that the order was accepted or that  
20 the customer's account was debited with respect to the order. The  
21 bank is not entitled to any recovery from the customer on account  
22 of a failure by the customer to give notification as stated in  
23 this section.

24       (2) Reasonable time under subsection (1) may be fixed by  
25 agreement as stated in section ~~1204(1)~~**1302(2)**, but the  
26 obligation of a receiving bank to refund payment as stated in  
27 subsection (1) may not otherwise be varied by agreement.

1           Sec. 5103. (1) This article applies to letters of credit and  
2 to certain rights and obligations arising out of transactions  
3 involving letters of credit.

4           (2) The statement of a rule in this article does not by  
5 itself require, imply, or negate application of the same or a  
6 different rule to a situation not provided for, or to a person  
7 not specified, in this article.

8           (3) With the exception of this subsection, subsections (1)  
9 and (4), sections 5102(1)(i) and (j), 5106(4), and 5114(4), and  
10 except to the extent prohibited in sections ~~1102(3)~~ **1302** and  
11 5117(4), the effect of this article may be varied by agreement or  
12 by a provision stated or incorporated by reference in an  
13 undertaking. A term in an agreement or undertaking generally  
14 excusing liability or generally limiting remedies for failure to  
15 perform obligations is not sufficient to vary obligations  
16 prescribed by this article.

17           (4) Rights and obligations of an issuer to a beneficiary or  
18 a nominated person under a letter of credit are independent of  
19 the existence, performance, or nonperformance of a contract or  
20 arrangement out of which the letter of credit arises or which  
21 underlies it, including contracts or arrangements between the  
22 issuer and the applicant and between the applicant and the  
23 beneficiary.

24           Sec. 8102. (1) As used in this article:

25           (a) "Adverse claim" means a claim that a claimant has a  
26 property interest in a financial asset and that it is a violation  
27 of the rights of the claimant for another person to hold,

1 transfer, or deal with the financial asset.

2 (b) "Bearer form", as applied to a certificated security,  
3 means a form in which the security is payable to the bearer of  
4 the security certificate according to its terms but not by reason  
5 of an indorsement.

6 (c) "Broker" means a person defined as a broker or dealer  
7 under the federal securities laws, but without excluding a bank  
8 acting in that capacity.

9 (d) "Certificated security" means a security that is  
10 represented by a certificate.

11 (e) "Clearing corporation" means 1 or more of the following:

12 (i) A person that is registered as a clearing agency under  
13 the federal securities laws.

14 (ii) A federal reserve bank.

15 (iii) Any other person that provides clearance or settlement  
16 services with respect to financial assets that would require it  
17 to register as a clearing agency under the federal securities  
18 laws but for an exclusion or exemption from the registration  
19 requirement, if its activities as a clearing corporation,  
20 including promulgation of rules, are subject to regulation by a  
21 federal or state governmental authority.

22 (f) "Communicate" means either of the following:

23 (i) Send a signed writing.

24 (ii) Transmit information by any mechanism agreed upon by the  
25 persons transmitting and receiving the information.

26 (g) "Entitlement holder" means a person identified in the  
27 records of a securities intermediary as the person having a

1 security entitlement against the securities intermediary. If a  
2 person acquires a security entitlement under section 8501(2)(b)  
3 or (c), that person is the entitlement holder.

4 (h) "Entitlement order" means a notification communicated to  
5 a securities intermediary directing transfer or redemption of a  
6 financial asset to which the entitlement holder has a security  
7 entitlement.

8 (i) "Financial asset", except as otherwise provided in  
9 section 8103, means 1 or more of the following:

10 (i) A security.

11 (ii) An obligation of a person or a share, participation, or  
12 other interest in a person or in property or an enterprise of a  
13 person, which is, or is of a type, dealt in or traded on  
14 financial markets, or which is recognized in any area in which it  
15 is issued or dealt in as a medium for investment.

16 (iii) Any property that is held by a securities intermediary  
17 for another person in a securities account if the securities  
18 intermediary has expressly agreed with the other person that the  
19 property is to be treated as a financial asset under this  
20 article. As context requires, the term means either the interest  
21 itself or the means by which a person's claim to it is evidenced,  
22 including a certificated or uncertificated security, a security  
23 certificate, or a security entitlement.

24 ~~—— (j) "Good faith", for purposes of the obligation of good~~  
25 ~~faith in the performance or enforcement of contracts or duties~~  
26 ~~within this article, means honesty in fact and the observance of~~  
27 ~~reasonable commercial standards of fair dealing.~~

1           **(J)** ~~(k)~~—"Indorsement" means a signature that alone or  
2 accompanied by other words is made on a security certificate in  
3 registered form or on a separate document for the purpose of  
4 assigning, transferring, or redeeming the security or granting a  
5 power to assign, transfer, or redeem the security.

6           **(K)** ~~(l)~~—"Instruction" means a notification communicated to  
7 the issuer of an uncertificated security which directs that the  
8 transfer of the security be registered or that the security be  
9 redeemed.

10           **(L)** ~~(m)~~—"Registered form", as applied to a certificated  
11 security, means a form containing both of the following:

12           (i) The security certificate specifies a person entitled to  
13 the security.

14           (ii) A transfer of the security may be registered upon books  
15 maintained for that purpose by or on behalf of the issuer, or the  
16 security certificate so states.

17           **(M)** ~~(n)~~—"Securities intermediary" means either of the  
18 following:

19           (i) A clearing corporation.

20           (ii) A person, including a bank or broker, that in the  
21 ordinary course of its business maintains securities accounts for  
22 others and is acting in that capacity.

23           **(N)** ~~(o)~~—"Security", except as otherwise provided in section  
24 8103, means an obligation of an issuer or a share, participation,  
25 or other interest in an issuer or in property or an enterprise of  
26 an issuer and is all of the following:

27           (i) Represented by a security certificate in bearer or



1 registered form, or the transfer of which may be registered upon  
2 books maintained for that purpose by or on behalf of the issuer.

3 (ii) One of a class or series or by its terms is divisible  
4 into a class or series of shares, participations, interests, or  
5 obligations.

6 (iii) Either of the following:

7 (A) Is, or is of a type, dealt in or traded on securities  
8 exchanges or securities markets.

9 (B) Is a medium for investment and by its terms expressly  
10 provides that it is a security governed by this article.

11 (O) ~~(p)~~ "Security certificate" means a certificate  
12 representing a security.

13 (P) ~~(q)~~ "Security entitlement" means the rights and property  
14 interest of an entitlement holder with respect to a financial  
15 asset specified in part 5.

16 (Q) ~~(r)~~ "Uncertificated security" means a security that is  
17 not represented by a certificate.

18 (2) Other definitions applying to this article and the  
19 sections in which they appear are:

20	Appropriate person	Section 8107
21	Control	Section 8106
22	Delivery	Section 8301
23	Investment company security	Section 8103
24	Issuer	Section 8201
25	Overissue	Section 8210
26	Protected purchaser	Section 8303
27	Securities account	Section 8501

1           (3) In addition, article 1 contains general definitions and  
2 principles of construction and interpretation applicable  
3 throughout this article.

4           (4) The characterization of a person, business, or  
5 transaction for purposes of this article does not determine the  
6 characterization of the person, business, or transaction for  
7 purposes of any other law, regulation, or rule.

8           Enacting section 1. Sections 1105, 1107, 1207, 1208, 1209,  
9 1210, 1211, 2208, and 2A207 of the uniform commercial code, 1962  
10 PA 174, MCL 440.1105, 440.1107, 440.1207, 440.1208, 440.1209,  
11 440.1210, 440.1211, 440.2208, and 440.2857, are repealed.

12           Enacting section 2. This amendatory act takes effect July 1,  
13 2013.

14           Enacting section 3. This amendatory act does not take effect  
15 unless all of the following bills of the 96th Legislature are  
16 enacted into law:

17           (a) House Bill No. 5082.

18           (b) House Bill No. 5083.