

HOUSE BILL No. 5081

October 18, 2011, Introduced by Reps. Huuki, Cotter and Lipton and referred to the Committee on Banking and Financial Services.

A bill to amend 1962 PA 174, entitled "Uniform commercial code," by amending the heading for part 1 and sections 1101, 1102, 1103, 1106, 1201, 1202, 1203, 1204, 1205, 1206, 2103, 2202, 2A103, 2A501, 2A518, 2A519, 2A527, 2A528, 3103, 4104, 4A105, 4A106, 4A204, 5103, 8102, and 9102 (MCL 440.1101, 440.1102, 440.1103, 440.1106, 440.1201, 440.1202, 440.1203, 440.1204, 440.1205, 440.1206, 440.2103, 440.2202, 440.2803, 440.2951, 440.2968, 440.2969, 440.2977, 440.2978, 440.3103, 440.4104, 440.4605, 440.4606, 440.4704, 440.5103, 440.8102, and 440.9102), sections 1201, 2103, 2A103, and 9102 as amended by 2000 PA 348, sections 1206, 4104, 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:

PART 1

~~SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE
ACT-GENERAL PROVISIONS~~

Sec. 1101. (1) This act shall be known and may be cited as ~~THE~~ "uniform commercial code".

(2) ~~THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE
"UNIFORM COMMERCIAL CODE - GENERAL PROVISIONS".~~

Sec. 1102. ~~(1) This act shall be liberally construed and
applied to promote its underlying purposes and policies.~~

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

~~(a) to simplify, clarify and modernize the law governing
commercial transactions;~~

~~(b) to permit the continued expansion of commercial
practices through custom, usage and agreement of the parties;~~

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

~~(3) The effect of provisions of this act may be varied by
agreement, except as otherwise provided in this act and except
that the obligations of good faith, diligence, reasonableness and
care prescribed by this act may not be disclaimed by agreement
but the parties may by agreement determine the standards by which
the performance of such obligations is to be measured if such
standards are not manifestly unreasonable.~~

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

1 ~~words "unless otherwise agreed" or words of similar import does~~
 2 ~~not imply that the effect of other provisions may not be varied~~
 3 ~~by agreement under subsection (3).~~

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

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

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

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

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

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

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

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

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

26 Sec. 1106. ~~(1) The remedies provided by this act shall be~~
 27 ~~liberally administered to the end that the aggrieved party may be~~

1 ~~put in as good a position as if the other party had fully~~
 2 ~~performed but neither consequential or special nor penal damages~~
 3 ~~may be had except as specifically provided in this act or by~~
 4 ~~other rule of law.~~

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

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

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

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

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

18 Sec. 1201. (1) UNLESS THE CONTEXT OTHERWISE REQUIRES, WORDS
 19 OR PHRASES DEFINED IN THIS SECTION, OR IN THE ADDITIONAL
 20 DEFINITIONS CONTAINED IN OTHER ARTICLES OF THIS ACT THAT APPLY TO
 21 PARTICULAR ARTICLES OR PARTS OF THIS ACT, HAVE THE MEANINGS
 22 STATED.

23 (2) Subject to ~~additional~~ definitions contained in the
 24 ~~subsequent OTHER~~ articles of this act ~~which are applicable to~~
 25 ~~specific~~ **THAT APPLY TO PARTICULAR** articles or parts of this act,
 26 and unless the context otherwise requires, **AS USED** in this act:

27 (A) ~~(1)~~ "Action" in the sense of a judicial proceeding

1 includes recoupment, counterclaim, setoff, suit in equity, and
2 any other proceedings in which rights are determined.

3 (B) ~~(2)~~-"Aggrieved party" means a party entitled to resort
4 to a remedy.

5 (C) ~~(3)~~-"Agreement", **AS DISTINGUISHED FROM CONTRACT AS**
6 **DEFINED IN SUBDIVISION (I)**, means the bargain of the parties in
7 fact, as found in their language or by implication from other
8 circumstances, including **COURSE OF PERFORMANCE**, course of
9 dealing, or usage of trade or course of performance as provided
10 in this act ~~(sections 1205 and 2208)~~ **SECTION 1303**. Whether an
11 agreement has legal consequences is determined by the provisions
12 of this act, if applicable; otherwise by the law of contracts
13 ~~(section 1103)~~. ~~(Compare "Contract".)~~

14 (D) ~~(4)~~-"Bank" means ~~any~~ **A** person engaged in the business of
15 banking **AND INCLUDES A SAVINGS BANK, SAVINGS AND LOAN**
16 **ASSOCIATION, CREDIT UNION, AND TRUST COMPANY**.

17 (E) ~~(5)~~-"Bearer" means the person in possession of ~~an~~ **A**
18 **NEGOTIABLE** instrument, document of title, or certificated
19 security **THAT IS** payable to bearer or indorsed in blank.

20 (F) ~~(6)~~-"Bill of lading" means a document evidencing the
21 receipt of goods for shipment issued by a person engaged in the
22 business of transporting or forwarding goods. ~~, and includes an~~
23 ~~airbill. "Airbill" means a document serving for air~~
24 ~~transportation as a bill of lading does for marine or rail~~
25 ~~transportation, and includes an air consignment note or air~~
26 ~~waybill.~~

27 (G) ~~(7)~~-"Branch" includes a separately incorporated foreign

1 branch of a bank.

2 (H) ~~(8)~~—"Burden of establishing" a fact ~~"~~means the burden
3 of persuading the ~~triers~~**TRIER** of fact that the existence of the
4 fact is more probable than its nonexistence.

5 (I) ~~(9)~~—"Buyer in ordinary course of business" means a
6 person that buys goods in good faith, without knowledge that the
7 sale violates the rights of another person in the ~~good~~**GOODS**, and
8 in the ordinary course from a person, other than a pawnbroker, in
9 the business of selling goods of that kind. A person buys goods
10 in the ordinary course if the sale to the person comports with
11 the usual or customary practices in the kind of business in which
12 the seller is engaged or with the seller's own usual or customary
13 practices. A person that sells oil, gas, or other minerals at the
14 wellhead or minehead is a person in the business of selling goods
15 of that kind. A buyer in ordinary course of business may buy for
16 cash, by exchange of other property, or on secured or unsecured
17 credit, and may acquire goods or documents of title under a
18 preexisting contract for sale. Only a buyer that takes possession
19 of the goods or has a right to recover the goods from the seller
20 under article 2 may be a buyer in ordinary course of business. A
21 **THE TERM DOES NOT INCLUDE A** person that acquires goods in a
22 transfer in bulk or as security for or in total or partial
23 satisfaction of a money debt. ~~is not a buyer in ordinary course~~
24 ~~of business.~~

25 (J) ~~(10)~~—"Conspicuous", ~~+~~ ~~A term or clause is conspicuous~~
26 ~~when it is~~ **WITH REFERENCE TO A TERM, MEANS** so written, **DISPLAYED,**
27 **OR PRESENTED** that a reasonable person against ~~whom~~**WHICH** it is to

1 operate ought to have noticed it. A ~~printed heading in capitals~~
 2 ~~(as: non negotiable bill of lading)~~ is conspicuous. Language in
 3 the body of a form is "conspicuous" if it is in larger or other
 4 contrasting type or color. But in a telegram any stated term is
 5 "conspicuous". Whether a term or clause is "conspicuous" or not
 6 is for decision by the court. **CONSPICUOUS TERMS INCLUDE ANY OF**
 7 **THE FOLLOWING:**

8 (i) A HEADING IN CAPITALS EQUAL TO OR GREATER IN SIZE THAN
 9 THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT, OR COLOR TO
 10 SURROUNDING TEXT OF THE SAME OR LESSER SIZE.

11 (ii) LANGUAGE IN THE BODY OF A RECORD OR DISPLAY IN LARGER
 12 TYPE THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT, OR
 13 COLOR TO SURROUNDING TEXT OF THE SAME SIZE, OR SET OFF FROM
 14 SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS THAT
 15 CALL ATTENTION TO THE LANGUAGE.

16 (K) "CONSUMER" MEANS AN INDIVIDUAL WHO ENTERS INTO A
 17 TRANSACTION PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD
 18 PURPOSES.

19 (l) ~~(11)~~ "Contract", AS DISTINGUISHED FROM AGREEMENT AS
 20 DEFINED IN SUBDIVISION (C), means the total legal obligation
 21 ~~which THAT~~ results from the parties' agreement as affected
 22 DETERMINED by this act and any other applicable rules of law AS
 23 SUPPLEMENTED BY ANY OTHER APPLICABLE LAWS. ~~(Compare "Agreement".)~~

24 (M) ~~(12)~~ "Creditor" includes a general creditor, a secured
 25 creditor, a lien creditor, and any representative of creditors,
 26 including an assignee for the benefit of creditors, a trustee in
 27 bankruptcy, a receiver in equity, and an executor or

1 administrator of an insolvent debtor's or assignor's estate.

2 (N) ~~(13)~~ "Defendant" includes a person in the position of
3 defendant in a ~~cross action or counterclaim~~, **CROSS-CLAIM, OR**
4 **THIRD-PARTY CLAIM.**

5 (O) ~~(14)~~ "Delivery", with respect to ~~instruments, documents~~
6 **AN INSTRUMENT, DOCUMENT** of title, **OR** chattel paper, ~~or~~
7 ~~certificated securities~~ means voluntary transfer of possession.

8 (P) ~~(15)~~ "Document of title" includes **A** bill of lading, dock
9 warrant, dock receipt, warehouse receipt, or order for the
10 delivery of goods, and also any other document which in the
11 regular course of business or financing is treated as adequately
12 evidencing that the person in possession of it is entitled to
13 receive, hold, and dispose of the document and the goods it
14 covers. To be a document of title, a document must purport to be
15 issued by or addressed to a bailee and purport to cover goods in
16 the bailee's possession which are either identified or are
17 fungible portions of an identified mass.

18 (Q) ~~(16)~~ "Fault" means ~~wrongful act, omission, or breach~~ **A**
19 **DEFAULT, BREACH, OR WRONGFUL ACT OR OMISSION.**

20 ~~(17)~~ "Fungible" with respect to ~~goods or securities~~ means
21 ~~goods or securities of which any unit is, by nature or usage of~~
22 ~~trade, the equivalent of any other like unit. Goods which are not~~
23 ~~fungible shall be deemed fungible for the purposes of this act to~~
24 ~~the extent that under a particular agreement or document unlike~~
25 ~~units are treated as equivalents.~~

26 (R) **"FUNGIBLE GOODS" MEANS EITHER OF THE FOLLOWING:**

27 (i) **GOODS OF WHICH ANY UNIT, BY NATURE OR USAGE OF TRADE, IS**

1 THE EQUIVALENT OF ANY OTHER LIKE UNIT.

2 (ii) GOODS THAT BY AGREEMENT ARE TREATED AS EQUIVALENT.

3 (S) ~~(18)~~ "Genuine" means free of forgery or counterfeiting.

4 (T) ~~(19)~~ "Good faith", means ~~honesty in fact in the conduct~~
 5 ~~or transaction concerned~~ EXCEPT AS OTHERWISE PROVIDED IN ARTICLE
 6 5, MEANS HONESTY IN FACT AND THE OBSERVANCE OF REASONABLE
 7 COMMERCIAL STANDARDS OF FAIR DEALING.

8 (U) ~~(20)~~ "Holder" ~~, with respect to a negotiable instrument,~~
 9 ~~means the person in possession if the instrument is payable to~~
 10 ~~bearer or, in the case of an instrument payable to an identified~~
 11 ~~person, if the identified person is in possession. Holder, with~~
 12 ~~respect to a document of title, means the person in possession if~~
 13 ~~the goods are deliverable to bearer or to the order of the person~~
 14 ~~in possession.~~ MEANS 1 OF THE FOLLOWING:

15 (i) THE PERSON IN POSSESSION OF A NEGOTIABLE INSTRUMENT THAT
 16 IS PAYABLE EITHER TO BEARER OR TO AN IDENTIFIED PERSON THAT IS
 17 THE PERSON IN POSSESSION.

18 (ii) THE PERSON IN POSSESSION OF A DOCUMENT OF TITLE IF THE
 19 GOODS ARE DELIVERABLE EITHER TO BEARER OR TO THE ORDER OF THE
 20 PERSON IN POSSESSION.

21 ~~—— (21) To "honor" is to pay or to accept and pay, or where a~~
 22 ~~credit so engages to purchase or discount a draft complying with~~
 23 ~~the terms of the credit.~~

24 (V) ~~(22)~~ "Insolvency proceedings" includes ~~any~~ AN assignment
 25 for the benefit of creditors or other ~~proceedings~~ PROCEEDING
 26 intended to liquidate or rehabilitate the estate of the person
 27 involved.

1 ~~———— (23) A person is "insolvent" who either has ceased to pay~~
2 ~~his or her debts in the ordinary course of business or cannot pay~~
3 ~~his or her debts as they become due or is insolvent within the~~
4 ~~meaning of the federal bankruptcy law.~~

5 (W) "INSOLVENT" MEANS ANY OF THE FOLLOWING:

6 (i) HAVING GENERALLY CEASED TO PAY DEBTS IN THE ORDINARY
7 COURSE OF BUSINESS OTHER THAN AS A RESULT OF A BONA FIDE DISPUTE.

8 (ii) BEING UNABLE TO PAY DEBTS AS THEY BECOME DUE.

9 (iii) BEING INSOLVENT WITHIN THE MEANING OF FEDERAL BANKRUPTCY
10 LAW.

11 (X) ~~(24)~~—"Money" means a medium of exchange authorized or
12 adopted by a domestic or foreign government. ~~and THE TERM~~
13 includes a monetary unit of account established by an
14 intergovernmental organization or by agreement between 2 or more
15 nations ~~COUNTRIES~~.

16 ~~———— (25) A person has "notice" of a fact when he or she has~~
17 ~~actual knowledge of it; he or she has received a notice or~~
18 ~~notification of it; or from all the facts and circumstances known~~
19 ~~to him or her at the time in question he or she has reason to~~
20 ~~know that it exists. A person "knows" or has "knowledge" of a~~
21 ~~fact when he or she has actual knowledge of it. "Discover" or~~
22 ~~"learn" or a word or phrase of similar import refers to knowledge~~
23 ~~rather than to reason to know. The time and circumstances under~~
24 ~~which a notice or notification may cease to be effective are not~~
25 ~~determined by this act.~~

26 ~~———— (26) A person "notifies" or "gives" a notice or notification~~
27 ~~to another by taking such steps as may be reasonably required to~~

1 ~~inform the other in ordinary course whether or not such other~~
2 ~~actually comes to know of it. A person "receives" a notice or~~
3 ~~notification when 1 of the following occurs:~~

4 ~~—— (a) It comes to his or her attention.~~

5 ~~—— (b) It is duly delivered at the place of business through~~
6 ~~which the contract was made or at any other place held out by him~~
7 ~~or her as the place for receipt of such communications.~~

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

22 ~~(Y) (28) "Organization" includes a corporation, government,~~
23 ~~or governmental subdivision or agency, business trust, estate,~~
24 ~~trust, partnership or association, 2 or more persons having a~~
25 ~~joint or common interest, or any other legal or commercial entity~~

26 **MEANS A PERSON OTHER THAN AN INDIVIDUAL.**

27 ~~(Z) (29) "Party", as distinct from "third party", means a~~

1 person ~~who~~ **THAT** has engaged in a transaction or made an agreement
2 ~~within~~ **SUBJECT TO** this act.

3 ~~—— (30) "Person" includes an individual or an organization (see~~
4 ~~section 1102).~~

5 ~~—— (31) "Presumption" or "presumed" means that the trier of~~
6 ~~fact must find the existence of the fact presumed unless and~~
7 ~~until evidence is introduced which would support a finding of its~~
8 ~~nonexistence.~~

9 (AA) **"PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS**
10 **TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,**
11 **ASSOCIATION, JOINT VENTURE, GOVERNMENT, GOVERNMENTAL SUBDIVISION,**
12 **AGENCY, OR INSTRUMENTALITY, PUBLIC CORPORATION, OR ANY OTHER**
13 **LEGAL OR COMMERCIAL ENTITY.**

14 (BB) **"PRESENT VALUE" MEANS THE AMOUNT AS OF A DATE CERTAIN**
15 **OF 1 OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE**
16 **CERTAIN BY USE OF EITHER AN INTEREST RATE SPECIFIED BY THE**
17 **PARTIES IF THAT RATE IS NOT MANIFESTLY UNREASONABLE AT THE TIME**
18 **THE TRANSACTION IS ENTERED INTO OR, IF AN INTEREST RATE IS NOT SO**
19 **SPECIFIED, A COMMERCIALY REASONABLE RATE THAT TAKES INTO ACCOUNT**
20 **THE FACTS AND CIRCUMSTANCES AT THE TIME THE TRANSACTION IS**
21 **ENTERED INTO.**

22 (CC) ~~(32)~~**"Purchase" includes** ~~MEANS~~ taking by sale, **LEASE,**
23 discount, negotiation, mortgage, pledge, lien, security interest,
24 issue or reissue, gift, or any other voluntary transaction
25 creating an interest in property.

26 (DD) ~~(33)~~**"Purchaser" means a person** ~~who~~ **THAT** takes by
27 purchase.

1 (EE) "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 (FE) ~~(34)~~"Remedy" means any remedial right to which an
5 aggrieved party is entitled with or without resort to a tribunal.

6 (GG) ~~(35)~~"Representative" ~~includes~~ **MEANS A PERSON EMPOWERED**
7 **TO ACT FOR ANOTHER, INCLUDING** an agent, an officer of a
8 corporation or association, and a trustee, executor, or
9 administrator of an estate. ~~, or any other person empowered to~~
10 ~~act for another.~~

11 (HH) ~~(36)~~ "Rights" **"RIGHT"** includes ~~remedies~~ **REMEDY**.

12 (II) ~~(37)~~"Security interest" means an interest in personal
13 property or fixtures which secures payment or performance of an
14 obligation. The term ~~also~~ includes any interest of a consignor
15 and a buyer of ~~an account~~ **ACCOUNTS**, chattel paper, a payment
16 intangible, or a promissory note in a transaction that is subject
17 to article 9. The **TERM DOES NOT INCLUDE THE** special property
18 interest of a buyer of goods on identification of those goods to
19 a contract for sale under section 2401, ~~is not a "security~~
20 ~~interest",~~ but a buyer may also acquire a "security interest" by
21 complying with article 9. Except as otherwise provided in section
22 2505, the right of a seller or lessor of goods under article 2 or
23 2A to retain or acquire possession of the goods is not a
24 "security interest", but a seller or lessor may also acquire a
25 "security interest" by complying with article 9. The retention or
26 reservation of title by a seller of goods notwithstanding
27 shipment or delivery to the buyer ~~(section 2401)~~ **UNDER SECTION**

1 2401 is limited in effect to a reservation of a "security
2 interest". Whether a transaction **IN THE FORM OF A LEASE** creates a
3 ~~lease or security interest is determined UNDER SECTION 1203. by~~
4 ~~the facts of each case; however, a transaction creates a security~~
5 ~~interest if the consideration the lessee is to pay the lessor for~~
6 ~~the right to possession and use of the goods is an obligation for~~
7 ~~the term of the lease not subject to termination by the lessee,~~
8 ~~and any of the following:~~

9 ~~—— (a) The original term of the lease is equal to or greater~~
10 ~~than the remaining economic life of the goods.~~

11 ~~—— (b) The lessee is bound to renew the lease for the remaining~~
12 ~~economic life of the goods or is bound to become the owner of the~~
13 ~~goods.~~

14 ~~—— (c) The lessee has an option to renew the lease for the~~
15 ~~remaining economic life of the goods for no additional~~
16 ~~consideration or nominal additional consideration upon compliance~~
17 ~~with the lease agreement.~~

18 ~~—— (d) The lessee has an option to become the owner of the~~
19 ~~goods for no additional consideration or nominal additional~~
20 ~~consideration upon compliance with the lease agreement.~~

21 ~~—— A transaction does not create a security interest merely~~
22 ~~because it provides any of the following:~~

23 ~~—— (a) The present value of the consideration the lessee is~~
24 ~~obligated to pay the lessor for the right to possession and use~~
25 ~~of the goods is substantially equal to or is greater than the~~
26 ~~fair market value of the goods at the time the lease is entered~~
27 ~~into.~~

1 ~~—— (b) The lessee assumes risk of loss of the goods, or agrees~~
2 ~~to pay taxes, insurance, filing, recording, or registration fees,~~
3 ~~or service or maintenance costs with respect to the goods.~~

4 ~~—— (c) The lessee has an option to renew the lease or to become~~
5 ~~the owner of the goods.~~

6 ~~—— (d) The lessee has an option to renew the lease for a fixed~~
7 ~~rent that is equal to or greater than the reasonably predictable~~
8 ~~fair market rent for the use of the goods for the term of the~~
9 ~~renewal at the time the option is to be performed.~~

10 ~~—— (e) The lessee has an option to become the owner of the~~
11 ~~goods for a fixed price that is equal to or greater than the~~
12 ~~reasonably predictable fair market value of the goods at the time~~
13 ~~the option is to be performed.~~

14 ~~—— As used in this subsection:~~

15 ~~—— (a) Additional consideration is not nominal if when the~~
16 ~~option to renew the lease is granted to the lessee the rent is~~
17 ~~stated to be the fair market rent for the use of the goods for~~
18 ~~the term of the renewal determined at the time the option is to~~
19 ~~be performed, or when the option to become the owner of the goods~~
20 ~~is granted to the lessee, the price is stated to be the fair~~
21 ~~market value of the goods determined at the time the option is to~~
22 ~~be performed. Additional consideration is nominal if it is less~~
23 ~~than the lessee's reasonably predictable cost of performing under~~
24 ~~the lease agreement if the option is not exercised.~~

25 ~~—— (b) "Present value" means the amount as of a date certain of~~
26 ~~1 or more sums payable in the future, discounted to the date~~
27 ~~certain. The discount is determined by the interest rate~~

1 ~~specified by the parties if the rate is not manifestly~~
 2 ~~unreasonable at the time the transaction is entered into,~~
 3 ~~otherwise, the discount is determined by a commercially~~
 4 ~~reasonable rate that takes into account the facts and~~
 5 ~~circumstances of each case at the time the transaction was~~
 6 ~~entered into.~~

7 ~~—— (c) "Reasonably predictable" and "remaining economic life of~~
 8 ~~the goods" are to be determined with reference to the facts and~~
 9 ~~circumstances at the time the transaction is entered into.~~

10 (JJ) ~~(38)~~ "Send" in connection with any writing or notice
 11 means ~~to~~ **EITHER OF THE FOLLOWING:**

12 (i) **TO** deposit in the mail or deliver for transmission by any
 13 other usual means of communication with postage or cost of
 14 transmission provided for and properly addressed and, in the case
 15 of an instrument, to an address specified ~~thereon~~ **ON THE**
 16 **INSTRUMENT** or otherwise agreed, or if there ~~be~~ **IS** none, to any
 17 address reasonable under the circumstances. ~~The receipt of any~~
 18 ~~writing or notice within the time at which it would have arrived,~~
 19 ~~if properly sent, has the effect of a proper sending.~~

20 (ii) **IN ANY OTHER WAY TO CAUSE TO BE RECEIVED ANY RECORD OR**
 21 **NOTICE WITHIN THE TIME IT WOULD HAVE ARRIVED IF PROPERLY SENT.**

22 (KK) ~~(39)~~ "Signed" includes any symbol executed or adopted
 23 by a party with present intention to ~~authenticate a writing,~~
 24 ~~including a carbon copy of his or her signature~~ **ADOPT OR ACCEPT A**
 25 **WRITING.**

26 ~~—— (40) "Surety" includes guarantor.~~

27 ~~—— (41) "Telegram" includes a message transmitted by radio,~~

1 teletype, cable, any mechanical method of transmission, or the
2 like.

3 (II) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
4 OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR
5 ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION
6 OF THE UNITED STATES.

7 (MM) "SURETY" INCLUDES A GUARANTOR OR OTHER SECONDARY
8 OBLIGOR.

9 (NN) ~~(42)~~ "Term" means ~~that~~ A portion of an agreement which
10 THAT relates to a particular matter.

11 (OO) ~~(43)~~ "Unauthorized "signature means one SIGNATURE"
12 MEANS A SIGNATURE made without actual, implied, or apparent
13 authority. and THE TERM includes a forgery.

14 ~~———— (44) "Value". Except as otherwise provided with respect to~~
15 ~~negotiable instruments and bank collections (sections 3303, 4208,~~
16 ~~and 4209) a person gives "value" for rights if the person~~
17 ~~acquires them:~~

18 ~~———— (a) In return for a binding commitment to extend credit or~~
19 ~~for the extension of immediately available credit whether or not~~
20 ~~drawn upon and whether or not a charge back is provided for in~~
21 ~~the event of difficulties in collection; or~~

22 ~~———— (b) As security for or in total or partial satisfaction of a~~
23 ~~preexisting claim; or~~

24 ~~———— (c) By accepting delivery pursuant to a preexisting contract~~
25 ~~for purchase; or~~

26 ~~———— (d) Generally, in return for any consideration sufficient to~~
27 ~~support a simple contract.~~

1 (PP) ~~(45)~~—"Warehouse receipt" means a receipt issued by a
2 person engaged in the business of storing goods for hire.

3 (QQ) ~~(46)~~—"Written" or "writing" includes printing,
4 typewriting, or any other intentional reduction to tangible form.

5 Sec. 1202. ~~A document in due form purporting to be a bill of~~
6 ~~lading, policy or certificate of insurance, official weigher's or~~
7 ~~inspector's certificate, consular invoice, or any other document~~
8 ~~authorized or required by the contract to be issued by a third~~
9 ~~party shall be prima facie evidence of its own authenticity and~~
10 ~~genuineness and of the fact stated in the document by the third~~
11 ~~party.~~ FOR PURPOSES OF THIS ACT:

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

14 (i) ACTUAL KNOWLEDGE OF IT.

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

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

18 (B) "KNOWLEDGE" MEANS ACTUAL KNOWLEDGE. "KNOWS" HAS A
19 CORRESPONDING MEANING.

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

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

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

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

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

6 (F) NOTICE, KNOWLEDGE, OR A NOTICE OR NOTIFICATION RECEIVED
7 BY AN ORGANIZATION IS EFFECTIVE FOR A PARTICULAR TRANSACTION FROM
8 THE TIME IT IS BROUGHT TO THE ATTENTION OF THE INDIVIDUAL
9 CONDUCTING THAT TRANSACTION AND, IN ANY EVENT, FROM THE TIME IT
10 WOULD HAVE BEEN BROUGHT TO THE INDIVIDUAL'S ATTENTION IF THE
11 ORGANIZATION HAD EXERCISED DUE DILIGENCE. AN ORGANIZATION
12 EXERCISES DUE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR
13 COMMUNICATING SIGNIFICANT INFORMATION TO THE PERSON CONDUCTING
14 THE TRANSACTION AND THERE IS REASONABLE COMPLIANCE WITH THE
15 ROUTINES. DUE DILIGENCE DOES NOT REQUIRE AN INDIVIDUAL ACTING FOR
16 THE ORGANIZATION TO COMMUNICATE INFORMATION UNLESS THE
17 COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR DUTIES OR THE
18 INDIVIDUAL HAS REASON TO KNOW OF THE TRANSACTION AND THAT THE
19 TRANSACTION WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.

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

22 (1) WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A
23 LEASE OR SECURITY INTEREST IS DETERMINED BY THE FACTS OF EACH
24 CASE.

25 (2) A TRANSACTION IN THE FORM OF A LEASE CREATES A SECURITY
26 INTEREST IF THE CONSIDERATION THAT THE LESSEE IS TO PAY THE
27 LESSOR FOR THE RIGHT TO POSSESSION AND USE OF THE GOODS IS AN

1 OBLIGATION FOR THE TERM OF THE LEASE AND IS NOT SUBJECT TO
2 TERMINATION BY THE LESSEE, AND ANY OF THE FOLLOWING ARE MET:

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

5 (B) THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE REMAINING
6 ECONOMIC LIFE OF THE GOODS OR IS BOUND TO BECOME THE OWNER OF THE
7 GOODS.

8 (C) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE
9 REMAINING ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL
10 CONSIDERATION OR FOR NOMINAL ADDITIONAL CONSIDERATION UPON
11 COMPLIANCE WITH THE LEASE AGREEMENT.

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

15 (3) A TRANSACTION IN THE FORM OF A LEASE DOES NOT CREATE A
16 SECURITY INTEREST MERELY BECAUSE ANY OF THE FOLLOWING ARE MET:

17 (A) THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS
18 OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE
19 OF THE GOODS IS SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE
20 FAIR MARKET VALUE OF THE GOODS AT THE TIME THE LEASE IS ENTERED
21 INTO.

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

23 (C) THE LESSEE AGREES TO PAY, WITH RESPECT TO THE GOODS,
24 TAXES, INSURANCE, FILING, RECORDING, OR REGISTRATION FEES, OR
25 SERVICE OR MAINTENANCE COSTS.

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

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

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

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

13 (A) WHEN THE OPTION TO RENEW THE LEASE IS GRANTED TO THE
14 LESSEE, THE RENT IS STATED TO BE THE FAIR MARKET RENT FOR THE USE
15 OF THE GOODS FOR THE TERM OF THE RENEWAL DETERMINED AT THE TIME
16 THE OPTION IS TO BE PERFORMED.

17 (B) WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS IS
18 GRANTED TO THE LESSEE, THE PRICE IS STATED TO BE THE FAIR MARKET
19 VALUE OF THE GOODS DETERMINED AT THE TIME THE OPTION IS TO BE
20 PERFORMED.

21 (5) THE "REMAINING ECONOMIC LIFE OF THE GOODS" AND
22 "REASONABLY PREDICTABLE" FAIR MARKET RENT, FAIR MARKET VALUE, OR
23 COST OF PERFORMING UNDER THE LEASE AGREEMENT MUST BE DETERMINED
24 WITH REFERENCE TO THE FACTS AND CIRCUMSTANCES AT THE TIME THE
25 TRANSACTION IS ENTERED INTO.

26 Sec. 1204. ~~(1) Whenever this act requires any action to be~~
27 ~~taken within a reasonable time, any time which is not manifestly~~

1 ~~unreasonable may be fixed by agreement.~~

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

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

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

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

15 (C) BY ACCEPTING DELIVERY UNDER A PREEXISTING CONTRACT FOR
 16 PURCHASE.

17 (D) IN RETURN FOR ANY CONSIDERATION SUFFICIENT TO SUPPORT A
 18 SIMPLE CONTRACT.

19 Sec. 1205. ~~(1) A course of dealing is a sequence of previous~~
 20 ~~conduct between the parties to a particular transaction which is~~
 21 ~~fairly to be regarded as establishing a common basis of~~
 22 ~~understanding for interpreting their expressions and other~~
 23 ~~conduct.~~

24 ~~—— (2) A usage of trade is any practice or method of dealing~~
 25 ~~having such regularity of observance in a place, vocation or~~
 26 ~~trade as to justify an expectation that it will be observed with~~
 27 ~~respect to the transaction in question. The existence and scope~~

1 of such a usage are to be proved as facts. If it is established
 2 that such a usage is embodied in a written trade code or similar
 3 writing the interpretation of the writing is for the court.

4 ——— (3) A course of dealing between parties and any usage of
 5 trade in the vocation or trade in which they are engaged or of
 6 which they are or should be aware give particular meaning to and
 7 supplement or qualify terms of an agreement.

8 ——— (4) The express terms of an agreement and an applicable
 9 course of dealing or usage of trade shall be construed wherever
 10 reasonable as consistent with each other; but when such
 11 construction is unreasonable express terms control both course of
 12 dealing and usage of trade and course of dealing controls usage
 13 of trade.

14 ——— (5) An applicable usage of trade in the place where any part
 15 of performance is to occur shall be used in interpreting the
 16 agreement as to that part of the performance.

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

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

24 (2) AN ACTION IS TAKEN SEASONABLY IF IT IS TAKEN AT OR
 25 WITHIN THE TIME AGREED OR, IF NO TIME IS AGREED, AT OR WITHIN A
 26 REASONABLE TIME.

27 Sec. 1206. (1) ~~Except in the cases described in subsection~~

1 ~~(2) of this section, a contract for the sale of personal property~~
 2 ~~is not enforceable by way of action or defense beyond \$5,000.00~~
 3 ~~in amount or value of remedy unless there is some writing which~~
 4 ~~indicates that a contract for sale has been made between the~~
 5 ~~parties at a defined or stated price, reasonably identifies the~~
 6 ~~subject matter, and is signed by the party against whom~~
 7 ~~enforcement is sought or by his or her authorized agent.~~

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

11 **WHENEVER THIS ACT CREATES A "PRESUMPTION" WITH RESPECT TO A FACT,**
 12 **OR PROVIDES THAT A FACT IS "PRESUMED", THE TRIER OF FACT MUST**
 13 **FIND THE EXISTENCE OF THE FACT UNLESS AND UNTIL EVIDENCE IS**
 14 **INTRODUCED THAT SUPPORTS A FINDING OF ITS NONEXISTENCE.**

15 **PART 3**

16 **TERRITORIAL APPLICABILITY AND GENERAL RULES**

17 **SEC. 1301. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**
 18 **WHEN A TRANSACTION BEARS A REASONABLE RELATION TO THIS STATE AND**
 19 **ALSO TO ANOTHER STATE OR NATION, THE PARTIES MAY AGREE THAT THE**
 20 **LAW EITHER OF THIS STATE OR OF THAT OTHER STATE OR NATION SHALL**
 21 **GOVERN THEIR RIGHTS AND DUTIES.**

22 **(2) IN THE ABSENCE OF AN AGREEMENT EFFECTIVE UNDER**
 23 **SUBSECTION (1), AND EXCEPT AS PROVIDED IN SUBSECTION (3), THIS**
 24 **ACT APPLIES TO TRANSACTIONS BEARING AN APPROPRIATE RELATION TO**
 25 **THIS STATE.**

26 **(3) IF 1 OF THE FOLLOWING PROVISIONS OF THIS ACT SPECIFIES**
 27 **THE APPLICABLE LAW, THAT PROVISION GOVERNS AND A CONTRARY**

1 AGREEMENT IS EFFECTIVE ONLY TO THE EXTENT PERMITTED BY THE LAW SO
2 SPECIFIED:

3 (A) SECTION 2402.

4 (B) SECTIONS 2A105 AND 2A106.

5 (C) SECTION 4102.

6 (D) SECTION 4A507.

7 (E) SECTION 5116.

8 (F) SECTION 8110.

9 (G) SECTIONS 9301 THROUGH 9307.

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

13 (2) THE OBLIGATIONS OF GOOD FAITH, DILIGENCE,
14 REASONABLENESS, AND CARE PRESCRIBED BY THIS ACT MAY NOT BE
15 DISCLAIMED BY AGREEMENT. THE PARTIES, BY AGREEMENT, MAY DETERMINE
16 THE STANDARDS BY WHICH THE PERFORMANCE OF THOSE OBLIGATIONS IS TO
17 BE MEASURED IF THOSE STANDARDS ARE NOT MANIFESTLY UNREASONABLE.
18 WHENEVER THIS ACT REQUIRES AN ACTION TO BE TAKEN WITHIN A
19 REASONABLE TIME, A TIME THAT IS NOT MANIFESTLY UNREASONABLE MAY
20 BE FIXED BY AGREEMENT.

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

25 SEC. 1303. (1) FOR PURPOSES OF THIS ACT, A "COURSE OF
26 PERFORMANCE" IS A SEQUENCE OF CONDUCT BETWEEN THE PARTIES TO A
27 PARTICULAR TRANSACTION THAT EXISTS IF BOTH OF THE FOLLOWING ARE

1 MET:

2 (A) THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE
3 TRANSACTION INVOLVES REPEATED OCCASIONS FOR PERFORMANCE BY A
4 PARTY.

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

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

13 (3) FOR PURPOSES OF THIS ACT, A "USAGE OF TRADE" IS ANY
14 PRACTICE OR METHOD OF DEALING HAVING SUCH REGULARITY OF
15 OBSERVANCE IN A PLACE, VOCATION, OR TRADE AS TO JUSTIFY AN
16 EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT TO THE
17 TRANSACTION IN QUESTION. THE EXISTENCE AND SCOPE OF A USAGE OF
18 TRADE MUST BE PROVED AS FACTS. IF IT IS ESTABLISHED THAT A USAGE
19 OF TRADE IS EMBODIED IN A TRADE CODE OR SIMILAR RECORD, THE
20 INTERPRETATION OF THE RECORD IS A QUESTION OF LAW.

21 (4) A COURSE OF PERFORMANCE OR COURSE OF DEALING BETWEEN THE
22 PARTIES OR USAGE OF TRADE IN THE VOCATION OR TRADE IN WHICH THEY
23 ARE ENGAGED OR OF WHICH THEY ARE OR SHOULD BE AWARE IS RELEVANT
24 IN ASCERTAINING THE MEANING OF THE PARTIES' AGREEMENT, MAY GIVE
25 PARTICULAR MEANING TO SPECIFIC TERMS OF THE AGREEMENT, AND MAY
26 SUPPLEMENT OR QUALIFY THE TERMS OF THE AGREEMENT. A USAGE OF
27 TRADE APPLICABLE IN THE PLACE IN WHICH PART OF THE PERFORMANCE

1 UNDER THE AGREEMENT IS TO OCCUR MAY BE SO UTILIZED AS TO THAT
2 PART OF THE PERFORMANCE.

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

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

10 (B) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING
11 AND USAGE OF TRADE.

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

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

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

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

22 SEC. 1305. (1) THE REMEDIES PROVIDED IN THIS ACT MUST BE
23 LIBERALLY ADMINISTERED TO THE END THAT THE AGGRIEVED PARTY MAY BE
24 PUT IN AS GOOD A POSITION AS IF THE OTHER PARTY HAD FULLY
25 PERFORMED BUT NEITHER CONSEQUENTIAL OR SPECIAL DAMAGES NOR PENAL
26 DAMAGES MAY BE HAD EXCEPT AS SPECIFICALLY PROVIDED IN THIS ACT OR
27 BY OTHER RULE OF LAW.

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

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

7 SEC. 1307. A DOCUMENT IN DUE FORM PURPORTING TO BE A BILL OF
8 LADING, POLICY OR CERTIFICATE OF INSURANCE, OFFICIAL WEIGHER'S OR
9 INSPECTOR'S CERTIFICATE, CONSULAR INVOICE, OR ANY OTHER DOCUMENT
10 AUTHORIZED OR REQUIRED BY THE CONTRACT TO BE ISSUED BY A THIRD
11 PARTY IS PRIMA FACIE EVIDENCE OF ITS OWN AUTHENTICITY AND
12 GENUINENESS AND OF THE FACTS STATED IN THE DOCUMENT BY THE THIRD
13 PARTY.

14 SEC. 1308. (1) A PARTY THAT WITH EXPLICIT RESERVATION OF
15 RIGHTS PERFORMS OR PROMISES PERFORMANCE OR ASSENTS TO PERFORMANCE
16 IN A MANNER DEMANDED OR OFFERED BY THE OTHER PARTY DOES NOT
17 PREJUDICE THE RIGHTS RESERVED BY THAT PERFORMANCE, PROMISE, OR
18 ASSENT. WORDS SUCH AS "WITHOUT PREJUDICE", "UNDER PROTEST", OR
19 THE LIKE ARE SUFFICIENT.

20 (2) SUBSECTION (1) DOES NOT APPLY TO AN ACCORD AND
21 SATISFACTION.

22 SEC. 1309. A TERM PROVIDING THAT 1 PARTY OR THAT PARTY'S
23 SUCCESSOR IN INTEREST MAY ACCELERATE PAYMENT OR PERFORMANCE OR
24 REQUIRE COLLATERAL OR ADDITIONAL COLLATERAL "AT WILL" OR WHEN THE
25 PARTY "DEEMS ITSELF INSECURE", OR WORDS OF SIMILAR IMPORT, MEANS
26 THAT THE PARTY HAS POWER TO DO SO ONLY IF THAT PARTY IN GOOD
27 FAITH BELIEVES THAT THE PROSPECT OF PAYMENT OR PERFORMANCE IS

1 IMPAIRED. THE BURDEN OF ESTABLISHING LACK OF GOOD FAITH IS ON THE
2 PARTY AGAINST WHICH THE POWER HAS BEEN EXERCISED.

3 SEC. 1310. AN OBLIGATION MAY BE ISSUED AS SUBORDINATED TO
4 PERFORMANCE OF ANOTHER OBLIGATION OF THE PERSON OBLIGATED, OR A
5 CREDITOR MAY SUBORDINATE ITS RIGHT TO PERFORMANCE OF AN
6 OBLIGATION BY AGREEMENT WITH EITHER THE PERSON OBLIGATED OR
7 ANOTHER CREDITOR OF THE PERSON OBLIGATED. SUBORDINATION DOES NOT
8 CREATE A SECURITY INTEREST AS AGAINST EITHER THE COMMON DEBTOR OR
9 A SUBORDINATED CREDITOR.

10 Sec. 2103. (1) In this article unless the context otherwise
11 requires:

12 (a) "Buyer" means a person who buys or contracts to buy
13 goods.

14 ~~—— (b) "Good faith" in the case of a merchant means honesty in~~
15 ~~fact and the observance of reasonable commercial standards of~~
16 ~~fair dealing in the trade.~~

17 (B) ~~(e)~~ "Receipt" of goods means taking physical possession
18 of them.

19 (C) ~~(d)~~ "Seller" means a person who sells or contracts to
20 sell goods.

21 (2) Other definitions applying to this article or to
22 specified parts thereof, and the sections in which they appear
23 are:

24	"Acceptance".	Section 2606.
25	"Banker's credit".	Section 2325.
26	"Between merchants".	Section 2104.

1	"Cancellation".	Section 2106(4).
2	"Commercial unit".	Section 2105.
3	"Confirmed credit".	Section 2325.
4	"Conforming to contract".	Section 2106.
5	"Contract for sale".	Section 2106.
6	"Cover".	Section 2712.
7	"Entrusting".	Section 2403.
8	"Financing agency".	Section 2104.
9	"Future goods".	Section 2105.
10	"Goods".	Section 2105.
11	"Identification".	Section 2501.
12	"Installment contract".	Section 2612.
13	"Letter of credit".	Section 2325.
14	"Lot".	Section 2105.
15	"Merchant".	Section 2104.
16	"Overseas".	Section 2323.
17	"Person in position of seller".	Section 2707.
18	"Present sale".	Section 2106.
19	"Sale".	Section 2106.
20	"Sale on approval".	Section 2326.
21	"Sale or return".	Section 2326.
22	"Termination".	Section 2106.

23 (3) The following definitions in other articles apply to
24 this article:

25	"Check".	Section 3104.
26	"Consignee".	Section 7102.
27	"Consignor".	Section 7102.
28	"Consumer goods".	Section 9102.
29	"Dishonor".	Section 3502.

1 "Draft". Section 3104.

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

5 Sec. 2202. Terms with respect to which the confirmatory
6 memoranda of the parties agree or which are otherwise set forth
7 in a writing intended by the parties as a final expression of
8 their agreement with respect to ~~such~~**THOSE** terms as are included
9 ~~therein~~**IN THAT MEMORANDA OR WRITING** may not be contradicted by
10 evidence of any prior agreement or of a contemporaneous oral
11 agreement but may be explained or supplemented **BY ANY OF THE**
12 **FOLLOWING:**

13 (a) ~~by~~**BY COURSE OF PERFORMANCE**, course of dealing, or usage
14 of trade ~~(section 1205) or by course of performance (section~~
15 ~~2208); and~~**UNDER SECTION 1303.**

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

19 Sec. 2A103. (1) In this article unless the context otherwise
20 requires:

21 (a) "Buyer in ordinary course of business" means a person
22 who in good faith and without knowledge that the sale to him or
23 her is in violation of the ownership rights or security interest
24 or leasehold interest of a third party in the goods buys in
25 ordinary course from a person in the business of selling goods of
26 that kind but does not include a pawnbroker. "Buying" may be for

1 cash or by exchange of other property or on secured or unsecured
2 credit and includes receiving goods or documents of title under a
3 pre-existing contract for sale but does not include a transfer in
4 bulk or as security for or in total or partial satisfaction of a
5 money debt.

6 (b) "Cancellation" occurs when either party puts an end to
7 the lease contract for default by the other party.

8 (c) "Commercial unit" means such a unit of goods as by
9 commercial usage is a single whole for purposes of lease and
10 division of which materially impairs its character or value on
11 the market or in use. A commercial unit may be a single article,
12 as a machine, or a set of articles, as a suite of furniture or a
13 line of machinery, or a quantity, as a gross or carload, or any
14 other unit treated in use or in the relevant market as a single
15 whole.

16 (d) "Conforming" means goods or performance under a lease
17 contract that are in accordance with the obligations under the
18 lease contract.

19 (e) "Consumer lease" means a lease that a lessor regularly
20 engaged in the business of leasing or selling makes to a lessee
21 who is an individual and who takes under the lease primarily for
22 a personal, family, or household purpose, if the total payments
23 to be made under the lease contract, excluding payments for
24 options to renew or buy, do not exceed \$25,000.00.

25 (f) "Fault" means wrongful act, omission, breach, or
26 default.

27 (g) "Finance lease" means a lease with respect to which all

1 of the following apply:

2 (i) The lessor does not select, manufacture, or supply the
3 goods.

4 (ii) The lessor acquires the goods or the right to possession
5 and use of the goods in connection with the lease.

6 (iii) One of the following occurs:

7 (A) The lessee receives a copy of the contract by which the
8 lessor acquired the goods or the right to possession and use of
9 the goods before signing the lease contract.

10 (B) The lessee's approval of the contract by which the
11 lessor acquired the goods or the right to possession and use of
12 the goods is a condition to effectiveness of the lease contract.

13 (C) The lessee, before signing the lease contract, receives
14 an accurate and complete statement designating the promises and
15 warranties, and any disclaimers of warranties, limitations or
16 modifications of remedies, or liquidated damages, including those
17 of a third party, such as the manufacturer of the goods, provided
18 to the lessor by the person supplying the goods in connection
19 with or as part of the contract by which the lessor acquired the
20 goods or the right to possession and use of the goods.

21 (D) If the lease is not a consumer lease, the lessor, before
22 the lessee signs the lease contract, informs the lessee in
23 writing of the following:

24 (I) The identity of the person supplying the goods to the
25 lessor, unless the lessee has selected that person and directed
26 the lessor to acquire the goods or the right to possession and
27 use of the goods from that person.

1 (II) The lessee is entitled under this article to the
2 promises and warranties, including those of any third party,
3 provided to the lessor by the person supplying the goods in
4 connection with or as part of the contract by which the lessor
5 acquired the goods or the right to possession and use of the
6 goods.

7 (III) The lessee may communicate with the person supplying
8 the goods to the lessor and receive an accurate and complete
9 statement of those promises and warranties, including any
10 disclaimers and limitations of them or of remedies.

11 (h) "Goods" means all things that are movable at the time of
12 identification to the lease contract, or are fixtures (section
13 2A309), but the term does not include money, documents,
14 instruments, accounts, chattel paper, general intangibles, or
15 minerals or the like, including oil and gas, before extraction.
16 The term also includes the unborn young of animals.

17 (i) "Installment lease contract" means a lease contract that
18 authorizes or requires the delivery of goods in separate lots to
19 be separately accepted, even though the lease contract contains a
20 clause "each delivery is a separate lease" or its equivalent.

21 (j) "Lease" means a transfer of the right to possession and
22 use of goods for a term in return for consideration, but a sale,
23 including a sale on approval or a sale or return, or retention or
24 creation of a security interest is not a lease. Unless the
25 context clearly indicates otherwise, the term includes a
26 sublease.

27 (k) "Lease agreement" means the bargain, with respect to the

1 lease, of the lessor and the lessee in fact as found in their
2 language or by implication from other circumstances including
3 course of dealing or usage of trade or course of performance as
4 provided in this article. Unless the context clearly indicates
5 otherwise, the term includes a sublease agreement.

6 (l) "Lease contract" means the total legal obligation that
7 results from the lease agreement as affected by this article and
8 any other applicable rules of law. Unless the context clearly
9 indicates otherwise, the term includes a sublease contract.

10 (m) "Leasehold interest" means the interest of the lessor or
11 the lessee under a lease contract.

12 (n) "Lessee" means a person who acquires the right to
13 possession and use of goods under a lease. Unless the context
14 clearly indicates otherwise, the term includes a sublessee.

15 (o) "Lessee in ordinary course of business" means a person
16 who in good faith and without knowledge that the lease to him or
17 her is in violation of the ownership rights or security interest
18 or leasehold interest of a third party in the goods leases in
19 ordinary course from a person in the business of selling or
20 leasing goods of that kind but does not include a pawnbroker.

21 "Leasing" may be for cash or by exchange of other property or on
22 secured or unsecured credit and includes receiving goods or
23 documents of title under a pre-existing lease contract but does
24 not include a transfer in bulk or as security for or in total or
25 partial satisfaction of a money debt.

26 (p) "Lessor" means a person who transfers the right to
27 possession and use of goods under a lease. Unless the context

1 clearly indicates otherwise, the term includes a sublessor.

2 (q) "Lessor's residual interest" means the lessor's interest
3 in the goods after expiration, termination, or cancellation of
4 the lease contract.

5 (r) "Lien" means a charge against or interest in goods to
6 secure payment of a debt or performance of an obligation, but the
7 term does not include a security interest.

8 (s) "Lot" means a parcel or a single article that is the
9 subject matter of a separate lease or delivery, whether or not it
10 is sufficient to perform the lease contract.

11 (t) "Merchant lessee" means a lessee that is a merchant with
12 respect to goods of the kind subject to the lease.

13 (u) "Present value" means the amount as of a date certain of
14 1 or more sums payable in the future, discounted to the date
15 certain. The discount is determined by the interest rate
16 specified by the parties if the rate was not manifestly
17 unreasonable at the time the transaction was entered into;
18 otherwise, the discount is determined by a commercially
19 reasonable rate that takes into account the facts and
20 circumstances of each case at the time the transaction was
21 entered into.

22 (v) "Purchase" includes taking by sale, lease, mortgage,
23 security interest, pledge, gift, or any other voluntary
24 transaction creating an interest in goods.

25 (w) "Sublease" means a lease of goods the right to
26 possession and use of which was acquired by the lessor as a
27 lessee under an existing lease.

1 (x) "Supplier" means a person from whom a lessor buys or
2 leases goods to be leased under a finance lease.

3 (y) "Supply contract" means a contract under which a lessor
4 buys or leases goods to be leased.

5 (z) "Termination" occurs when either party pursuant to a
6 power created by agreement or law puts an end to the lease
7 contract otherwise than for default.

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

10	"Accessions".	Section 2A310(1) 2A310 .
11	"Construction mortgage".	Section 2A309(1)(d) 2A309 .
12	"Encumbrance".	Section 2A309(1)(e) 2A309 .
13	"Fixtures".	Section 2A309(1)(a) 2A309 .
14	"Fixture filing".	Section 2A309(1)(b) 2A309 .
15	"Purchase money lease".	Section 2A309(1)(c) 2A309 .

16 (3) The following definitions in other articles apply to
17 this article:

18	"Account".	Section 9102(1)(b) 9102 .
19	"Between merchants".	Section 2104(3) 2104 .
20	"Buyer".	Section 2103(1)(a) 2103 .
21	"Chattel paper".	Section 9102(1)(k) 9102 .
22	"Consumer goods".	Section 9102(1)(w) 9102 .
23	"Document".	Section 9102(1)(dd) 9102 .
24	"Entrusting".	Section 2403(3) 2403 .
25	"General intangible".	Section 9102(1)(pp) 9102 .
26	"Good faith".	Section 2103(1)(b) 2103 .
27	"Instrument".	Section 9102(1)(uu) 9102 .

1	"Merchant".	Section 2104(1) — 2104 .
2	"Mortgage".	Section 9102(1)(ccc) — 9102 .
3	"Pursuant to commitment".	Section 9102(1)(sss) — 9102 .
4	"Receipt".	Section 2103(1)(e) — 2103 .
5	"Sale".	Section 2106(1) — 2106 .
6	"Sale on approval".	Section 2326.
7	"Sale or return".	Section 2326.
8	"Seller".	Section 2103(1)(d) — 2103 .

9 (4) In addition article 1 contains general definitions and
10 principles of construction and interpretation applicable
11 throughout this article.

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

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

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

25 (4) Except as otherwise provided in section 1106(1) **OR**
26 **1305(1)** or this article or the lease agreement, the rights and
27 remedies referred to in subsections (2) and (3) are cumulative.

1 (5) If the lease agreement covers both real property and
2 goods, the party seeking enforcement may proceed under this part
3 as to the goods, or under other applicable law as to both the
4 real property and the goods in accordance with that party's
5 rights and remedies in respect of the real property, in which
6 case this part does not apply.

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

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

1 (3) If a lessee's cover is by lease agreement that for any
2 reason does not qualify for treatment under subsection (2), or is
3 by purchase or otherwise, the lessee may recover from the lessor
4 as if the lessee had elected not to cover and section 2A519
5 governs.

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

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

24 (3) Except as otherwise agreed, if the lessee has accepted
25 goods and given notification **UNDER** ~~(section 2A516(3),)~~, the
26 measure of damages for nonconforming tender or delivery or other
27 default by a lessor is the loss resulting in the ordinary course

1 of events from the lessor's default as determined in any manner
2 that is reasonable together with incidental and consequential
3 damages, less expenses saved in consequence of the lessor's
4 default.

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

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

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

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

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

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

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

26 Sec. 2A528. (1) Except as otherwise provided with respect to
27 damages liquidated in the lease agreement **UNDER** ~~←section 2A504 →~~

1 or otherwise determined pursuant to agreement of the parties
2 **UNDER** ~~(sections 1102(3)–1302 and 2A503,)~~, if a lessor elects to
3 retain the goods or a lessor elects to dispose of the goods and
4 disposition is by lease agreement that for any reason does not
5 qualify for treatment under section 2A527(2), or is by sale or
6 otherwise, the lessor may recover from the lessee as damages for
7 a default of the type described in section 2A523(1) or
8 2A523(3)(a), or, if agreed, for other default of the lessee, (i)
9 accrued and unpaid rent as of the date of default if the lessee
10 has never taken possession of the goods, or, if the lessee has
11 taken possession of the goods, as of the date the lessor
12 repossesses the goods or an earlier date on which the lessee
13 makes a tender of the goods to the lessor, (ii) the present value
14 as of the date determined under this subsection of the total rent
15 for the then remaining lease term of the original lease agreement
16 minus the present value as of the same date of the market rent at
17 the place where the goods are located computed for the same lease
18 term, and any incidental damages allowed under section 2A530,
19 less expenses saved in consequence of the lessee's default.

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

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

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

3 (b) "Drawee" means a person ordered in a draft to make
4 payment.

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

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

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

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

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

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

2 (H) ~~(i)~~—"Promise" means a written undertaking to pay money
3 signed by the person undertaking to pay. An acknowledgment of an
4 obligation by the obligor is not a promise unless the obligor
5 also undertakes to pay the obligation.

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

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

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

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

1	"Incomplete instrument"	section 3115.
2	"Instrument"	section 3104.
3	"Issue"	section 3105.
4	"Issuer"	section 3105.
5	"Negotiable instrument"	section 3104.
6	"Negotiation"	section 3201.
7	"Note"	section 3104.
8	"Payable at a definite time"	section 3108.
9	"Payable on demand"	section 3108.
10	"Payable to bearer"	section 3109.
11	"Payable to order"	section 3109.
12	"Payment"	section 3602.
13	"Person entitled to enforce"	section 3301.
14	"Presentment"	section 3501.
15	"Reacquisition"	section 3207.
16	"Special endorsement"	section 3205.
17	"Teller's check"	section 3104.
18	"Transfer of instrument"	section 3203.
19	"Traveler's check"	section 3104.
20	"Value"	section 3303.

21 (3) The following definitions in other articles apply to
22 this article:

23	"Bank"	section 4105.
24	"Banking day"	section 4104.
25	"Clearing house"	section 4104.
26	"Collecting bank"	section 4105.
27	"Depositary bank"	section 4105.
28	"Documentary draft"	section 4104.
29	"Intermediary bank"	section 4105.

1 "Item" section 4104.
 2 "Payor bank" section 4105.
 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. 4104. (1) As used in this article unless the context
 8 otherwise requires:

9 (a) "Account" means any depositor credit account with a
 10 bank, including a demand, time, savings, passbook, share draft,
 11 or like account, other than an account evidenced by a certificate
 12 of deposit.

13 (b) "Afternoon" means the period of a day between noon and
 14 midnight.

15 (c) "Banking day" means the part of a day on which a bank is
 16 open to the public for carrying on substantially all of its
 17 banking functions.

18 (d) "Clearing-house" means an association of banks or other
 19 payors regularly clearing items.

20 (e) "Customer" means any person having an account with a
 21 bank or for whom a bank has agreed to collect items, including a
 22 bank that maintains an account at another bank.

23 (f) "Documentary draft" means a draft to be presented for
 24 acceptance or payment if specified documents, certificated
 25 securities ~~—AS DEFINED IN (section 8102)—~~or instructions for
 26 uncertificated securities **AS DEFINED IN (section 8102,)—**or
 27 other certificates, statements, or the like are to be received by

1 the drawee or other payor before acceptance or payment of the
2 draft.

3 (g) "Draft" means a draft as defined in section 3104 or an
4 item, other than an instrument, that is an order.

5 (h) "Drawee" means a person ordered in a draft to make
6 payment.

7 (i) "Item" means an instrument or a promise or order to pay
8 money handled by a bank for collection or pay. The term does not
9 include a payment order governed by article 2a or a credit or
10 debit card slip.

11 (j) "Midnight deadline" with respect to a bank is midnight
12 on its next banking day following the banking day on which it
13 receives the relevant item or notice or from which the time for
14 taking action commences to run, whichever is later.

15 (k) "Settle" means to pay in cash, by clearing-house
16 settlement, in a charge or credit or by remittance, or otherwise
17 as agreed. A settlement may be either provisional or final.

18 (l) "Suspends payments" with respect to a bank means that it
19 has been closed by order of the supervisory authorities, that a
20 public officer has been appointed to take it over or that it
21 ceases or refuses to make payments in the ordinary course of
22 business.

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

25 "Agreement for electronic presentment". Section 4110.

26 "Bank". Section 4105.

1	"Collecting bank".	Section 4105.
2	"Depository bank".	Section 4105.
3	"Intermediary bank".	Section 4105.
4	"Payor bank".	Section 4105.
5	"Presenting bank".	Section 4105.
6	"Presentment notice".	Section 4110.

7 (3) The following definitions in other articles apply to
8 this article:

9	"Acceptance".	Section 3409.
10	"Alteration".	Section 3409.
11	"Certificate of deposit".	Section 3104.
12	"Cashier's check".	Section 3104.
13	"Certified check".	Section 3409.
14	"Check".	Section 3104.
15	"Draft".	Section 3104.
16	"Good faith".	Section 3103.
17	"Holder in due course".	Section 3302.
18	"Instrument".	Section 3104.
19	"Notice of dishonor".	Section 3503.
20	"Order".	Section 3103.
21	"Ordinary care".	Section 3103.
22	"Person entitled to enforce".	Section 3301.
23	"Presentment".	Section 3501.
24	"Promise".	Section 3103.
25	"Prove".	Section 3103.
26	"Teller's check".	Section 3104.
27	"Unauthorized signature".	Section 3403.

28 (4) In addition article 1 contains general definitions and

1 principles of construction and interpretation applicable
2 throughout this article.

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

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

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

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

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

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

27 ~~—— (f) "Good faith" means honesty in fact and the observance of~~

1 ~~reasonable commercial standards of fair dealing.~~

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

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

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

25 (3) The following definitions in article 4 apply to this
 26 article:

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

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

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

24 (2) If this article refers to an execution date or payment
25 date or states a day on which a receiving bank is required to
26 take action, and the date or day does not fall on a ~~funds-~~

1 ~~transfer~~ **FUNDS TRANSFER** business day, the next day that is a
2 ~~funds transfer~~ **FUNDS TRANSFER** business day is treated as the date
3 or day stated, unless the contrary is stated in this article.

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

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

27 Sec. 5103. (1) This article applies to letters of credit and

1 to certain rights and obligations arising out of transactions
2 involving letters of credit.

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

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

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

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

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

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

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

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

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

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

13 (ii) A federal reserve bank.

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

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

22 (i) Send a signed writing.

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

25 (g) "Entitlement holder" means a person identified in the
26 records of a securities intermediary as the person having a
27 security entitlement against the securities intermediary. If a

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

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

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

9 (i) A security.

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

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

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

27 (J) ~~(k)~~—"Indorsement" means a signature that alone or

1 accompanied by other words is made on a security certificate in
2 registered form or on a separate document for the purpose of
3 assigning, transferring, or redeeming the security or granting a
4 power to assign, transfer, or redeem the security.

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

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

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

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

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

18 (i) A clearing corporation.

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

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

26 (i) Represented by a security certificate in bearer or
27 registered form, or the transfer of which may be registered upon

1 books maintained for that purpose by or on behalf of the issuer.

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

5 (iii) Either of the following:

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

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

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

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

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

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

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

27 (3) In addition, article 1 contains general definitions and

1 principles of construction and interpretation applicable
2 throughout this article.

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

7 Sec. 9102. (1) As used in this article:

8 (a) "Accession" means goods that are physically united with
9 other goods in such a manner that the identity of the original
10 goods is not lost.

11 (b) "Account", except as used in "account for", means a
12 right to payment of a monetary obligation, whether or not earned
13 by performance, for property that has been or is to be sold,
14 leased, licensed, assigned, or otherwise disposed of, for
15 services rendered or to be rendered, for a policy of insurance
16 issued or to be issued, for a secondary obligation incurred or to
17 be incurred, for energy provided or to be provided, for the use
18 or hire of a vessel under a charter or other contract, arising
19 out of the use of a credit or charge card or information
20 contained on or for use with the card, or as winnings in a
21 lottery or other game of chance operated or sponsored by a state,
22 governmental unit of a state, or person licensed or authorized to
23 operate the game by a state or governmental unit of a state. The
24 term includes health-care-insurance receivables. The term does
25 not include rights to payment evidenced by chattel paper or an
26 instrument, commercial tort claims, deposit accounts, investment
27 property, letter-of-credit rights or letters of credit, or rights

1 to payment for money or funds advanced or sold, other than rights
2 arising out of the use of a credit or charge card or information
3 contained on or for use with the card.

4 (c) "Account debtor" means a person obligated on an account,
5 chattel paper, or general intangible. The term does not include
6 persons obligated to pay a negotiable instrument, even if the
7 instrument constitutes part of chattel paper.

8 (d) "Accounting", except as used in "accounting for", means
9 a record that meets all of the following requirements:

10 (i) Authenticated by a secured party.

11 (ii) Indicating the aggregate unpaid secured obligations as
12 of a date not more than 35 days earlier or 35 days later than the
13 date of the record.

14 (iii) Identifying the components of the obligations in
15 reasonable detail.

16 (e) "Agricultural lien" means an interest, other than a
17 security interest, in farm products that meets all of the
18 following requirements:

19 (i) The interest secures payment or performance of an
20 obligation for 1 or more of the following:

21 (A) Goods or services furnished in connection with a
22 debtor's farming operation.

23 (B) Rent on real property leased by a debtor in connection
24 with its farming operation.

25 (ii) The interest is created by statute in favor of a person
26 that did 1 or more of the following:

27 (A) In the ordinary course of its business furnished goods

1 or services to a debtor in connection with a debtor's farming
2 operation.

3 (B) Leased real property to a debtor in connection with the
4 debtor's farming operation.

5 (iii) The effectiveness of the interest does not depend on the
6 person's possession of the personal property.

7 (f) "As-extracted collateral" means 1 or more of the
8 following:

9 (i) Oil, gas, or other minerals that are subject to a
10 security interest that is created by a debtor having an interest
11 in the minerals before extraction and attaches to the minerals as
12 extracted.

13 (ii) Accounts arising out of the sale at the wellhead or
14 minehead of oil, gas, or other minerals in which the debtor had
15 an interest before extraction.

16 (g) "Authenticate" means 1 of the following:

17 (i) To sign.

18 (ii) To execute or otherwise adopt a symbol, or encrypt or
19 similarly process a record in whole or in part, with the present
20 intent of the authenticating person to identify the person and
21 adopt or accept a record.

22 (h) "Bank" means an organization that is engaged in the
23 business of banking. The term includes savings banks, savings and
24 loan associations, credit unions, and trust companies.

25 (i) "Cash proceeds" means proceeds that are money, checks,
26 deposit accounts, or the like.

27 (j) "Certificate of title" means a certificate of title with

1 respect to which a statute provides for the security interest in
2 question to be indicated on the certificate as a condition or
3 result of the security interest's obtaining priority over the
4 rights of a lien creditor with respect to the collateral.

5 (k) "Chattel paper" means a record or records that evidence
6 both a monetary obligation and a security interest in specific
7 goods, a security interest in specific goods and software used in
8 the goods, a security interest in specific goods and license of
9 software used in the goods, a lease of specific goods, or a lease
10 of specific goods and license of software used in the goods. As
11 used in this subdivision, "monetary obligation" means a monetary
12 obligation secured by the goods or owed under a lease of the
13 goods and includes a monetary obligation with respect to software
14 used in the goods. The term does not include charters or other
15 contracts involving the use or hire of a vessel, or records that
16 evidence a right to payment arising out of the use of a credit or
17 charge card or information contained on or for use with the card.
18 If a transaction is evidenced by records that include an
19 instrument or series of instruments, the group of records taken
20 together constitutes chattel paper.

21 (l) "Collateral" means the property subject to a security
22 interest or agricultural lien. The term includes 1 or more of the
23 following:

24 (i) Proceeds to which a security interest attaches.

25 (ii) Accounts, chattel paper, payment intangibles, and
26 promissory notes that have been sold.

27 (iii) Goods that are the subject of a consignment.

1 (m) "Commercial tort claim" means a claim arising in tort
2 with respect to which 1 of the following applies:

3 (i) The claimant is an organization.

4 (ii) The claimant is an individual and the claim arose in the
5 course of the claimant's business or profession and does not
6 include damages arising out of personal injury to or the death of
7 an individual.

8 (n) "Commodity account" means an account maintained by a
9 commodity intermediary in which a commodity contract is carried
10 for a commodity customer.

11 (o) "Commodity contract" means a commodity futures contract,
12 an option on a commodity futures contract, a commodity option, or
13 another contract if the contract or option is 1 of the following:

14 (i) Traded on or subject to the rules of a board of trade
15 that has been designated as a contract market for such a contract
16 pursuant to federal commodities laws.

17 (ii) Traded on a foreign commodity board of trade, exchange,
18 or market, and is carried on the books of a commodity
19 intermediary for a commodity customer.

20 (p) "Commodity customer" means a person for which a
21 commodity intermediary carries a commodity contract on its books.

22 (q) "Commodity intermediary" means 1 of the following:

23 (i) A person that is registered as a futures commission
24 merchant under federal commodities law.

25 (ii) A person that in the ordinary course of its business
26 provides clearance or settlement services for a board of trade
27 that has been designated as a contract market pursuant to federal

1 commodities law.

2 (r) "Communicate" means 1 or more of the following:

3 (i) To send a written or other tangible record.

4 (ii) To transmit a record by any means agreed upon by the
5 persons sending and receiving the record.

6 (iii) In the case of transmission of a record to or by a
7 filing office, to transmit a record by any means prescribed by
8 filing-office rule.

9 (s) "Consignee" means a merchant to which goods are
10 delivered in a consignment.

11 (t) "Consignment" means a transaction, regardless of its
12 form, in which a person delivers goods to a merchant for the
13 purpose of sale and that meets all of the following:

14 (i) The merchant deals in goods of that kind under a name
15 other than the name of the person making delivery, is not an
16 auctioneer, and is not generally known by its creditors to be
17 substantially engaged in selling the goods of others.

18 (ii) With respect to each delivery, the aggregate value of
19 the goods is \$1,000.00 or more at the time of delivery.

20 (iii) The goods are not consumer goods immediately before
21 delivery.

22 (iv) The transaction does not create a security interest that
23 secures an obligation.

24 (u) "Consignor" means a person that delivers goods to a
25 consignee in a consignment.

26 (v) "Consumer debtor" means a debtor in a consumer
27 transaction.

1 (w) "Consumer goods" means goods that are used or bought for
2 use primarily for personal, family, or household purposes.

3 (x) "Consumer-goods transaction" means a consumer
4 transaction in which an individual incurs an obligation primarily
5 for personal, family, or household purposes and a security
6 interest in consumer goods secures the obligation.

7 (y) "Consumer obligor" means an obligor who is an individual
8 and who incurred the obligation as part of a transaction entered
9 into primarily for personal, family, or household purposes.

10 (z) "Consumer transaction" means a transaction in which an
11 individual incurs an obligation primarily for personal, family,
12 or household purposes, a security interest secures the
13 obligation, and the collateral is held or acquired primarily for
14 personal, family, or household purposes. The term includes
15 consumer-goods transactions.

16 (aa) "Continuation statement" means an amendment of a
17 financing statement which identifies, by its file number, the
18 initial financing statement to which it relates and indicates
19 that it is a continuation statement for, or that it is filed to
20 continue the effectiveness of, the identified financing
21 statement.

22 (bb) "Debtor" means 1 of the following:

23 (i) A person having an interest, other than a security
24 interest or other lien, in the collateral, whether or not the
25 person is an obligor.

26 (ii) A seller of accounts, chattel paper, payment
27 intangibles, or promissory notes.

- 1 (iii) A consignee.
- 2 (cc) "Deposit account" means a demand, time, savings,
3 passbook, or similar account maintained with a bank. The term
4 does not include investment property or accounts evidenced by an
5 instrument.
- 6 (dd) "Document" means a document of title or a receipt of
7 the type described in section 7201(2).
- 8 (ee) "Electronic chattel paper" means chattel paper
9 evidenced by a record or records consisting of information stored
10 in an electronic medium.
- 11 (ff) "Encumbrance" means a right, other than an ownership
12 interest, in real property. The term includes mortgages and other
13 liens on real property.
- 14 (gg) "Equipment" means goods other than inventory, farm
15 products, or consumer goods.
- 16 (hh) "Farm products" means goods, other than standing
17 timber, with respect to which the debtor is engaged in a farming
18 operation and which are 1 of the following:
- 19 (i) Crops grown, growing, or to be grown, including crops
20 produced on trees, vines, and bushes, and aquatic goods produced
21 in aquacultural operations.
- 22 (ii) Livestock, born or unborn, including aquatic goods
23 produced in aquacultural operations.
- 24 (iii) Supplies used or produced in a farming operation.
- 25 (iv) Products of crops or livestock in their unmanufactured
26 states.
- 27 (ii) "Farming operation" means raising, cultivating,

1 propagating, fattening, grazing, or any other farming, livestock,
2 or aquacultural operation.

3 (jj) "File number" means the number assigned to an initial
4 financing statement pursuant to section 9519(1).

5 (kk) "Filing office" means an office designated in section
6 9501 as the place to file a financing statement.

7 (ll) "Filing-office rule" means a rule adopted pursuant to
8 section 9526.

9 (mm) "Financing statement" means a record or records
10 composed of an initial financing statement and any filed record
11 relating to the initial financing statement.

12 (nn) "Fixture filing" means the filing of a financing
13 statement covering goods that are or are to become fixtures and
14 satisfying section 9502(1) and (2). The term includes the filing
15 of a financing statement covering goods of a transmitting utility
16 which are or are to become fixtures.

17 (oo) "Fixtures" means goods that have become so related to
18 particular real property that an interest in them arises under
19 real property law.

20 (pp) "General intangible" means any personal property,
21 including things in action, other than accounts, chattel paper,
22 commercial tort claims, deposit accounts, documents, goods,
23 instruments, investment property, letter-of-credit rights,
24 letters of credit, money, and oil, gas, or other minerals before
25 extraction. The term includes payment intangibles and software.

26 ~~—— (qq) "Good faith" means honesty in fact and the observance~~
27 ~~of reasonable commercial standards of fair dealing.~~

1 **(QQ)** ~~(rr)~~—"Goods" means all things that are movable when a
2 security interest attaches. The term includes fixtures, standing
3 timber that is to be cut and removed under a conveyance or
4 contract for sale, the unborn young of animals, crops grown,
5 growing, or to be grown, even if the crops are produced on trees,
6 vines, or bushes, and manufactured homes. The term also includes
7 a computer program embedded in goods and any supporting
8 information provided in connection with a transaction relating to
9 the program if the program is associated with the goods in such a
10 manner that it customarily is considered part of the goods, or by
11 becoming the owner of the goods, a person acquires a right to use
12 the program in connection with the goods. The term does not
13 include a computer program embedded in goods that consist solely
14 of the medium in which the program is embedded. The term also
15 does not include accounts, chattel paper, commercial tort claims,
16 deposit accounts, documents, general intangibles, instruments,
17 investment property, letter-of-credit rights, letters of credit,
18 money, or oil, gas, or other minerals before extraction.

19 **(RR)** ~~(ss)~~—"Governmental unit" means a subdivision, agency,
20 department, county, parish, municipality, or other unit of the
21 government of the United States, a state, or a foreign country.
22 The term includes an organization having a separate corporate
23 existence if the organization is eligible to issue debt on which
24 interest is exempt from income taxation under the laws of the
25 United States.

26 **(SS)** ~~(tt)~~—"Health-care-insurance receivable" means an
27 interest in or claim under a policy of insurance which is a right

1 to payment of a monetary obligation for health-care goods or
2 services provided.

3 **(TT)** ~~(uu)~~—"Instrument" means a negotiable instrument or any
4 other writing that evidences a right to the payment of a monetary
5 obligation, is not itself a security agreement or lease, and is
6 of a type that in ordinary course of business is transferred by
7 delivery with any necessary indorsement or assignment. The term
8 does not include investment property, letters of credit, or
9 writings that evidence a right to payment arising out of the use
10 of a credit or charge card or information contained on or for use
11 with the card.

12 **(UU)** ~~(vv)~~—"Inventory" means goods, other than farm products,
13 that meet 1 of the following:

14 (i) Are leased by a person as lessor.

15 (ii) Are held by a person for sale or lease or to be
16 furnished under a contract of service.

17 (iii) Are furnished by a person under a contract of service.

18 (iv) Consist of raw materials, work in process, or materials
19 used or consumed in a business.

20 **(VV)** ~~(ww)~~—"Investment property" means a security, whether
21 certificated or uncertificated, security entitlement, securities
22 account, commodity contract, or commodity account.

23 **(WW)** ~~(xx)~~—"Jurisdiction of organization", with respect to a
24 registered organization, means the jurisdiction under whose law
25 the organization is organized.

26 **(XX)** ~~(yy)~~—"Letter-of-credit right" means a right to payment
27 or performance under a letter of credit, whether or not the

1 beneficiary has demanded or is at the time entitled to demand
2 payment or performance. The term does not include the right of a
3 beneficiary to demand payment or performance under a letter of
4 credit.

5 **(YY)** ~~(zz)~~—"Lien creditor" means 1 or more of the following:

6 (i) A creditor that has acquired a lien on the property
7 involved by attachment, levy, or the like.

8 (ii) An assignee for benefit of creditors from the time of
9 assignment.

10 (iii) A trustee in bankruptcy from the date of the filing of
11 the petition.

12 (iv) A receiver in equity from the time of appointment.

13 **(ZZ)** ~~(aaa)~~—"Manufactured home" means a structure,
14 transportable in 1 or more sections, which, in the traveling
15 mode, is 8 body feet or more in width or 40 body feet or more in
16 length, or when erected on site, is 320 or more square feet, and
17 which is built on a permanent chassis and designed to be used as
18 a dwelling with or without a permanent foundation when connected
19 to the required utilities, and includes the plumbing, heating,
20 air-conditioning, and electrical systems contained therein. The
21 term includes any structure that meets all of the requirements of
22 this paragraph except the size requirements and with respect to
23 which the manufacturer voluntarily files a certification required
24 by the secretary of the department of housing and urban
25 development and complies with the standards established under
26 title 42 of the United States Code.

27 **(AAA)** ~~(bbb)~~—"Manufactured-home transaction" means a secured

1 transaction that creates a purchase-money security interest in a
2 manufactured home, other than a manufactured home held as
3 inventory, or in which a manufactured home, other than a
4 manufactured home held as inventory, is the primary collateral.

5 (BBB) ~~(eee)~~—"Mortgage" means a consensual interest in real
6 property, including fixtures, which secures payment or
7 performance of an obligation.

8 (CCC) ~~(ddd)~~—"New debtor" means a person that becomes bound
9 as debtor under section 9203(4) by a security agreement
10 previously entered into by another person.

11 (DDD) ~~(eee)~~—"New value" means money, money's worth in
12 property, services, or new credit, or release by a transferee of
13 an interest in property previously transferred to the transferee.
14 The term does not include an obligation substituted for another
15 obligation.

16 (EEE) ~~(fff)~~—"Noncash proceeds" means proceeds other than
17 cash proceeds.

18 (FFF) ~~(ggg)~~—"Obligor" means a person that, with respect to
19 an obligation secured by a security interest in or an
20 agricultural lien on the collateral, owes payment or other
21 performance of the obligation, has provided property other than
22 the collateral to secure payment or other performance of the
23 obligation, or is otherwise accountable in whole or in part for
24 payment or other performance of the obligation. The term does not
25 include issuers or nominated persons under a letter of credit.

26 (GGG) ~~(hhh)~~—"Original debtor" means, except as used in
27 section 9310(3), a person that, as debtor, entered into a

1 security agreement to which a new debtor has become bound under
2 section 9203(4).

3 **(HHH)** ~~(iii)~~—"Payment intangible" means a general intangible
4 under which the account debtor's principal obligation is a
5 monetary obligation.

6 **(III)** ~~(jjj)~~—"Person related to", with respect to an
7 individual, means 1 or more of the following:

8 (i) The spouse of the individual.

9 (ii) A brother, brother-in-law, sister, or sister-in-law of
10 the individual.

11 (iii) An ancestor or lineal descendant of the individual or
12 the individual's spouse.

13 (iv) Any other relative, by blood or marriage, of the
14 individual or the individual's spouse who shares the same home
15 with the individual.

16 **(JJJ)** ~~(kkk)~~—"Person related to", with respect to an
17 organization, means 1 or more of the following:

18 (i) A person directly or indirectly controlling, controlled
19 by, or under common control with the organization.

20 (ii) An officer or director of, or a person performing
21 similar functions with respect to, the organization.

22 (iii) An officer or director of, or a person performing
23 similar functions with respect to, a person described in
24 subparagraph (i).

25 (iv) The spouse of an individual described in subparagraph
26 (i), (ii), or (iii).

27 (v) An individual who is related by blood or marriage to an

1 individual described in subparagraph (i), (ii), (iii), or (iv) and
2 shares the same home with the individual.

3 **(KKK)** ~~(III)~~—"Proceeds" means, except as used in section
4 9609(2), 1 or more of the following property:

5 (i) Whatever is acquired upon the sale, lease, license,
6 exchange, or other disposition of collateral.

7 (ii) Whatever is collected on, or distributed on account of,
8 collateral.

9 (iii) Rights arising out of collateral.

10 (iv) To the extent of the value of collateral, claims arising
11 out of the loss, nonconformity, or interference with the use of,
12 defects or infringement of rights in, or damage to, the
13 collateral.

14 (v) To the extent of the value of collateral and to the
15 extent payable to the debtor or the secured party, insurance
16 payable by reason of the loss or nonconformity of, defects or
17 infringement of rights in, or damage to, the collateral.

18 **(III)** ~~(mmm)~~—"Promissory note" means an instrument that
19 evidences a promise to pay a monetary obligation, does not
20 evidence an order to pay, and does not contain an acknowledgment
21 by a bank that the bank has received for deposit a sum of money
22 or funds.

23 **(MMM)** ~~(nnn)~~—"Proposal" means a record authenticated by a
24 secured party which includes the terms on which the secured party
25 is willing to accept collateral in full or partial satisfaction
26 of the obligation it secures pursuant to sections 9620, 9621, and
27 9622.

1 (**NNN**) ~~(eee)~~—"Pursuant to commitment", with respect to an
2 advance made or other value given by a secured party, means
3 pursuant to the secured party's obligation, whether or not a
4 subsequent event of default or other event not within the secured
5 party's control has relieved or may relieve the secured party
6 from its obligation.

7 (**OOO**) ~~(ppp)~~—"Record", except as used in "for record", "of
8 record", "record or legal title", and "record owner", means
9 information that is inscribed on a tangible medium or which is
10 stored in an electronic or other medium and is retrievable in
11 perceivable form.

12 (**PPP**) ~~(qqq)~~—"Registered organization" means an organization
13 organized solely under the law of a single state or the United
14 States and as to which the state or the United States must
15 maintain a public record showing the organization to have been
16 organized.

17 (**QQQ**) ~~(rrr)~~—"Secondary obligor" means an obligor to the
18 extent that the obligor's obligation is secondary or the obligor
19 has a right of recourse with respect to an obligation secured by
20 collateral against the debtor, another obligor, or property of
21 either.

22 (**RRR**) ~~(sss)~~—"Secured party" means 1 or more of the
23 following:

24 (i) A person in whose favor a security interest is created or
25 provided for under a security agreement, whether or not any
26 obligation to be secured is outstanding.

27 (ii) A person that holds an agricultural lien.

- 1 (iii) A consignor.
- 2 (iv) A person to which accounts, chattel paper, payment
3 intangibles, or promissory notes have been sold.
- 4 (v) A trustee, indenture trustee, agent, collateral agent,
5 or other representative in whose favor a security interest or
6 agricultural lien is created or provided for.
- 7 (vi) A person that holds a security interest arising under
8 section 2401, 2505, 2711(3), 2A508(5), 4210, or 5118.
- 9 **(SSS)** ~~(ttt)~~—"Security agreement" means an agreement that
10 creates or provides for a security interest.
- 11 **(TTT)** ~~(uuu)~~—"Send", in connection with a record or
12 notification, means 1 of the following:
- 13 (i) To deposit in the mail, deliver for transmission, or
14 transmit by any other usual means of communication, with postage
15 or cost of transmission provided for, addressed to any address
16 reasonable under the circumstances.
- 17 (ii) To cause the record or notification to be received
18 within the time that it would have been received if properly sent
19 under subparagraph (i).
- 20 **(UUU)** ~~(vvv)~~—"Software" means a computer program and any
21 supporting information provided in connection with a transaction
22 relating to the program. The term does not include a computer
23 program that is included in the definition of goods.
- 24 **(VVV)** ~~(www)~~—"State" means a state of the United States, the
25 District of Columbia, Puerto Rico, the United States Virgin
26 Islands, or any territory or insular possession subject to the
27 jurisdiction of the United States.

1 (**WWW**) ~~(xxx)~~—"Supporting obligation" means a letter-of-credit
 2 right or secondary obligation that supports the payment or
 3 performance of an account, chattel paper, a document, a general
 4 intangible, an instrument, or investment property.

5 (**XXX**) ~~(yyy)~~—"Tangible chattel paper" means chattel paper
 6 evidenced by a record or records consisting of information that
 7 is inscribed on a tangible medium.

8 (**YYY**) ~~(zzz)~~—"Termination statement" means an amendment of a
 9 financing statement that identifies, by its file number, the
 10 initial financing statement to which it relates and indicates
 11 either that it is a termination statement or that the identified
 12 financing statement is no longer effective.

13 (**ZZZ**) ~~(aaa)~~—"Transmitting utility" means a person primarily
 14 engaged in the business of 1 of the following:

15 (i) Operating a railroad, subway, street railway, or trolley
 16 bus.

17 (ii) Transmitting communications electrically,
 18 electromagnetically, or by light.

19 (iii) Transmitting goods by pipeline or sewer.

20 (iv) Transmitting or producing and transmitting electricity,
 21 steam, gas, or water.

22 (2) The following definitions in other articles apply to
 23 this article:

24	"Applicant"	Section 5102
25	"Beneficiary"	Section 5102
26	"Broker"	Section 8102

1	"Certificated security"	Section 8102
2	"Check"	Section 3104
3	"Clearing corporation"	Section 8102
4	"Contract for sale"	Section 2106
5	"Customer"	Section 4104
6	"Entitlement holder"	Section 8102
7	"Financial asset"	Section 8102
8	"Holder in due course"	Section 3302
9	"Issuer" (with respect to a letter	
10	of credit or letter-of-credit right)	Section 5102
11	"Issuer" (with respect to a security)	Section 8201
12	"Lease"	Section 2A103
13	"Lease agreement"	Section 2A103
14	"Lease contract"	Section 2A103
15	"Leasehold interest"	Section 2A103
16	"Lessee"	Section 2A103
17	"Lessee in ordinary course of business"	Section 2A103
18	"Lessor"	Section 2A103
19	"Lessor's residual interest"	Section 2A103
20	"Letter of credit"	Section 5102
21	"Merchant"	Section 2104
22	"Negotiable instrument"	Section 3104
23	"Nominated person"	Section 5102
24	"Note"	Section 3104
25	"Proceeds of a letter of credit"	Section 5114
26	"Prove"	Section 3103
27	"Sale"	Section 2106
28	"Securities account"	Section 8501
29	"Securities intermediary"	Section 8102
30	"Security"	Section 8102
31	"Security certificate"	Section 8102

1 "Security entitlement" Section 8102
2 "Uncertificated security" Section 8102.

3 (3) Article 1 contains general definitions and principles of
4 construction and interpretation applicable throughout this
5 article.

6 Enacting section 1. Sections 1105, 1107, 1207, 1208, 1209,
7 1210, 1211, 2208, and 2A207 of the uniform commercial code, 1962
8 PA 174, MCL 440.1105, 440.1107, 440.1207, 440.1208, 440.1209,
9 440.1210, 440.1211, 440.2208, and 440.2857, are repealed.

10 Enacting section 2. This amendatory act takes effect July 1,
11 2013.