~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 12, 2014

**S. 343**

Introduced by Senator Hayes

S. Printed 3/12/14--S.

Read the first time February 6, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 343) to amend Chapter 7, Title 36, Code of Laws of South Carolina, 1976, relating to Article 7 of the Uniform Commercial Code, so as to revise the chapter, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting the following:

/ A BILL

TO AMEND CHAPTER 1, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO GENERAL PROVISIONS OF THE UNIFORM COMMERCIAL CODE, SO AS TO MAKE CONFORMING AND TECHNICAL CORRECTIONS IN ORDER FOR CHAPTER 1 TO REMAIN CONSISTENT WITH OTHER REVISED CHAPTERS; TO MAKE CERTAIN CHANGES TO CLARIFY AMBIGUITIES THAT HAVE ARISEN OVER THE YEARS; TO MAKE CERTAIN SUBSTANTIVE CHANGES, INCLUDING CHANGES RELATED TO THE EXPANSION OF THE DEFINITION OF GOOD FAITH AND THE RELEVANCE OF COURSE OF PERFORMANCE IN CONTRACT INTERPRETATION; TO AMEND CHAPTER 7, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE, SO AS TO REVISE THE CHAPTER IN ITS ENTIRETY IN ORDER TO PROVIDE FOR THE USE OF ELECTRONIC DOCUMENTS OF TITLE AND TO MAKE CONFORMING CHANGES; TO MAKE CONFORMING CHANGES IN OTHER CHAPTERS OF THE UNIFORM COMMERCIAL CODE; AND TO REPEAL SECTIONS 36‑2‑208 AND 36‑2A‑207.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 36 of the 1976 Code is amended to read:

“CHAPTER 1

Commercial Code-General Provisions

Part 1

Short Title, Construction, Application

and Subject Matter of the Act

Section 36‑1‑101. (1) This ~~act~~ title shall be known and may be cited as the Uniform Commercial Code.

(2) This chapter may be cited as Uniform Commercial Code‑General Provisions.

Section 36‑1‑102. This chapter applies to a transaction to the extent that it is governed by another chapter of this title, known as the Uniform Commercial Code.

Section ~~36‑1‑102~~ 36‑1‑103. ~~(1)~~(a) This ~~act~~ title ~~shall~~ must be liberally construed and applied to promote its underlying purposes and policies~~.~~, which are:

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

~~(a)~~(1) to simplify, clarify, and modernize the law governing commercial transactions;

~~(b)~~(2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;

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

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

~~(a)~~ ~~words in the singular number include the plural, and in the plural include the singular;~~

~~(b)~~ ~~words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.~~

~~Section 36‑1‑103.~~

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

SOUTH CAROLINA REPORTER’S COMMENTS

With minor stylistic changes, revised Section 36‑1‑103 combines former Section 36‑1‑102(1) and (2). Subsection (1) of former Section 36‑1‑102 provided that ‘[t]his act shall be liberally construed and applied to promote its underlying purposes and policies’ and subsection (2) identified those purposes and policies. Except for changing the references to ‘this act’ in the former statute to ‘the Uniform Commercial Code’ and making ‘minor stylistic changes,’ the language of subsection (a) is the same as former Section 1‑102(1) and (2).

Section 36‑1‑104. ~~This act~~The Uniform Commercial Code, being a general ~~act~~ enactment of chapters under Title 36, intended as a unified coverage of its subject matter, no part of it shall be ~~deemed~~ considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

SOUTH CAROLINA REPORTER’S COMMENTS

With the exception of changing the reference from ‘this act’ to ‘the Uniform Commercial Code,’ revised Section 36‑1‑104 is identical to former Section 36‑1‑104. In Atlas Food Systems and Services, Inc. v. Crane National Vendors Division of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995), the court held that under former Section 36‑1‑104, a 1988 amendment to S.C. Code Ann. Section 15‑3‑530(1) reducing the general contract statute of limitations to three years, did not repeal, by implication, the preexisting six year statute of limitations for breach of contract obligations under Article 2 of the Uniform Commercial Code, now codified at S.C. Code Ann. Section 36‑2‑725(1) (2003).

~~Section 36‑1‑105.~~ ~~(1)~~ ~~Except as provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of another state or nation shall govern their rights and duties. Failing an agreement this title applies to transactions bearing an appropriate relation to this State.~~

~~(2)~~ ~~Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:~~

~~Rights of seller’s creditors against sold goods. Section 36‑2‑402.~~

~~Applicability of the Chapter on Leases. Sections 36‑2A‑102, 36‑2A‑105 and 36‑2A‑106.~~

~~Applicability of the Chapter on Bank Deposits and Collections. Section 36‑4‑102.~~

~~Governing law in the Chapter on Funds Transfers. Section 36‑4A‑507.~~

~~Letters of credit. Sections 35‑5‑116.~~

~~Applicability of the Chapter on Investment Securities. Section 36‑8‑110.~~

~~Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 36‑9‑301 through 36‑9‑307.’~~

~~Section 36‑1‑106.~~ ~~(1)~~ ~~The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act or by other rule of law.~~

~~(2)~~ ~~Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.~~

~~Section 36‑1‑107.~~ ~~Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by waiver or renunciation.~~

Section ~~36‑1‑108.~~ 36‑1‑105. If any provision or clause of this ~~act~~ title or its application ~~thereof~~ to any person or circumstance~~s~~ is held invalid, ~~such~~ the invalidity ~~shall~~ does not affect other provisions or applications of this ~~act which~~ title that can be given effect without the invalid provision or application, and to this end the provisions of this ~~act~~ title are ~~declared to be~~ severable.

SOUTH CAROLINA REPORTER’S COMMENTS

Except for changing references from ‘this act’ to ‘the Uniform Commercial Code,’ revised Section 36‑1‑105 is identical to former Section 36‑1‑108. Neither the appellate courts of South Carolina nor the federal courts have interpreted former Section 36‑1‑108.

Section 36‑1‑106. In the Uniform Commercial Code, unless the statutory context otherwise requires:

(a) words in the singular number include the plural, and those in the plural include the singular; and

(b) words of any gender also refer to any other gender.

SOUTH CAROLINA REPORTER’S COMMENTS

With the exception of minor stylistic changes, revised Section 36‑1‑106 is identical to former Section 36‑1‑102(5). Neither the appellate courts of South Carolina nor the federal courts have interpreted former Section 36‑1‑102(5).

Section ~~36‑1‑109~~ 36‑1‑107. Section captions are part~~s~~ of ~~this act, but the comments are not parts of the act~~ the Uniform Commercial Code, with the exception of the subsection headings of Chapter 9, Title 36, which are not part of the provisions. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions of each chapter, are to be included by the Code Commissioner in the annotated versions of this title, but are not considered part of the provisions of this title and do not indicate legislative intent.

SOUTH CAROLINA REPORTER’S COMMENTS

Section captions are part of the Uniform Commercial Code, but neither the Official Comments nor the South Carolina Reporter’s Comments are part of the Uniform Commercial Code. Moreover, the Official Comments should not be relied upon as legislative history in interpreting provisions of the statute.

Section 36‑1‑108. This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this title modifies, limits, or supersedes Section 7001 (c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act.

SOUTH CAROLINA REPORTER’S COMMENTS

Revised Section 36‑1‑108 is an ‘E‑Sign Shield’ provision drafted to exempt revised Article 1 from the effect of Section 7001 of the Federal Electronic Signatures in Global and National Commerce Act [‘E‑Sign’], 15 U.S.C. Section 7001. As a general rule, in transactions affecting interstate or foreign commerce, Section 7001 preempts any statute that denies legal effect, validity, or enforceability to a signature, contract, or other record solely because it is in electronic form. However, 15 U.S.C. Section 7002(a) empowers the states to exempt state law from the provisions of Section 7001. Under Section 7002(a)(1), a state can supersede the provisions of Section 7001 by enacting the 1999 Official Text of the Uniform Electronic Transactions Act [UETA]. In the alternative, a state can supersede the provisions of Section 7001 by enacting a statute that meets the requirements of Section 7002(a)(2). The Drafters assert that revised Article 1, including revised Section 1‑108 meets the requirements of Section 7002(a)(2), and exempts revised Article 1 from preemption. *See* Revised Section 1‑108, Official Comment 1.

Part 2

General Definitions and Principles of Interpretation

Section 36‑1‑201. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of the Uniform Commercial Code that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to ~~additional~~ definitions contained in ~~the subsequent~~ other chapters of this ~~act which are applicable~~ title that apply to ~~specific~~ particular chapters or parts thereof~~, and unless the context otherwise requires, in this act~~:

(1) ‘Action’, in the sense of a judicial proceeding, includes recoupment, counterclaim, set‑off, suit in equity, and any other ~~proceedings~~ proceeding in which rights are determined.

(2) ‘Aggrieved party’ means a party entitled to ~~resort to~~ pursue a remedy.

(3) ‘Agreement’, as distinguished from ‘contract’, means the bargain of the parties in fact, as found in their language or ~~by implication~~ inferred from other circumstances, including course of performance, course of dealing, or usage of trade ~~or course of performance~~ as provided in ~~this act (Sections 36‑1‑205 and 36‑2‑208)~~ Section 36‑1‑303. ~~Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (Section 36‑1‑103). (Compare ‘Contract.’)~~

(4) ‘Bank’ means ~~any~~ a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) ‘Bearer’ means ~~the~~ a person in control of a negotiable electronic document of title or a person in possession of ~~an~~ a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) ‘Bill of lading’ means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods~~, and includes an airbill. ‘Airbill’ means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill~~. The term does not include a warehouse receipt.

(7) ‘Branch’ includes a separately incorporated foreign branch of a bank.

(8) ‘Burden of establishing’ a fact means the burden of persuading the ~~triers~~ trier of fact that the existence of the fact is more probable than its nonexistence.

(9) ‘Buyer in ordinary course of business’ means a person ~~who~~ that buys goods in good faith ~~and~~, without knowledge that the sale ~~to him is in violation of~~ violates the ~~ownership~~ rights ~~or security interest~~ of ~~a third party~~ another person in the goods ~~buys~~, and in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. ~~but does not include a pawnbroker.~~ A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. ~~All~~ A ~~persons~~ person ~~who~~ that ~~sell minerals or the like (including~~ sells oil, ~~and~~ gas~~)~~, or other minerals at the wellhead or minehead ~~are considered to be~~ is a ~~persons~~ person in the business of selling goods of that kind. ~~‘Buying’~~ A buyer in the ordinary course of business may buy ~~may be~~ for cash, ~~or~~ by exchange of other property, or on secured or unsecured credit, and may acquire ~~includes receiving~~ goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in the ordinary course of business. ~~but~~ ‘Buyer in ordinary course of business’ does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) ‘Conspicuous’~~:~~, with reference to a term, ~~or clause is conspicuous when it is so written~~ means so written, displayed, or presented that a reasonable person against ~~whom~~ which it is to operate ought to have noticed it. Whether a term is ‘conspicuous’ or not is a decision for the court. Conspicuous terms include the following:

(A) ~~A printed~~ a heading in capitals ~~(as Nonnegotiable Bill of Lading) is conspicuous.~~ equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) ~~Language~~ language in the body of a ~~form~~ record or display ~~is ‘conspicuous’ if it is~~ in larger ~~or other contrasting~~ type ~~or color~~ than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language. ~~But in a telegram any stated term is ‘conspicuous.’ Whether a term or clause is ‘conspicuous’ or not is for decision by the court.~~

(11) ‘Consumer’ means an individual who enters into a transaction primarily for personal, family, or household purposes.

~~(11)~~(12) ‘Contract’, as distinguished from ‘agreement’, means the total legal obligation ~~which~~ that results from the parties’ agreement as ~~affected~~ determined by ~~this act~~ the Uniform Commercial Code as supplemented by ~~and~~ any other applicable ~~rules of law~~ laws. ~~(Compare ‘Agreement.’)~~

~~(12)~~(13) ‘Creditor’ includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

~~(13)~~(14) ‘Defendant’ includes a person in the position of defendant in a ~~cross‑action or~~ counterclaim, cross-claim, or third-party claim.

~~(14)~~(15) ‘Delivery’, with respect to ~~instruments~~ an electronic document of title means voluntary transfer of control, and with respect to an instrument, ~~documents~~ a tangible document of title, or chattel paper ~~or certificated securities~~ means voluntary transfer of possession.

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

~~(16)~~(17) ‘Fault’ means ~~wrongful act, omission or breach~~ a default, breach, or wrongful act or omission.

~~(17)~~(18) ‘Fungible goods’ ~~with respect to goods or securities~~ means:

(A) goods ~~or securities~~ of which any unit ~~is~~, by nature or usage of trade, is the equivalent of any other like unit~~.~~; or

(B) ~~Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.~~ goods that by agreement are treated as equivalent.

~~(18)~~(19) ‘Genuine’ means free of forgery or counterfeiting.

~~(19)~~(20) ‘Good faith’, except as otherwise provided in Chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing. ~~in the conduct or transaction concerned.~~

~~(20)~~(21) ‘Holder’ means:

(A) ~~a~~ the person ~~who is~~ in possession of a ~~document of title or an~~ negotiable instrument ~~or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank~~ that is payable either to bearer or an identified person that is the person in possession;

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

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

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

(22) ‘Insolvency ~~proceedings~~ proceeding’ includes ~~any~~ an assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) ~~A person is ‘insolvent’ who either~~ ‘Insolvent’ means:

(A) having generally ceased to pay ~~his~~ debts in the ordinary course of business other than as a result of a bona fide dispute;

(B) ~~or cannot~~ being unable to pay ~~his~~ debts as they become due; or

(C) ~~is~~ being insolvent within the meaning of ~~the~~ Federal Bankruptcy Law.

(24) ‘Money’ means a medium of exchange currently authorized or adopted by a domestic or foreign government ~~as a part of its currency~~. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

~~(25)~~ ~~A person has ‘notice’ of a fact when~~

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

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

~~(c)~~ ~~from all the facts and circumstances known to him at the time in question he has reason to know that it exists.~~

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

~~(26)~~ ~~A person ‘notifies’ or ‘gives’ a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person ‘receives’ a notice or notification when~~

~~(a)~~ ~~it comes to his attention; or~~

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

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

~~(28)~~ ~~‘Organization’ includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.~~

(25) ‘Organization’ means a person other than an individual.

~~(29)~~(26) ‘Party’, as ~~distinct~~ distinguished from ‘third party’, means a person ~~who~~ that has engaged in a transaction or made an agreement ~~within~~ subject to the Uniform Commercial Code ~~this act~~.

~~(30)~~(27) ‘Person’ ~~includes~~ means an individual, ~~or an organization~~ corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity. ~~(See Section 36‑1‑102).~~

~~(31)~~ ~~‘Presumption’ or ‘presumed’ means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.~~

(28) ‘Present value’ means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

~~(32)~~(29) ‘Purchase’ ~~includes~~ means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

~~(33)~~(30) ‘Purchaser’ means a person ~~who~~ that takes by purchase.

(31) ‘Record’ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(34)~~(32) ‘Remedy’ means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~(35)~~(33) ‘Representative’ ~~includes~~ means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate~~, or any other person empowered to act for another~~.

~~(36)~~(34) ~~‘Rights’~~ ‘Right’ includes ~~remedies~~ remedy.

~~(37)~~ ~~‘Security interest’ means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 36‑2‑401) is limited in effect to a reservation of a ‘security interest’. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 36‑2‑401 is not a ‘security interest’, but a buyer also may acquire a ‘security interest’ by complying with Chapter 9. Unless a consignment is intended as security, reservation of title under a lease or consignment is not a ‘security interest’, but a consignment in any event is subject to the provisions on consignment sales ( Section 36‑2‑326).~~

~~(A)~~ ~~Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and~~

~~(1)~~ ~~the original term of the lease is equal to or greater than the remaining economic life of the goods,~~

~~(2)~~ ~~the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,~~

~~(3)~~ ~~the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or~~

~~(4)~~ ~~the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.~~

~~(B)~~ ~~A transaction does not create a security interest merely because it provides that~~

~~(1)~~ ~~the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,~~

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

~~(3)~~ ~~the lessee has an option to renew the lease or to become the owner of the goods,~~

~~(4)~~ ~~the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or~~

~~(5)~~ ~~the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~

~~For Purposes of this subsection (37):~~

~~Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~

~~‘Reasonably predictable’ and ‘remaining economic life of the goods’ are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and~~

~~‘Present value’ means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.~~

(35) ‘Security interest’ means an interest in personal property or fixtures, which secures payment or performance of an obligation. ‘Security interest’ includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. ‘Security interest’ does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 36‑2‑401, but a buyer may also acquire a ‘security interest’ by complying with Chapter 9. Except as otherwise provided in Section 36‑2‑505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a ‘security interest’, but a seller or lessor may also acquire a ‘security interest’ by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 36‑2‑401 is limited in effect to a reservation of a ‘security interest’. Whether a transaction in the form of a lease creates a ‘security interest’ is determined pursuant to Section 36‑1‑203.

~~(38)~~(36) ‘Send’ in connection with ~~any~~ a writing, record, or notice means:

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

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

~~(39)~~(37) ‘Signed’ includes using any symbol executed or adopted ~~by a party~~ with present intention to ~~authenticate~~ adopt or accept a writing.

(38) ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(40)~~(39) ‘Surety’ includes a guarantor or other secondary obligor.

~~(41)~~ ~~‘Telegram’ includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.~~

~~(42)~~(40) ‘Term’ means ~~that~~ a portion of an agreement ~~which~~ that relates to a particular matter.

~~(43)~~(41) ~~‘Unauthorized’ signature or indorsement~~ ‘Unauthorized signature’ means ~~one~~ a signature made without actual, implied or apparent authority. ~~and includes a~~ The term includes a forgery.

~~(44)~~ ~~‘Value.’ Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 36‑3‑303, 36‑4‑208 and 36‑4‑209) a person gives ‘value’ for rights if he acquires them~~

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

~~(b)~~ ~~as security for or in total or partial satisfaction of a preexisting claim; or~~

~~(c)~~ ~~by accepting delivery pursuant to a preexisting contract for purchase; or~~

~~(d)~~ ~~generally, in return for any consideration sufficient to support a simple contract.~~

~~(45)~~(42) ‘Warehouse receipt’ means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire.

~~(46)~~(43) ~~‘Written’ or~~ ‘Writing’ includes printing, typewriting or any other intentional reduction to tangible form. ‘Written’ has a corresponding meaning.

SOUTH CAROLINA REPORTER’S COMMENTS

1. Definitions Deleted: The 2014 amendments to Article 1 delete the definitions of ‘honor’ and ‘telegram,’ terms that were defined in former Section 36‑1‑201(21) and (41).

2. Definitions Reformulated as substantive provisions and codified in separate sections of Article 1:

a. Notice, Knowledge, Notifications, Receiving Notice: Former Section 36‑1‑201(25)–(27) defined notice, knowledge, notification, and related terms. The 2014 amendment deleted those definitions from revised Section 36‑1‑201, and codified them in revised Section 36‑1‑202.

b. Presumption: Former Section 36‑1‑201(31) defined the term presumption. The 2014 amendments to Article 1 delete that definition from revised Section 36‑1‑201. However, the 2014 amendments codify, as revised Section 36‑1‑206, the definition of presumption in former Section 36‑1‑201(31), making only changes of style.

c. Value: Former Section 36‑1‑201(44) defined the term ‘value’. The 2014 amendments to Article 1 do not include value among the terms defined in revised Section 36‑1‑201(b). However, the amendments codified, without substantive change, the definition in former Section 36‑1‑201(44) in revised Section 36‑1‑204.

d. Distinguishing a lease from a security interest: In 2001, the definition of security interest in former Section 36‑1‑201(37) was amended to include rules for determining whether a transaction in the form of a lease creates an Article 9 security interest. The 2014 amendments delete those rules from the definition of security interest in revised Section 36‑1‑201(35), but codify them in substantively identical form in revised Section 36‑1‑203.

2. New definitions and terms added by the 2014 amendments to the list of definitions in revised Section 36‑1‑201(b):

a. Consumer—Section 36‑1‑201(b)(11): The 2014 amendments add consumer to terms defined in revised Section 36‑1‑201(b). Revised Section 36‑1‑201(b)(11) defines consumer as an individual entering into a transaction primarily for personal family or household purposes. The definition is consistent with the use of the term under Article 9. *See* S.C. Code Section 36‑9‑102(a)(22)–(26).

b. Present Value—Section 36‑1‑201(b)(28): Although present value was not separately defined in former Section 36‑1‑201, the rules for distinguishing leases from security interests were codified in former Section 36‑1‑201(37), under the definition of ‘security interest.’ The 2014 amendments define ‘Present value’ in revised Section 36‑1‑201(28). The 2014 amendments delete the rules for distinguishing leases from security interests from the revised definition of security interest, but codify them in revised Section 36‑1‑203.

c. Record—Section 36‑1‑201(b)(31): The 2014 amendments to former Section 36‑1‑201 add ‘record’ to the list of defined terms. Revised Section 36‑1‑201(b)(31) provides that record means information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form. The term encompasses both written and electronic communications. Although new to Article 1, in 2001, the provisions of Article 9 were revised to include a substantively identical definition of record. *See* Section 36‑9‑102(a)(70).

d. State—Section 36‑1‑201(b)(38): The 2014 amendments add the definition of ‘State’ that is used in all acts prepared by the National Conference on Uniform State Laws or its successor, the Uniform Laws Commission.

3. Substantive changes to the definitions or terms defined in both former Section 36-1-201 and revised Section 36‑1‑201(b) in the 2014 amendments:

a. Bearer—Section 36‑1‑201(b)(5): The definition of bearer is amended to include a person in control of negotiable electronic documents of title as well as a person in possession of a negotiable tangible document of title. The amendment, equating control of a negotiable electronic document of title with possession of negotiable tangible document of title, is one of a set of provisions drafted to facilitate the recognition of electronic documents.

b. Bill of Lading—Section 36‑1‑201(b)(6): The 2014 amendments delete the reference to ‘airbills’ from the definition of a bill of lading because it is no longer necessary. In addition, the revised Section 36‑1‑201(b)(6) expressly states that the definition of a bill of lading does not include a warehouse receipt.

c. Buyer in Ordinary Course of Business—Section 36‑1‑201(b)(9): The 2014 amendments make two significant revisions to the definition of buyer in ordinary course of business. First, revised Section 36‑1‑201(b)(9) provides some guidelines for determining when a person buys goods ‘in the ordinary course.’ Under the revised definition, a buyer buys in the ordinary course if the sale ‘comports with the usual or customary practices in the kind of business in which the seller is engaged’ or with the ‘seller’s own usual or customary practices.’ Second, to qualify as a buyer in ordinary course of business, under the revised definition, a buyer must have possession of the goods or the right to recover the goods from the seller under Article 2. *See* S.C. Code Sections 36‑2‑501, 36‑2‑502, and 36‑2‑716.

d. Delivery—Section 36‑1‑201(b)(15): The definition of delivery is amended to include the voluntary transfer of control of an electronic document of title as well as the voluntary transfer of possession of a tangible document of title. This amendment is one of a set of related provisions designed to facilitate the recognition of electronic documents of title.

e. Document of Title—Section 36‑1‑201(b)(16): The revised definition of document of title explicitly makes the obligation or designation of a bailee essential to a document of title. Revised Section 36‑1‑201(b)(16) also defines ‘electronic document of title’ and ‘tangible document of title.’ An electronic document of title is a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is a document of title evidenced by a record consisting of information inscribed on a tangible medium. Note that the term ‘record,’ used in defining both electronic and tangible documents of title, is defined in revised Section 36‑1‑201(b)(31) as ‘information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.’

f. Good Faith—36‑1‑201(b)(20): The definition of good faith in Article 1 is amended to require observance of reasonable commercial standards of fair dealing as well as honesty in fact.

g. Holder—Section 36‑1‑201(b)(21): The 2014 amendments restructures and substantively revises the definition of holder.

Subsection (A) applies to negotiable instruments and revises the definition of holder to conform to the use of the term in the revision of Article 3 that became effective in 2008. Subsection (B) governs negotiable tangible documents of title and provides that a person is a holder, if the person has possession of the document and the goods covered are deliverable either to the bearer or to the order of the person in possession of the document. Subsection (C) applies to negotiable electronic documents of title and provides that the person in control of the document is a holder.

h. Security Interest—Section 36‑1‑201(b)(35): In addition to deleting the rules for distinguishing a lease from security interest from the definition of a security interest, the 2014 amendments further revise the definition to reflect changes in the scope of Article 9. Under revised Section 36‑1‑201(b)(35), the definition includes the interest of an Article 9 consignor, as well as rights acquired by a buyer of accounts, chattel paper, payment intangibles, or promissory notes. *See* Section 36‑9‑109(a)(3) & (4).

i. Signed—Section 36‑1‑201(b)(37) : The definition of signed adopts the standard used in Article 9 to define the term ‘authenticate.’ However, under the definition in revised Section 36‑1‑201(b)(37), only records in writing can be signed.

j. Warehouse Receipt—Section 36‑1‑201(b)(42): The definition of warehouse receipt is revised to state expressly that a warehouse receipt is a document of title.

4. Definitions of the following terms that are defined in both former Section 36‑1‑201 and revised Section 36‑1‑201(b) as clarified by the 2014 amendments:

a. Agreement—Section 36‑1‑201(b)(3): The revised definition of agreement emphasizes the distinction between an agreement and a contract. The amendment also cites revised Section 36‑1‑303 as the basis for inferring terms of an agreement from course of performance, course of dealing, and usage of trade.

b. Bank—Section 36‑1‑201(b)(4): Revised Section 36‑1‑201(b)(4) adopts the definition of bank currently codified in Section 36‑4‑105(1).

c. Conspicuous—Section 36‑1‑201(b)(10): The definition of conspicuous is amended to provide more specific examples of terms that are conspicuous.

d. Contract—Section 36‑1‑201(b)(12): The revised definition emphasizes the distinction between an agreement and a contract.

e. Fungible Goods—Section 36‑1‑201(b)(18): The revised definition eliminates a reference to securities because Article 8 no longer uses the term fungible to describe securities.

f. Insolvent—Section 36‑1‑201(b)(23): The revised definition clarifies that there are three alternative tests to determine whether a person is insolvent.

g. Money—Section 36‑1‑201(b)(24): The revised definition provides that a medium of exchange constitutes money only if it is currently authorized by a government. The revised definition also includes a monetary unit of account established by an intergovernmental organization or an agreement between two or more governments.

h. Purchase—Section 36‑1‑201(b)(29): The revised definition of purchase includes taking an interest in property by lease.

i. Surety—Section 36‑1‑201(b)(39): The revised definition includes not only guarantors, but also other secondary obligors.

4. Definitions from the former Section 36-1-201adopted and included in revised Section 36-1-201(b) without substantive changes:

a. Action

b. Aggrieved party

c. Branch

d. Burden of establishing

e. Creditor

f. Fault

g. Genuine

h. Insolvency Proceeding

i. Organization

j. Party

k. Person

l. Purchaser

m. Remedy

n. Representative

o. Right

p. Send

q. Term

r. Unauthorized Signature

Section 36‑1‑202. ~~A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.~~

(a) Subject to subsection (f), a person has ‘notice’ of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it;

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) ‘Knowledge’ means actual knowledge. ‘Knows’ has a corresponding meaning.

(c) ‘Discover’, ‘learn’, or words of similar import refer to knowledge rather than to reason to know.

(d) A person ‘notifies’ or ‘gives’ a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person ‘receives’ a notice or notification when:

(1) it comes to that person’s attention; or

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

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is derived from former Sections 36‑1‑201(25)–(27). Subsection (a), specifying when a person has notice of a fact, is identical to former Section 36‑1‑201(25)(a)–(c). Subsection (b), defining ‘knowledge’ and ‘knows’ is adopted without substantive changes from the second paragraph of former Section 36‑1‑201(25). Subsection (c), defining ‘discover’ and ‘learn,’ is also substantively identical to the second paragraph of former Section 36‑1‑201(25). Subsection (d), specifying when a person ‘notifies’ or gives ‘notice or notification,’ is substantively identical to the first sentence of former Section 36‑1‑201(26). Subsection (e), specifying when a person receives notice, is substantively identical to the second sentence of former Section 36‑1‑201(26), but unlike the former statute, subsection (e) expressly states that the receipt of notice or notification by a person is subject to the rules of determining when notification received by an organization is effective. Subsection (f), specifying when notification received by an organization is effective, is substantially identical Section 36‑1‑201 (27).

NOTE: Former Section 36‑1‑202 provided that a document in due form purporting to be a bill of lading or any other document authorized or required to be issued by a third party was prima facie evidence of its own authority, genuineness, and of the facts stated in the document by a third party. With minor stylistic changes, former Section 36‑1‑202 is codified in revised Section 36‑1‑307.

Section 36‑1‑203. ~~Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement.~~

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and;

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The ‘remaining economic life of the goods’ and ‘reasonably predictable’ fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

SOUTH CAROLINA REPORTER’S COMMENTS

With one exception, this section is substantively identical to the portion of former Section 36‑1‑201(37) that provided the rules and process for distinguishing between a lease and a transaction creating a security interest. The exception is that revised Section 36‑1‑203 does not include the definition of present value , which is codified in revised Section 36‑1‑201(b)(28).

NOTE: Former Section 36‑1‑203 imposed the obligation of good faith in the performance and enforcement of contract within the scope of the code. The obligation of good faith is now imposed under revised Section 36‑1‑304.

Section 36‑1‑204. ~~(1)~~ ~~Whenever this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.~~

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

~~(3)~~ ~~An action is taken ‘seasonably’ when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.~~ Except as otherwise provided in Chapters 3, 4, 4A, 5, and 6 of this title, a person gives value for rights if the person acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge‑back is provided for in the event of difficulties in collection; or

(b) as security for, or in total or partial satisfaction of, a preexisting claim; or

(c) by accepting delivery under a preexisting contract for purchase; or

(d) in return for any consideration sufficient to support a simple contract.

SOUTH CAROLINA REPORTER’S COMMENTS

The definition of value in revised Section 36‑1‑204 is unchanged from former Section 36‑1‑201(44).

NOTE: Former Section 36‑1‑204 defined the terms ‘reasonable time’ and ‘seasonably.’ Those terms are now defined in revised Section 36‑1‑205.

Section 36‑1‑205. ~~(1)~~ ~~A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.~~

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

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

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

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

~~(6)~~ ~~Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.~~ (a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

SOUTH CAROLINA REPORTER’S COMMENTS

Revised Section 36‑1‑205 is based upon former Section 36‑1‑205(2)‑(3) and provides the same standards for determining a ‘reasonable time’ within which to take an action required by the Uniform Commercial Code and whether an action is taken ‘seasonably’. The revised statute, however, does not include a provision comparable to former Section 36‑1‑204(1), addressing agreements to define a reasonable time.

NOTE: Former Section 36‑1‑205 defined ‘course of dealing’ and ‘usage of trade’ and provided standards under which evidence of a course of dealing or usage of trade were used to interpret, supplement, and qualify the express terms of an agreement. The substance of former Section 36‑1‑205 is now codified in revised Section 36‑1‑303.

Section 36‑1‑206. ~~(1)~~ ~~Except in cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.~~

~~(2)~~ ~~Subsection (1) of this section does not apply to contract for the sale of goods (Section 36‑1‑201) nor of securities (Section 36‑8‑113) nor to security agreements (Section 36‑9‑203).~~ Whenever the provisions of this title create a ‘presumption’ with respect to a fact, or provide that a fact is ‘presumed’, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

SOUTH CAROLINA REPORTER’S COMMENTS

This section defines the terms presumption and presumed when the Uniform Commercial Code creates a presumption with respect to a fact or provides that a fact is presumed. The section is based upon the definition of presumption in former Section 36‑1‑201(31). A presumption under both the former and revised definitions imposes an obligation upon the party against whom the presumption is made to come forward with evidence to rebut the existence of the presumed fact. The definitions do not shift the burden of persuasion.

NOTE: Former Section 36‑1‑206 constituted a general statute of frauds for contracts for the sale of personal property, but that provision is now deleted, as it was determined by the drafters that such a provision was better imposed by a state law and was not necessary under a uniform commercial provision.

~~Section 36‑1‑207.~~ ~~A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as ‘without prejudice,’ ‘under protest’ or the like are sufficient.~~

~~Section 36‑1‑208.~~ ~~A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral ‘at will’ or ‘when he deems himself insecure’ or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.~~

Part 3

Territorial Applicability and General Rules

Section 36‑1‑301. (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by law so specified:

(1) Section 36‑2‑402;

(2) Sections 36‑2A‑105 and 36‑2A‑106;

(3) Section 36‑4‑102;

(4) Section 36‑4A‑507;

(5) Section 36‑5‑116;

(6) Section 36‑8‑110;

(7) Sections 36‑9‑301 through 36‑9‑307.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑105.

Section 36‑1‑302. (a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase ‘unless otherwise agreed’, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

SOUTH CAROLINA REPORTER’S COMMENTS

This section combines the rules from former Sections 36‑1‑102(3) (variation by agreement), 36‑1‑102(4) (provisions not including phrase ‘unless otherwise provided’ may be varied by agreement), and Section 36‑1‑204(1) (fixing reasonable time by agreement). This section makes no substantive changes from those provisions.

Section 36‑1‑303. (a) A ‘course of performance’ is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A ‘course of dealing’ is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A ‘usage of trade’ is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 36‑2‑209, a course of performance is relevant to show a waive or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

SOUTH CAROLINA REPORTER’S COMMENTS

Subsections (a)–(c) define ‘course of performance,’ ‘course of dealing,’ and ‘usage of trade,’ based upon Section 36‑2‑208(1) (course of performance), former Section 36‑1‑205(1) (course of dealing) and former Section 36‑1‑205(2) (usage of trade). Subsection (d) is based upon Section 36‑2‑208 and former Section 36‑1‑205(3) and provides that a course of performance, course of dealing, and usage of trade are relevant in ascertaining the meaning of the parties’ agreement and may supplement or qualify the terms of the agreement. Subsection (e) is based upon Section 36‑2‑208(2) and former Section 36‑1‑205(4) and provides the hierarchy of express terms and terms implied from course of performance, course of dealing, and usage of trade in determining the terms of an agreement. Subsection (f) is based upon Section 36‑2‑208(3) and provides that a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

Section 36‑1‑304. Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑203.

Section 36‑1‑305. (a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑106.

Section 36‑1‑306. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

SOUTH CAROLINA REPORTER’S COMMENTS

This section replaces former Section 36‑1‑107, which at the time of its enactment in 1966 was inconsistent with the Official Text of former Section 1‑107. The Official Text of former Section 1‑107 provided that a claim for breach of contract could be discharged without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. Former Section 36‑1‑207 did not condition the discharge of a claim for breach upon the aggrieved party signing and delivering a written waiver or renunciation of the claim. Under revised Section 36‑1‑306, a claim for breach may be discharged without consideration by agreement of the aggrieved party in an authenticated record. The revision effects two changes to former Section 36‑1‑107. First, revised Section 36‑1‑306 makes it clear that the discharge of a claim for breach requires the aggrieved party’s agreement. Second, that agreement must be evidenced by a record authenticated by the aggrieved party. The authenticated record requirement may be satisfied either by a signed writing or an authentic electronic record.

Section 36‑1‑307. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑202.

Section 36‑1‑308. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as ‘without prejudice’, ‘under protest’, or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

SOUTH CAROLINA REPORTER’S COMMENTS

Subsection (a) is substantively identical to former Section 36‑1‑207. Subsection (b) provides that subsection (a) does not apply to an accord and satisfaction. The rules governing accord and satisfaction are codified in Section 36‑3‑311.

Section 36‑1‑309. A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral ‘at will’ or when the party ‘deems itself insecure’, or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑208.

Section 36‑1‑310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.”

SOUTH CAROLINA REPORTER’S COMMENTS

This section is based upon former Section 1‑209, an optional provision proposed in 1966, but never enacted in South Carolina. The purpose of the provision is to make it clear that a subordination agreement does not create a security interest unless so intended.

SECTION 2. Chapter 7, Title 36 of the 1976 Code is amended to read:

“CHAPTER 7

Commercial Code‑Warehouse Receipts, Bills of Lading and Other Documents of Title

PART 1

General

Section 36‑7‑101. This chapter must be known and may be cited as Uniform Commercial Code‑Documents of Title.

Section 36-7-102. ~~(1)~~(a) In this chapter, unless the context otherwise requires:

~~(a)~~ (1) ‘Bailee’ means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(2) ‘Carrier’ means a person who issues a bill of lading.

~~(b)~~(3) ‘Consignee’ means the person named in a bill of lading to whom or to whose order the bill promises delivery.

~~(c)~~(4) ‘Consignor’ means the person named in a bill of lading as the person from whom the goods have been received for shipment.

~~(d)~~(5) ‘Delivery order’ means a ~~written order~~ record that contains an order to deliver goods directed to a warehouse~~man~~, carrier or other person ~~who~~ that in the ordinary course of business issues warehouse receipts or bills of lading.

~~(e)~~(6) ‘Document’ means document of title as defined in the general definitions in Chapter 1 of this title ~~(Section 36‑1‑201)~~.

(7) ‘Reserved.’

~~(f)~~(8) ‘Goods’ means all things ~~which~~ that are treated as movable for the purposes of a contract ~~of~~ for storage or transportation.

~~(g)~~(9) ‘Issuer’ means a bailee who issues a document of title or, in the case of an unaccepted delivery order, the person who orders the possessor of goods to deliver. ~~except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver.~~ ~~Issuer~~ The term includes ~~any~~ a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions ~~notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions~~.

~~(h)~~(10) ‘Person entitled under the document’ means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or pursuant to, instructions in a record under, a negotiable document of title.

(11) ‘Reserved.’

(12) ‘Sign’ means, with present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic sound, symbol, or process.

(13) ‘Shipper’ means a person that enters into a contract of transportation with a carrier.

(14) ‘Warehouseman’ ~~is~~ or ‘Warehouse’ means a person engaged in the business of storing goods for hire.

~~(2)~~ ~~Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:~~

~~‘Duly negotiate.’ Section 36‑7‑501.~~

~~‘Person entitled under the document.’ Section 36‑7‑403(4).~~

~~(3)~~(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) ‘Contract for sale.’ Section 36‑2‑106;~~.~~

(2) ‘Lessee in the ordinary course of business.’ Section 36‑2A‑103; and

~~‘Overseas’ Section 36‑2‑323.~~

(3) ‘Receipt of goods.’ Section 36‑2‑103.

~~(4)~~(c) In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendments include a set of new definitions that were drafted to provide a framework for the development of electronic documents of title and to facilitate the electronic mediums for the storage and communications. Some of these new definitions are codified in revised Article 1 and others appear as amendments to the provisions of Article 7. Four of the new definitions in the 2014 amendments that provide the basic foundation and essential framework for the further development of electronic documents of title are codified in revised Article 1. The definition of document of title in revised Section 36–1‑201(b)(16) includes a definition of an electronic document of title as ‘a document of title evidenced by a record consisting of information stored in an electronic medium.’ Moreover, new definitions of the terms ‘bearer’, ‘delivered’, and ‘holder,’ codified in revised Section 36–1‑201(b)(5), (15) and (21)(c), provide a framework for the process of negotiating electronic documents provided for in the 2014 amendments and codified in revised Section 36–7‑501(b). The 2014 amendments also include new definitions of terms in Article 7 that were drafted to facilitate electronic mediums. The definition of ‘Record’ in revised Section 36–1‑201(b)(37) and the new definition of ‘Signed’ in Section 36–7‑102(a)(12) serve this function. Moreover, the amendment substituting the term ‘record’ for the term ‘written order’ in the definition of ‘Delivery order’ in Section 36–7‑102(a)(5) facilitates the use of electronic mediums for the storage and communication of information. The 2014 amendments include new definitions of the terms ‘carrier’ and ‘shipper.’ Section 36‑7‑102(a)(2) defines carrier as a person who issues a bill of lading and Section 36–7‑102(a) defines shipper as a person who enters into a contract of transportation with a carrier. The 2014 amendments remove the definition the definition of the ‘person entitled under the document’ from Section 36–7‑403 and includes it in Section 36–7‑102 as subsection (a)(10).

Section 36-7-103. (a) ~~To the extent that any treaty or statute of the United States, regulatory statute of this State or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto~~ This chapter is subject to any treaty or statute of the United States or regulatory statute of this state , or lawfully published tariff, to the extent the treaty, statute, regulatory statute or tariff is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronics Act and this chapter, this chapter governs.

Section 36-7-104. ~~(1)~~(a) ~~A~~ Except as provided in subsection (c), a warehouse receipt, bill of lading, or other document of title is negotiable ~~(a)~~ if by its terms the goods are to be delivered to bearer or to the order of a named person~~; or (b) where recognized in overseas trade, if it runs to a named person or assigns~~.

~~(2)~~(b) ~~Any other document~~ A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading ~~in which it is stated~~ stating that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against ~~a written order~~ an order in a record signed by the same or another named person.

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

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendments added subsection (c), which provides that, notwithstanding subsection (a), a document of title is nonnegotiable if at the time it was issued it had a conspicuous legend stating that it is nonnegotiable.

Section 36-7-105. (a) ~~The omission from either part 2 or part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.~~ Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

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

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

SOUTH CAROLINA REPORTER’S COMMENTS

This section provides a process under which a person entitled under a document of title issued in one medium may request the issuer to issue a document of title in a different medium. For example, if the person in control of an electronic negotiable document of title and therefore the person entitled under that document, requests that the issuer of the electronic document issue a tangible document as a substitute for the electronic, revised Section 36‑7‑105(a) allows the issuer to issue a tangible document as a substitute for the electronic document, provided the holder surrenders control of the electronic document to the issuer and the tangible record, when issued, states that it was issued in substitution for an electronic document. A person entitled under a tangible negotiable record can invoke the same process to obtain an electronic document in substitution for the tangible record. Note that the issuer is not obligated to issue a substitute document in the other medium in response to the request of the person entitled. Nevertheless, providing a process to convert a document of title issued in one medium for a document in the other medium provides flexibility that may result in greater use and acceptance of electronic documents.

Section 36‑7‑106. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SOUTH CAROLINA REPORTER’S COMMENTS

Control of an electronic document of title is the legal equivalent of indorsement and possession of a tangible document of title. For transactions utilizing electronic documents of title to function efficiently, all parties to the transaction must be able to readily and reliably identify the person who has control of an electronic document. Revised Section 36‑7‑106 provides the standard that a system evidencing transfers of electronic documents must meet to establish control.

PART 2

Warehouse Receipts: Special Provisions

Section 36‑7‑201. ~~(1)~~(a) A warehouse receipt may be issued by any ~~warehouseman~~ warehouse.

~~(2)~~(b) ~~Where~~ If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~has like effect as~~ is deemed to be a warehouse receipt even though issued by a person ~~who~~ that is the owner of the goods and is not a warehouse~~man~~.

Section 36-7-202. ~~(1)~~(a) A warehouse receipt need not be in any particular form.

~~(2)~~(b) Unless a warehouse receipt ~~embodies within its written or printed terms~~ provides for each of the following, the warehouse~~man~~ is liable for damages caused ~~by the omission to a person injured thereby~~ to a person injured by its omission:

~~(a)~~(1) a statement of the location of the warehouse facility where the goods are stored;

~~(b)~~(2) the date of issue of the receipt;

~~(c)~~(3) the ~~consecutive number~~ unique identification code of the receipt;

~~(d)~~(4) a statement whether the goods received will be delivered to the bearer, to a ~~specified~~ named person, or to a ~~specified~~ named person or ~~his~~ the person’s order;

~~(e)~~(5) the rate of storage and handling charges, ~~except that where~~ unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

~~(f)~~(6) a description of the goods or of the packages containing them;

~~(g)~~(7) the signature of the warehouse~~man~~, ~~which may be made by his authorized~~ or its agent;

~~(h)~~(8) if the receipt is issued for goods ~~of which~~ that the warehouse~~man is owner~~ owns, either solely ~~or~~ , jointly, or in common with others, a statement of the fact of ~~such~~ that ownership; and

~~(i)~~(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse~~man~~ claims a lien or security interest pursuant to Section 36‑7‑209 ~~(Section 36‑7‑209)~~. If the precise amount of ~~such~~ advances made or ~~of such~~ liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse~~man~~ or to ~~his~~ its agent ~~who issues it~~ that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose ~~thereof~~ of the advances or liabilities is sufficient.

~~(3)~~(c) A warehouse~~man~~ may insert in ~~his~~ its receipt any ~~other~~ terms ~~which~~ that are not contrary to the provisions of this ~~act~~ title and do not impair ~~his~~ its obligation of delivery pursuant to Section 36‑7‑403 ~~(Section 36‑7‑403)~~ or ~~his~~ its duty of care pursuant to Section 36‑7‑204~~(Section 36‑7‑204)~~. Any contrary provision~~s~~ ~~shall be~~ is ineffective.

Section 36-7-203. A party to or purchaser for value in good faith of a document of title other than a bill of lading ~~relying~~ that relies ~~in either case~~ upon the description ~~therein~~ of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether ~~any part or~~ all or part of the goods in fact were received or conform to the description, ~~as where~~ such as the case in which the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by ‘contents, condition and quality unknown,’ ‘said to contain’ or ~~the like~~ words of similar import, if ~~such~~ the indication ~~be~~ is true~~,~~; or

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

Section 36-7-204. ~~(1)~~(a) A ~~warehouseman~~ warehouse is liable for damages for loss of or injury to the goods caused by ~~his~~ its failure to exercise ~~such~~ care ~~in~~ with regard to ~~them~~ the goods that ~~as~~ a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances. ~~but unless~~ Unless otherwise agreed, ~~he~~ the warehouse is not liable for damages ~~which~~ that could not have been avoided by the exercise of ~~such~~ that care.

~~(2)~~(b) Damages may be limited by a term in the warehouse receipt, ~~or~~ storage agreement, or tariff limiting the amount of liability in case of loss or damage~~, and setting forth a specific liability per article or item, or value per unit of weight,~~ beyond which the ~~warehouseman shall not be~~ warehouse is not liable~~; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman’s tariff, if any. No such limitation is effective with respect to the warehouseman’s liability for conversion to his own use~~. This limitation is not effective with respect to the liability of the warehouse for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the liability of the warehouse may be increased on part or on all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be changed based on an increased valuation of the goods.

~~(3)~~(c) Reasonable provisions as to the time and manner or presenting claims and ~~instituting~~ commencing actions based on the bailment may be included in the warehouse receipt, storage agreement, or tariff.

SOUTH CAROLINA REPORTER’S COMMENTS

Section 36‑7‑204(a) revises the requirements for an effective agreement to limit a warehouse’s liability in order to conform to modern business practices.

Section 36-7-205. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse~~man~~ ~~who is also~~ that also is in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even ~~though~~ if the receipt is negotiable and ~~it~~ has been duly negotiated.

Section 36-7-206. ~~(1)~~(a) A warehouse~~man may on notifying~~ ,by giving notice to the person on whose account the goods are held and any other person known to claim ~~or~~ an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if ~~no~~ a period is not fixed, within a stated period not less than thirty days after the ~~notification~~ warehouse gives notice. If the goods are not removed before the date specified in the ~~notification~~ notice, the warehouse~~man~~ may sell them ~~in accordance with the provisions of the section on enforcement of a warehouseman’s lien (Section 36‑7‑210)~~ pursuant to Section 36‑7‑210.

~~(2)~~(b) If a warehouse~~man~~ in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of ~~his~~ its lien within the time ~~prescribed~~ provided in subsection ~~(1)~~(a) and Section 36‑7‑210, ~~for notification, advertisement and sale,~~ the warehouse~~man~~ may specify in the ~~notification~~ notice given under subsection (a) any reasonable shorter time for removal of the goods and*,* ~~in case~~ if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

~~(3)~~(c) If, as a result of a quality or condition of the goods of which the warehouse~~man~~ ~~had no~~ did not have notice at the time of deposit, the goods are a hazard to other property or to the warehouse or to persons, the warehouse~~man~~ may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse~~man~~, after a reasonable effort, is unable to sell the goods ~~he~~ it may dispose of them in any lawful manner and ~~shall incur no~~ does not incur liability by reason of ~~such~~ that disposition.

~~(4)~~(d) The warehouse~~man~~ must deliver the goods to any person entitled to ~~them~~ the goods under this chapter upon due demand made at any time ~~prior~~ before to sale or other disposition under this section.

~~(5)~~(e) The warehouse~~man~~ may satisfy ~~his~~ its lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

Section 36-7-207. ~~(1)~~(a) Unless the warehouse receipt otherwise provides, a warehouse~~man~~ ~~must~~ shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, ~~except that~~ different lots of fungible goods may be commingled.

~~(2)~~(b) If different lots of ~~Fungible~~ fungible goods are ~~so~~ commingled, the goods are owned in common by the persons entitled ~~thereto~~ to them and the warehouse~~man~~ is severally liable to each owner for ~~that owner’s~~ the share of that owner. ~~Where~~ If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts which the warehouse~~man~~ has issued against it, the persons entitled include all holders to ~~whom~~ which overissued receipts have been duly negotiated.

Section 36-7-208. ~~Where~~ If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good‑faith purchaser for value and without notice of the ~~want~~ lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Section 36-7-209. ~~(1)~~(a) A warehouse~~man~~ has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in ~~his~~ its possession for charges for storage or transportation, ~~(~~including demurrage and terminal charges~~)~~, insurance, labor, or other charges, present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~like~~ similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse~~man~~ also has a lien against ~~him~~ the goods covered by the warehouse receipt or storage agreement or on the proceeds of them in its possession for those ~~such~~ charges and expenses, whether or not the other goods have been delivered by the warehouse~~man~~. ~~But~~ However, as against a person to whom a negotiable warehouse receipt is duly negotiated, a warehouse~~man~~’s lien is limited to charges in an amount or at a rate specified on the receipt or, if no charges are so specified, then to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

~~(2)~~(b) ~~The~~ A warehouse~~man~~ may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection ~~(1)~~(a), such as for money advanced and interest. ~~Such a~~ The security interest is governed by the chapter on secured transactions (Chapter 9).

~~(3)~~(c) A warehouse~~man~~’s lien for charges and expenses under subsection ~~(1)~~(a) or a security interest under subsection ~~(2)~~(b) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest ~~but~~ is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:~~as to whom the document confers no right in the goods covered by it under Section 36‑7‑503~~

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the nominee of the bailor with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7‑403; or

(C) power of disposition under Sections 36‑2‑403, 36‑2A‑304(2), 36‑2A‑305(2), 36‑9‑320, or 36‑9‑321(c), or other statute of rule of law; or

(2) acquiesce in the procurement of the bailor or its nominee of any document.

(d) The lien of a warehouse on household goods for charges and expenses in relation to the goods under subsection (a) also is effective against all other persons if the depositor was the legal possessor of the goods at the time of the deposit. In this subsection, the term ‘household goods’ means furniture, furnishings, or personal effects used by the depositor in a dwelling.

~~(4)~~(e) A warehouse~~man~~ loses its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

Section 36-7-210. ~~(1)~~(a) Except as provided in subsection ~~(2)~~(b), a ~~warehouseman’s~~ warehouse’s lien may be enforced by public or private sale of the goods, in ~~block~~ bulk or in ~~parcels~~ packages, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ This notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a ~~different~~ method different from that selected by the warehouse~~man~~ is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse ~~If the warehouseman either~~ sells the goods in the usual manner in any recognized market ~~therefor,~~ for the goods it ~~or if he~~ sells at the price current in ~~such~~ that market at the time of ~~his~~ the sale, or ~~if he has~~ otherwise ~~sold~~ sells the goods in conformity with commercially reasonable practices among dealers in the type of goods sold~~, he has sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to ~~insure~~ ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

~~(2)~~(b) A ~~warehouseman’s lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows~~ warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

~~(a)~~(1) All persons known to claim an interest in the goods must be notified.

~~(b)~~(2) ~~The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.~~

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

~~(d)~~(3) The sale must conform to the terms of the notification.

~~(e)~~(4) The sale must be held at the nearest suitable place to ~~that~~ where the goods are held or stored.

~~(f)~~(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

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

~~(4)~~(d) ~~The warehouseman~~ A warehouse may buy at any public sale held pursuant to this section.

~~(5)~~(e) A purchaser in good faith of goods sold to enforce a warehouseman’s lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

~~(6)~~(f) ~~The warehouseman~~ A warehouse may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this section but ~~must~~ shall hold the balance, if any, for delivery on demand to any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

~~(7)~~(g) The rights provided by this section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

~~(8)~~(h) ~~Where~~ If a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection ~~(1)~~(a) or ~~(2)~~(b).

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

PART 3

Bills of Lading: Special Provisions

Section 36-7-301. ~~(1)~~(a) A consignee of a nonnegotiable bill of lading ~~who~~ which has given value in good faith, or a holder to ~~whom~~ which a negotiable bill has been duly negotiated, relying in either case upon the description ~~therein~~ of the goods in the bill~~,~~ or upon the date ~~therein~~ shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the ~~document~~ bill of lading indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which ~~where~~ the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by ‘contents or condition of contents of packages unknown,’ ‘said to contain,’ ‘shipper’s weight, load and count’ or ~~the like~~ words of similar import, if ~~such~~ that indication ~~be~~ is true.

~~(2)~~(b) ~~When~~ If goods are loaded by ~~an~~ the issuer of a bill of lading:

(1) the issuer ~~must~~ shall count the packages of goods if shipped in packages ~~package freight~~ and ascertain the kind and quantity if shipped in bulk ~~freight.~~; and

(2) ~~In such cases~~ words such as ‘shipper’s weight, load and count’ or other words of similar import indicating that the description was made by the shipper are ineffective except as to ~~freight~~ goods concealed by packages.

~~(3)~~(c) ~~When~~ If bulk ~~freight is~~ goods are loaded by a shipper ~~who~~ that makes available to the issuer of a bill of lading adequate facilities for weighing ~~such freight~~ those goods, ~~an~~ the issuer ~~who is a common carrier must~~ shall ascertain the kind and quantity within a reasonable time after receiving the ~~written request of the shipper~~ shipper’s request in a record to do so. In ~~such~~ that case~~s~~ ‘shipper’s weight’ or ~~other~~ words of ~~like purport~~ similar import are ineffective.

~~(4)~~(d) The issuer of a bill of lading, ~~may be inserting in the bill~~ by including in the bill the words ‘shipper’s weight, load and count’ or ~~other words~~ of ~~like purport~~ similar import, may indicate that the goods were loaded by the shipper~~;~~  , and if ~~such~~ that statement ~~be~~ is true, the issuer ~~shall not be~~ is not liable for damages caused by the improper loading. ~~But their~~ However, omission of those words does not imply liability for ~~such~~ damages caused by improper loading.

~~(5)~~(e) ~~The~~ A shipper ~~shall be deemed to have guaranteed~~ guarantees to ~~th~~e an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by ~~him~~ the shipper; and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~such~~ those particulars. ~~The right of the issuer to such indemnity shall in no way limit his responsibility and liability~~ This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

Section 36-7-302. ~~(1)~~(a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person~~s~~ acting as its agent~~s~~ or by ~~connecting carriers~~ a performing carrier is liable to anyone entitled to recover on the bill or other document for any breach by ~~such~~ the other person~~s~~ or by ~~a connecting~~ the performing carrier of its obligation under the bill or other document. ~~but~~ However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other party or the performing carrier may be varied by agreement of the parties.

~~(2)~~(b) ~~Where~~ If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person~~s~~ other than the issuer are received by ~~any such~~ that person, ~~he~~ the person is subject, with respect to ~~his~~ its own performance while the goods are in ~~his~~ its possession, to the obligation of the issuer. ~~His~~ The person’s obligation is discharged by delivery of the goods to another ~~such~~ person pursuant to the bill or other document, and does not include liability for breach by any other ~~such~~ persons or by the issuer.

~~(3)~~(c) The issuer of ~~such~~ a through bill of lading or other document of title described in subsection (a) ~~shall be~~ is entitled to recover from the ~~connecting~~ performing carrier or ~~such~~ other person in possession of the goods when the breach of the obligation under the bill or other document occurred~~,~~:

(1) the amount it may be required to pay to ~~anyone~~ any person entitled to recover on the bill or other document ~~therefor~~ for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment ~~thereof,~~ ; and

(2) the amount of any expense reasonably incurred by ~~it~~ the issuer in defending any action ~~brought by anyone~~ commenced by any person entitled to recover on the bill or other document ~~therefor~~ for the breach.

Section 36-7-303. ~~(1)~~(a) Unless the bill of lading otherwise provides, ~~the~~ a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

~~(a)~~(1) the holder of a negotiable bill; ~~or~~

~~(b)~~(2) the consignor on a nonnegotiable bill, ~~notwithstanding contrary instructions from the consignee~~ even if the consignee has given contrary instructions; ~~or~~

~~(c)~~(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

~~(d)~~(4) the consignee on a nonnegotiable bill, if ~~he~~ the consignee is entitled as against the consignor to dispose of ~~them~~ the goods.

~~(2)~~(b) Unless ~~such~~ instructions described in subsection (a) are ~~noted on~~ included in a negotiable bill of lading, a person to ~~whom~~ which the bill is duly negotiated ~~can~~ may hold the bailee according to the original terms.

Section 36-7-304. ~~(1)~~(a) Except ~~where~~ as customary in ~~overseas~~ international transportation, a tangible bill of lading ~~must~~ shall not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

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

~~(3)~~(c) ~~Where a~~ If a tangible bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~whom~~ which the first due negotiation is made prevails as to both the document of title and the goods even ~~though~~ if any later holder may have received the goods from the carrier in good faith and discharged the carrier’s obligation by surrender of ~~his~~ its part.

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

~~(5)~~(e) The bailee ~~is obliged to~~ shall deliver in accordance with ~~part~~ Part 4 of this chapter against the first presented part of a tangible bill of lading lawfully ~~drawn~~ issued in a set. ~~Such delivery~~ Delivery in this manner discharges the bailee’s obligation on the whole bill.

Section 36-7-305. ~~(1)~~(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, ~~may~~ at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

~~(2)~~(b) Upon request of ~~anyone~~ any person entitled as against ~~the~~ a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering ~~such~~ the goods, the issuer, subject to Section 36‑7‑105, may procure a substitute bill to be issued at any place designated in the request.

Section 36-7-306. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Section 36-7-307. ~~(1)~~(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges ~~subsequent to~~ after the date of ~~its~~ the carrier’s receipt of the goods for storage or transportation, ~~(~~including demurrage and terminal charges~~)~~, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~But~~ However, against a purchaser for value of a negotiable bill of lading, a carrier’s lien is limited to charges stated in the bill or the applicable tariffs~~,~~ or, if no charges are stated, then to a reasonable charge.

~~(2)~~(b) A lien for charges and expenses under subsection ~~(1)~~(a) on goods ~~which~~ that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to ~~such~~ those charges and expenses. Any other lien under subsection ~~(1)~~(a) is effective against the consignor and any person ~~who~~ that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~such~~ authority.

~~(3)~~(c) A carrier loses ~~his~~ its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

Section 36-7-308. ~~(1)~~(a) A carrier’s lien on goods may be enforced by public or private sale of the goods, in bulk or in ~~parcels~~ packages, at any time or place and on any terms ~~which~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a ~~different~~ method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If the~~ The carrier ~~either~~ sells ~~the~~ goods in ~~the usual~~ a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, ~~or if he~~ sells at the price current in ~~such~~ that market at the time of ~~his~~ the sale, or ~~if he has~~ otherwise ~~sold~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold ~~he has sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

~~(4)~~(d) A purchaser in good faith of goods sold to enforce a carrier’s lien takes the goods free of any rights of persons against ~~whom~~ which the lien was valid, despite the carrier’s noncompliance ~~by the carrier~~ with ~~the requirements of~~ this section.

~~(5)~~(e) ~~The~~ A carrier may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to ~~whom~~ which ~~he~~ the carrier would have been bound to deliver the goods.

~~(6)~~(f) The rights provided by this section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

~~(7)~~(g) A carrier’s lien may be enforced ~~in accordance with~~ pursuant to either subsection ~~(1)~~(a) or the procedure set forth in subsection ~~(2)~~(b) of Section 36‑7‑210.

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

Section 36-7-309. ~~(1)~~(a) A carrier ~~who~~ that issues a bill of lading, whether negotiable or nonnegotiable, ~~must~~ shall exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances. This subsection does not ~~repeal or change any law or rule of law which~~ affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

~~(2)~~(b) Damages may be limited by a ~~provision~~ term in the bill of lading or in a transportation agreement that the carrier’s liability shall not exceed a value stated in the ~~document~~ bill or transportation agreement if the carrier’s rates are dependent upon value and the consignor ~~by the carrier’s tariff~~ is afforded an opportunity to declare a higher value ~~or a value as lawfully provided in the tariff, or where no tariff is filed he~~ and the consignor is ~~otherwise~~ advised of ~~such~~ the opportunity.~~; but no~~ However, such a limitation is not effective with respect to the carrier’s liability for conversion to its own use.

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

PART 4

Warehouse Receipts and Bill of Lading: General Obligations

Section 36-7-401. The obligations imposed by this chapter on an issuer apply to a document of title ~~regardless of the fact that~~ even if:

~~(a)~~(1) the document ~~may~~ does not comply with the requirements of this chapter or of any other ~~law or regulation~~ statute, rule, or regulation regarding its issue, form or content; ~~or~~

~~(b)~~(2) the issuer ~~may have~~ violated laws regulating the conduct of ~~his~~ its business; ~~or~~

~~(c)~~(3) the goods covered by the document were owned by the bailee ~~at the time~~ when the document was issued; or

~~(d)~~(4) the person issuing the document ~~does not come within the definition of warehouseman~~ is not a warehouse ~~if it purports~~ but the document purports to be a warehouse receipt.

Section 36-7-402. ~~Neither a~~ A duplicate ~~nor~~ or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer ~~confers~~ does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, ~~and~~ substitutes for lost, stolen or destroyed documents, or substitute documents issued pursuant to Section 36‑7‑105. ~~But the~~ The issuer is liable for damages caused by ~~his~~ its overissue or failure to identify a duplicate document as such by conspicuous notation ~~on its face~~.

Section 36-7-403. ~~(1)~~(a) ~~The bailee must~~ A bailee shall deliver the goods to a person entitled under ~~the~~ a document of title ~~who~~ if the person complies with subsections ~~(2)~~(b) and ~~(3)~~(c), unless and to the extent that the bailee establishes any of the following:

~~(a)~~(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

~~(b)~~(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

~~(c)~~(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse~~man~~’s lawful termination of storage;

~~(d)~~(4) the exercise by a seller of ~~his~~ its right to stop delivery pursuant to ~~the provisions of the Chapter on sales (Section 36‑2‑705)~~ Section 36‑2‑705 or by a lessor of its right to stop delivery pursuant to Section 36‑2A‑526;

~~(e)~~(5) a diversion, reconsignment, or other disposition pursuant to ~~the provisions of this Chapter (Section 36‑7‑303) or tariff regulating such right~~ Section 36‑7‑303;

~~(f)~~(6) release, satisfaction or any other ~~fact affording a~~ personal defense against the claimant; or

~~(g)~~(7) any other lawful excuse.

~~(2)~~(b) A person claiming goods covered by a document of title ~~must~~ shall satisfy the bailee’s lien ~~where~~ if the bailee so requests or ~~where~~ if the bailee is prohibited by law from delivering the goods until the charges are paid.

~~(3)~~(c) Unless ~~the~~ a person claiming the goods is ~~one~~ a person against ~~whom~~ which the document of title does not confer a ~~confers no~~ right under Section 36‑7‑503 ~~(1)~~(a)~~,~~:

(1) ~~he must~~the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or ~~notation~~ indication of partial deliveries ~~any outstanding negotiable document covering the goods,~~ and;

(2) the bailee ~~must~~ shall cancel the document or conspicuously ~~note~~ indicate in the document the partial delivery ~~thereon~~ or ~~be~~ the bailee is liable to any person to ~~whom~~ which the document is duly negotiated.

~~(4)~~ ~~“Person entitled under the document” means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.~~

Section 36-7-404. A bailee ~~who~~ that in good faith ~~including observance of reasonable commercial standards~~ has received goods and delivered or otherwise disposed of ~~them~~ the goods according to the terms of ~~the~~ a document of title or pursuant to this chapter is not liable ~~therefor. This rule applies even though~~ for the goods even if:

(1) the person from ~~whom he~~ which the bailee received the goods ~~had no~~ did not have authority to procure the document or to dispose of the goods ~~and even though~~; or

(2) the person to ~~whom he~~ which the bailee delivered the goods ~~had no~~ did not have authority to receive ~~them~~ the goods.

PART 5

Warehouse Receipts and Bills of Lading: Negotiation and Transfer

Section 36-7-501. (a) The following rules apply to a negotiable tangible document of title:

(1) ~~A negotiable document of title running~~ If the document’s original terms run to the order of a named person, the document is negotiated by ~~his~~ the named person’s indorsement and delivery. After ~~his~~ the named person’s indorsement in blank or to bearer, any person ~~can~~ may negotiate ~~it~~ the document by delivery alone.

(2)~~(a)~~ ~~A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer~~ If the document’s original terms run to bearer, it is negotiated by delivery alone.

~~(b)~~(3) ~~When a document running~~ If the document’s original terms run to the order of a named person and it is delivered to ~~him~~ the named person, the effect is the same as if the document had been negotiated.

~~(3)~~(4) Negotiation of ~~a negotiable~~ the document ~~of title~~ after it has been indorsed to a ~~specified~~ named person requires indorsement by the ~~special indorsee~~ named person and ~~as well as~~ delivery.

~~(4)~~(5) A ~~negotiable~~ document ~~of title~~ is ‘duly negotiated’ ~~when~~ if it is negotiated in the manner stated in this section to a holder ~~who~~ that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves ~~receiving~~ taking delivery of the document in settlement or payment of a ~~money~~ monetary obligation.

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

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

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

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

(c)~~(5)~~ Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee’s rights.

(d)~~(6)~~ The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill ~~nor~~ or constitute notice to a purchaser ~~thereof~~ of the bill of any interest of ~~such~~ that person in the goods.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendment added the requirements for negotiation and due negotiation of a negotiable electronic document of title that are codified at Section 36‑7‑501(b).

Section 36-7-502. ~~(1)~~(a) Subject to ~~the following section (~~Section 36‑7‑503~~)~~ and ~~to the provisions of Section 36‑7‑205 on fungible goods~~ Section 36-7-503, a holder to ~~whom~~ which a negotiable document of title has been duly negotiated acquires thereby:

~~(a)~~(1) title to the document;

~~(b)~~(2) title to the goods;

~~(c)~~(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

~~(d)~~(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~him~~ the issuer except those arising under the terms of the document or under this chapter ~~. In~~, but in the case of a delivery order, the bailee’s obligation accrues only upon the bailee’s acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

~~(2)~~(b) Subject to ~~the following section (~~Section 36‑7‑503~~)~~, title and rights ~~so~~ acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~such~~ the goods by the bailee, and are not impaired even ~~though the negotiation or any prior negotiation constituted a breach of duty or even~~ if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) ~~though~~ any person has been deprived of possession of ~~the~~ a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion~~,~~; or

(3) ~~even though~~ a previous sale or other transfer of the goods or document has been made to a third person.

Section 36-7-503. ~~(1)~~(a) A document of title confers no right in goods against a person ~~who~~ that before issuance of the document had a legal interest or a perfected security interest in ~~them~~ the goods and ~~who neither~~ that did not:

~~(a)~~(1) deliver~~ed~~ or entrust~~ed~~ ~~them~~ the goods or any document of title covering ~~them~~ the goods to the bailor or ~~his~~ the bailor’s nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) ~~or with~~ power to obtain delivery under ~~this chapter (~~Section 36‑7‑403~~)~~; or

(C) ~~with~~ power of disposition under ~~this act (~~Sections 36‑2‑403, 36-2A-304(2), 36-2A-305(2), 36-9-320, ~~and 36‑9‑307)~~ or 36-9-321(c), or other statute or rule of law; ~~nor~~ or

~~(b)~~(2) acquiesce~~d~~ in the procurement by the bailor or ~~his~~ the bailor’s nominee of any document ~~of title~~.

~~(2)~~(b) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~anyone~~ any person to ~~whom~~ which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a~~ That title may be defeated under ~~the next section (~~Section 36‑7‑504~~)~~ to the same extent as the rights of the issuer or a transferee from the issuer.

~~(3)~~(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~anyone~~ any person to ~~whom~~ which a bill issued by the freight forwarder is duly negotiated~~;~~. ~~but~~ However, delivery by the carrier in accordance with ~~part~~ Part 4 of this chapter pursuant to its own bill of lading discharges the carrier’s obligation to deliver.

Section 36-7-504. ~~(1)~~(a) A transferee of a document of title, whether negotiable or nonnegotiable, to ~~whom~~ which the document has been delivered but not duly negotiated, acquires the title and rights ~~which his~~ that its transferor had or had actual authority to convey.

~~(2)~~(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives ~~notification~~ notice of the transfer, the rights of the transferee may be defeated:

~~(a)~~(1) by those creditors of the transferor ~~who~~ which could treat the ~~sale~~ transfer as void under Section 36‑2‑402 or Section 36-2A-308; ~~or~~

~~(b)~~(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ~~his~~ the buyer’s rights; ~~or~~

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee’s rights; or

~~(c)~~(4) as against the bailee, by good faith dealings of the bailee with the transferor.

~~(3)~~(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading ~~which~~ that causes the bailee not to deliver to the consignee defeats the consignee’s title to the goods if ~~they~~ the goods have been delivered to a buyer in ordinary course of business or lessee in ordinary course of business and, in any event, defeats the consignee’s rights against the bailee.

~~(4)~~(d) Delivery of the goods pursuant to a nonnegotiable document may be stopped by a seller under Section 36‑2‑705 or a lessor under Section 36-2A-526, ~~and~~ subject to the requirements of due notification ~~there provided~~ in those sections. A bailee honoring the seller’s or lessor’s instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Section 36-7-505. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Section 36-7-506. The transferee of a negotiable tangible document of title has a specifically enforceable right to have ~~his~~ its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Section 36-7-507. ~~Where~~ If a person negotiates or ~~transfers~~ delivers a document of title for value, otherwise than as a mere intermediary under ~~the next following section (~~Section 36‑7‑508~~)~~, then unless otherwise agreed ~~he~~ the transferor, in addition to any warranty made in selling or leasing the goods, warrants to ~~his~~ its immediate purchaser only that: ~~in addition to any warranty made in selling the goods~~

~~(a)~~(1) ~~that~~ the document is genuine; ~~and~~

~~(b)~~(2) ~~that he~~ the transferor ~~has no~~ does not have knowledge of any fact ~~which~~ that would impair ~~its~~ the document’s validity or worth; and

~~(c)~~(3) ~~that his~~ the negotiation or ~~transfer~~ delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Section 36-7-508. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~such~~ the delivery of the documents only its own good faith and authority~~. This rule applies~~ even ~~though~~ if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Section 36‑7‑509. ~~The question whether~~ Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is ~~governed~~ determined by the Chapters on sales (Chapter 2), leases (Chapter 2A), and on letters of credit (Chapter 5).

PART 6

Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

Section 36‑7‑601. ~~(1)~~(a) If a document ~~has been~~ of title is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ~~such~~ the order. If the document was negotiable ~~the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document~~, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was ~~not negotiable~~ nonnegotiable, ~~such security may be required at the discretion of the court~~ the court may require security. The court may also ~~in its discretion~~ order payment of the bailee’s reasonable costs and ~~counsel~~ attorney’s fees in any action under this subsection.

~~(2)~~(b) A bailee ~~who~~ that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. ~~, and if~~ If the delivery is not in good faith, the bailee is ~~becomes~~ liable for conversion. Delivery in good faith is not conversion ~~if made in accordance with a filed classification or tariff or, where no classification or tariff is filed,~~ if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery ~~who~~ that files a notice of claim within one year after the delivery.

Section 36‑7‑602. ~~Except where the~~ Unless a document of title was originally issued upon delivery of the goods by a person ~~who~~ that ~~had no~~ did not have power to dispose of them, ~~no lien attaches~~ a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document ~~be~~ is first surrendered to the bailee or ~~its~~ the document’s negotiation is enjoined. ~~, and the~~ The bailee shall not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the ~~him or impounded by~~ bailee or to the court. ~~One who purchases~~ A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Section 36‑7‑603. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until ~~he~~ the bailee has ~~had~~ a reasonable time to ascertain the validity of the adverse claims or to ~~bring~~ commence an action ~~to compel all claimants to interplead and may compel such~~ for interpleader~~,~~. The bailee may assert an interpleader either in defending an action for nondelivery of the goods, or by original action~~, whichever is appropriate~~.”

SECTION 3. Section 36‑2‑103(1) of the 1976 Code is amended to read:

“(1) In this chapter unless the context otherwise requires:

(a) ‘Buyer’ means a person who buys or contracts to buy goods.

(b) ~~‘Good faith’ in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade~~ [Reserved].

(c) ‘Receipt’ of goods means taking physical possession of them.

(d) ‘Seller’ means a person who sells or contracts to sell goods.”

SECTION 4. Section 36-2-103(3) of the 1976 Code is amended to read:

“(3) ‘Control’ as provided in Section 36-7-106 and the ~~The~~ following definitions in other Chapters of Title 36 apply to this Chapter:

‘Check.’ Section 36‑3‑104.

‘Consignee.’ Section 36‑7‑102.

‘Consignor.’ Section 36‑7‑102.

‘Consumer goods.’ Section ~~36‑9‑109~~ 36-9-102.

‘Dishonor.’ Section 36‑3‑507.

‘Draft.’ Section 36‑3‑104.”

SECTION 5. Section 36-2-104(2) of the 1976 Code is amended to read:

“(2) ‘Financing agency’ means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. ‘Financing agency’ includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 36‑2‑707).”

SECTION 6. Section 36‑2‑202 of the 1976 Code is amended to read:

“Section 36‑2‑202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing, or usage of trade (Section ~~36‑1‑205~~ 36‑1‑303) ~~or by course of performance (Section 36‑2‑208)~~; and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.”

SECTION 7. Section 36-2-310(c) of the 1976 Code is amended to read:

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

SECTION 8. Section 36-2-323(2) of the 1976 Code is amended to read:

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

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of Section 36‑2‑508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.”

SECTION 9. Section 36-2-401(3)of the 1976 Code is amended to read:

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

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

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

SECTION 10. Section 36-2-503(4) and (5) of the 1976 Code are amended to read:

“(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer’s right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Chapter 9 receipt by the bailee of notification of the buyer’s rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

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

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of Section 36‑2‑323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.”

SECTION 11. Section 36-2-505(1)(b) and (2) of the 1976 Code are amended to read:

“(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 36‑2‑507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section (Section 36‑2‑504) but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document of title.”

SECTION 12. Section 36-2-506(2) of the 1976 Code is amended to read:

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

SECTION 13. Section 36-2-509(2) of the 1976 Code is amended to read:

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

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

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

(c) after his receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of Section 36‑2‑503.”

SECTION 14. Section 36-2-605(2) of the 1976 Code is amended to read:

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

SECTION 15. Section 36-2-705(3)(c) of the 1976 Code is amended to read:

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

SECTION 16. Section 36-2A-103(1)(a) and (o) of the 1976 Code are amended to read:

“(a) ‘Buyer in ordinary course of business’ means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. ‘Buying’ may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a pre‑existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

SECTION 17. Section 36‑2A‑103(3) of the 1976 Code is amended to read:

“(3) The following definitions in other chapters apply to this chapter:

‘Account’. ~~Section 36‑9‑106~~ Section 36-9-102 .

‘Between merchants’. Section 36‑2‑104(3).

‘Buyer’. Section 36‑2‑103(1)(a).

‘Chattel paper’. ~~Section 36‑9‑105(1)(b)~~ Section 36-9-102.

‘Consumer goods’. ~~Section 36‑9‑109(1)~~ Section 36-9-102.

‘Document’. ~~Section 36‑9‑105(1)(f)~~ Section 36-9-102.

‘Entrusting’. Section 36‑2‑403(3).

‘General intangibles’. Section 36‑9‑102(a)(42).

~~‘Good faith’. Section 36‑2‑103(1)(b).~~

‘Instrument’. ~~Section 36‑9‑105(1)(i)~~ Section 36-9-102.

‘Merchant’. Section 36‑2‑104(1).

‘Mortgage’. ~~Section 36‑9‑105(1)(j)~~ Section 36-9-102.

‘Pursuant to commitment’. ~~Section 36‑9‑105(1)(k)~~ Section 36-9-102.

‘Receipt’. Section 36‑2‑103(1)(c).

‘Sale’. Section 36‑2‑106(1).

‘Sale on approval’. Section 36‑2‑326.

‘Sale or return’. Section 36‑2‑326.

‘Seller’. Section 36‑2‑103(1)(d).”

SECTION 18. Section 36‑2A‑501(4) of the 1976 Code is amended to read:

“(4) Except as otherwise provided in Section ~~36‑1‑106(1)~~ 36‑1‑305(a) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.”

SECTION 19. Section 36-2A-514(2) of the 1976 Code is amended to read:

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

SECTION 20. Section 36‑2A‑518(2) of the 1976 Code is amended to read:

“(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑2A‑503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor’s default.”

SECTION 21. Section 36‑2A‑519(1) of the 1976 Code is amended to read:

“(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑2A‑503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 36‑2A‑518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.”

SECTION 22. Section 36‑2A‑527(2) of the 1976 Code is amended to read:

“(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑2A‑503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 36‑2A‑530, less expenses saved in consequence of the lessee’s default.”

SECTION 23. Section 36‑2A‑528(1) of the 1976 Code is amended to read:

“(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ Section 36‑1‑302 and 36‑2A‑503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 36‑2A‑527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 36‑2A‑523(1) or 36‑2A‑523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 36‑2A‑530, less expenses saved in consequence of the lessee’s default.”

SECTION 24. Section 36‑3‑103(a)(6) and (a)(13) of the 1976 Code is amended to read:

“(6) ~~‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ ‘[Reserved]’.

“(13) ‘Prove’ with respect to a fact means to meet the burden of establishing the fact (Section 36‑1‑201(b)(8)).”

SECTION 25. Section 36‑4‑104(c) of the 1976 Code, as amended by Act 204 of 2008, is further amended to read:

“(c) ‘Control’ as provided in Section 36-7-106 and the ~~The~~ following definitions in other chapters apply to this chapter:

‘Acceptance’ Section 36‑3‑409.

‘Alteration’ Section 36‑3‑407.

‘Cashier’s check’ Section 36‑3‑104.

‘Certificate of deposit’ Section 36‑3‑104.

‘Certified check’ Section 36‑3‑409.

‘Check’ Section 36‑3‑104.

~~‘Good Faith’ Section 36-3-103~~.

‘Holder in due course’ Section 36‑3‑302.

‘Instrument’ Section 36‑3‑104.

‘Notice of dishonor’ Section 36‑3‑503.

‘Order’ Section 36‑3‑103.

‘Ordinary care’ Section 36‑3‑103.

‘Person entitled to enforce’ Section 36‑3‑301.

‘Presentment’ Section 36‑3‑501.

‘Promise’ Section 36‑3‑103.

‘Prove’ Section 36‑3‑103.

‘Record’ Section 36‑3‑103.

‘Remotely‑Created consumer item’ Section 36‑3‑103.

‘Teller’s check’ Section 36‑3‑104.

‘Unauthorized signature’ Section 36‑3‑403.”

SECTION 26. Section 36-4-210(c) of the 1976 Code is amended to read:

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

(1) no security agreement is necessary to make the security interest enforceable (Section 36‑9‑203(b)(3)(A));

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

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

SECTION 27. Section 36‑4A‑105(a)(6) and (7) of the 1976 Code are amended to read:

“(6) ~~‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ [Reserved].

(7) ‘Prove’ with respect to a fact means to meet the burden of establishing the fact (Section 36‑1‑201(b)(8)).”

SECTION 28. Section 36‑4A‑106(a) of the 1976 Code is amended to read:

“(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section ~~36‑1‑201(27)~~ 36‑1‑202. A receiving bank may fix a cut‑off time or times on a funds‑transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut‑off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut‑off time may apply to senders generally or different cut‑off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds‑transfer business day or after the appropriate cut‑off time on a funds‑transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds‑transfer business day.”

SECTION 29. Section 36‑4A‑204(b) of the 1976 Code is amended to read:

“(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section ~~36‑1‑204(1)~~ 36‑1‑302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.”

SECTION 30. Section 36‑5‑103(c) of the 1976 Code is amended to read:

“(c) With the exception of this subsection, subsections (a) and (d), Sections 36‑5‑102(a)(9) and (10), 36‑5‑106(d), and 36‑5‑114(d), and except to the extent prohibited in Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑5‑117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.”

SECTION 31. Section 36‑8‑102(a)(10) of the 1976 Code is amended to read:

“(10) ~~‘Good faith,’ for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ [Reserved].”

SECTION 32. Section 36-8-103 of the 1976 Code is amended by adding subsection (g) at the end to read:

“(g) A document of title is not a financial asset unless Section 36-8-102(a)(9)(iii) applies.”

SECTION 33. Section 36‑9‑102(a)(30) and (a)(43) of the 1976 Code are amended to read:

“(30) ‘Document’ means a document of title or a receipt of the type described in Section ~~36‑7‑201(2)~~ 36-7-201(b).

(43) ~~‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ [Reserved].”

SECTION 34. Section 36-9-102(b) of the 1976 Code is amended to read:

“(b) ‘Control’ as provided in Section 36-7-106 and the ~~The~~ following definitions in other chapters apply to this chapter:

‘Applicant’ Section 36-5-102.

‘Beneficiary’ Section 36‑5‑102.

‘Broker’ Section 36‑8‑102.

‘Certificated security’ Section 36‑8‑102.

‘Check’ Section 36‑3‑104.

‘Clearing corporation’ Section 36‑8‑102.

‘Contract for sale’ Section 36‑2‑106.

‘Customer’ Section 36‑4‑104.

‘Entitlement holder’ Section 36‑8‑102.

‘Financial asset’ Section 36‑8‑102.

‘Holder in due course’ Section 36‑3‑302.

‘Issuer’ (with respect to a letter of credit or letter‑of‑credit right) Section ~~36‑5‑103~~ 36-5-102.

‘Issuer’ (with respect to a security) Section 36‑8‑201.

‘Issuer’ (with respect to documents of title) Section 36-7-102.

‘Lease’ Section 36‑2A‑103.

‘Lease agreement’ Section 36‑2A‑103.

‘Lease contract’ Section 36‑2A‑103.

‘Leasehold interest’ Section 36‑2A‑103.

‘Lessee’ Section 36‑2A‑103.

‘Lessee in ordinary course of business’ Section 36‑2A‑103.

‘Lessor’ Section 36‑2A‑103.

‘Lessor’s residual interest’ Section 36‑2A‑103.

‘Letter of credit’ Section ~~36‑5‑103~~ 36-5-102.

‘Merchant’ Section 36‑2‑104.

‘Negotiable instrument’ Section 36‑3‑104.

‘Nominated person’ Section 36-5-102.

‘Note’ Section 36‑3‑104.

‘Proceeds of a letter of credit’ Section 36-5-114.

‘Sale’ Section 36‑2‑106.

‘Securities account’ Section 36‑8‑501.

‘Securities intermediary’ Section 36‑8‑102.

‘Security’ Section 36‑8‑102.

‘Security certificate’ Section 36‑8‑102.

‘Security entitlement’ Section 36‑8‑102.

‘Uncertificated security’ Section 36‑8‑102.”

SECTION 35. Section 36-9-203(b)(3)(D) of the 1976 Code is amended to read:

“(D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter‑of‑credit rights, or electronic documents and the secured party has control under Section 36-7-106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107 pursuant to the debtor’s security agreement.”

SECTION 36. Section 36-9-207(c) of the 1976 Code is amended to read:

“(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 36-7-106, 36‑9‑104, 36‑9‑105 , 36‑9‑106, or 36‑9‑107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.”

SECTION 37. Section 36-9-208(b)(4) and (5) of the 1976 Code are amended to read:

“(4) a secured party having control of investment property under Section 36‑8‑106(d)(2) or 36‑9‑106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) a secured party having control of a letter-of-credit right under Section 36‑9‑107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.”

SECTION 38. Section 36-9-301(3) of the 1976 Code is amended to read:

“(3) Except as otherwise provided in item (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.”

SECTION 39. Section 36-9-310(b) of the 1976 Code is amended to read:

“(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Section 36‑9‑308(d), (e), (f), or (g);

(2) that is perfected under Section 36‑9‑309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in Section 36‑9‑311(a);

(4) in goods in possession of a bailee which is perfected under Section 36‑9‑312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under Section 36‑9‑312(e), (f), or (g);

(6) in collateral in the secured party’s possession under Section 36‑9‑313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 36‑9‑313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 36‑9‑314;

(9) in proceeds which is perfected under Section 36‑9‑315; or

(10) that is perfected under Section 36‑9‑316.”

SECTION 40. Section 36-9-312(e) of the 1976 Code is amended to read:

“(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.”

SECTION 41. Section 36-9-313(a) of the 1976 Code is amended to read:

“(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 36‑8‑301.”

SECTION 42. Section 36-9-314(a) and (b) of the 1976 Code are amended to read:

“(a) A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 36-7-106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107.

(b) A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, or electronic documents is perfected by control under Section 36-7-106, 36‑9‑104, 36‑9‑105, or 36‑9‑107 when the secured party obtains control and remains perfected by control only while the secured party retains control.”

SECTION 43. Section 36-9-317(b), (c), and (d) of the 1976 Code are amended to read:

“(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper,tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of ~~collateral other than tangible chattel paper, tangible documents, goods, instruments, or~~ accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.”

SECTION 44. Section 36-9-338(2) of the 1976 Code is amended to read:

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

SECTION 45. Section 36-9-601(b) of the 1976 Code is amended to read:

“(b) A secured party in possession of collateral or control of collateral under Section 36-7-106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107 has the rights and duties provided in Section 36‑9‑207.”

SECTION 46. Sections 36‑2‑208 and 36‑2A‑207 of the 1976 Code are repealed.

SECTION 47. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections within the subject of the Uniform Commercial Code, as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

SECTION 48. After enactment of the provisions of this act, the Code Commissioner is instructed to insert the Official Comments, as amended, available from the Uniform Law Commission at http://uniformlaws.org., into the annotated versions of the provisions of this act, as contained in the South Carolina Code of Laws, after the appropriate provision and before the S.C. Reporter’s Comments, to the extent that S.C. Reporter’s Comments follow a provision. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions to the Uniform Commercial Code, are not considered part of this act and do not indicate legislative intent.

SECTION 49. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 50. The provisions of this act apply prospectively. To the extent that issues arise based upon rights or obligations that arise prior to the effective date of this act, prior law applies to resolve those issues. Transactions, documents of title, or bailment validly entered into before the effective date of this act and the rights, duties, and interests arising from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this act, as though the repeal or amendment had not occurred.

SECTION 51. This Act becomes effective on October 1, 2014. It applies to transactions entered into and events occurring after that date. /

Renumber sections to conform.

Amend title to conform.

CHAUNCEY K. GREGORY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Board of Financial Institutions

The board reports this bill would have no impact on the General Fund of the State or on federal and/other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND CHAPTER 7, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE, SO AS TO REVISE THE CHAPTER IN ITS ENTIRETY IN ORDER TO PROVIDE FOR THE USE OF ELECTRONIC DOCUMENTS OF TITLE AND TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 7, Title 36 of the 1976 Code is amended by deleting the chapter in its entirety and inserting:

“CHAPTER 7

Commercial Code‑Warehouse Receipts, Bills of Lading and Other Documents of Title

PART 1

General

Section 36‑7‑101. This chapter must be known and may be cited as Uniform Commercial Code‑Documents of Title.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑101.

Changes: Revised for style only.

This Article is a revision of the 1962 Official Text with Comments as amended since 1962. The 1962 Official Text was a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and embraced the provisions of the Uniform Sales Act relating to negotiation of documents of title.

This Article does not contain the substantive criminal provisions found in the Uniform Warehouse Receipts and Bills of Lading Acts. These criminal provisions are inappropriate to a Commercial Code, and for the most part duplicate portions of the ordinary criminal law relating to frauds. This revision deletes the former Section 7‑105 that provided that courts could apply a rule from Parts 2 and 3 by analogy to a situation not explicitly covered in the provisions on warehouse receipts or bills of lading when it was appropriate. This is, of course, an unexceptional proposition and need not be stated explicitly in the statute. Thus former Section 7‑105 has been deleted. Whether applying a rule by analogy to a situation is appropriate depends upon the facts of each case.

The Article does not attempt to define the tort liability of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care. For important classes of bailees, liabilities in case of loss, damages or destruction, as well as other legal questions associated with particular documents of title, are governed by federal statutes, international treaties, and in some cases regulatory state laws, which supersede the provisions of this Article in case of inconsistency. See Section 7‑103.

Section 36‑7‑102. (a) In this chapter, unless the context otherwise requires:

(1) ‘Bailee’ means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(2) ‘Carrier’ means a person who issues a bill of lading.

(3) ‘Consignee’ means the person named in a bill of lading to whom or to whose order the bill promises delivery.

(4) ‘Consignor’ means the person named in a bill as the person from whom the goods have been received for shipment.

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

(6) ‘Document’ means document of title as defined in the general definitions in Section 36‑1‑201.

(7) ‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(8) ‘Goods ‘ means all things which are treated as movable for the purposes of a contract of storage or transportation.

(9) ‘Issuer’ means a bailee who issues a document of title or, in the case of an unaccepted delivery order, the person who orders the possessor of goods to deliver. Issuer includes a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer received no goods, the goods were misdescribed, or in any other respect the agent or employee violated instructions of the issuer.

(10) ‘Person entitled under the document’ means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or pursuant to, instructions in a record under a negotiable document of title.

(11) ‘Record’ means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in a perceivable form.

(12) ‘Sign’ means, with present intent to authenticate or adopt a record to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate an electronic sound with the record.

(13) ‘Shipper’ means a person who enters a contract of transportation with a carrier.

(14) ‘Warehouseman’ or ‘Warehouse’ means a person engaged in the business of storing goods for hire.

(b) Other definitions applying to this chapter or to specified parts of it, and the sections in which they appear are:

(1) ‘Duly negotiate’ Section 36‑7‑501; and

(2) ‘Person entitled under the document’ Section 36‑7‑403(4).

(c) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) ‘Contract for sale’ Section 36‑2‑106;

(2) ‘Lessee in the ordinary course of business’ Section 36‑2A‑103’;

(3) ‘Overseas’ Section 36‑2‑323; and

(4) ‘Receipt of goods’ Section 36‑2‑103.

(d) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑102.

Changes: New definitions of ‘carrier’, ‘good faith’, ‘record’, ‘sign’, and ‘shipper’. Other definitions revised to accommodate electronic mediums.

Purposes:

1. ‘Bailee’ is used in this Article as a blanket term to designate carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when it does not have possession, the bailee is bound by sections of this Article which declare the ‘bailee’s’ obligations. (See definition of ‘Issuer’ in this section and Sections 7‑203 and 7‑301 on liability in case of nonreceipt.) A ‘carrier’ is one type of bailee and is defined as a person that issues a bill of lading. A ‘shipper’ is a person who enters into the contract of transportation with the carrier. The definitions of ‘bailee’, ‘consignee’, ‘consignor’, ‘goods’, and ‘issuer’, are unchanged in substance from prior law. ‘Document of title’ is defined in Article 1, and may be in either tangible or electronic form.

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1‑201) does not require that the issuing warehouse be ‘lawfully engaged’ in business or for profit. The warehouse’s compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this Article. Certainly the issuer’s violations of law should not diminish its responsibility on documents the issuer has put in commercial circulation. But it is still essential that the business be storing goods ‘for hire’ (Section 1‑201 and this section). A person does not become a warehouse by storing its own goods.

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of ‘document of title’ in Section 1‑201.

4. The obligation of good faith imposed by this Article and by Article 1, Section 1‑304 includes the observance of reasonable commercial standards of fair dealing.

5. The definitions of ‘record’ and ‘sign’ are included to facilitate electronic mediums. See comment 9 to Section 9‑102 discussing ‘record’ and the comment to amended Section 2‑103 discussing ‘sign’.

6. ‘Person entitled under the document’ is moved from former Section 7‑403.

7. These definitions apply in this Article unless the context otherwise requires. The ‘context’ is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. The definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. See comment to Section 1‑201.

Cross References:

Point 1: Sections 1‑201, 7‑203 and 7‑301.

Point 2: Sections 1‑201 and 7‑203.

Point 3: Section 1‑201.

Point 4: Section 1‑304.

Point 5: Section 9‑102 and 2‑103.

See general comment to document of title in Section 1‑201.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Contract’. Section 1‑201.

‘Contract for sale’. Section 2‑106.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Person’. Section 1‑201.

‘Purchase’. Section 1‑201.

‘Receipt of goods’. Section 2‑103.

‘Right’. Section 1‑201.

‘Warehouse receipt’. Section 1‑201.

Section 36‑7‑103. (a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). To the extent there is a conflict between the act and this chapter, this chapter governs.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Sections 7‑103 and 10‑104.

Changes: Deletion of references to tariffs and classifications; incorporation of former Section 10‑104 into subsection (b), provide for intersection with federal and state law governing electronic transactions.

Purposes:

1. To make clear what would of course be true without the Section, that applicable Federal law is paramount.

2. To make clear also that regulatory state statutes (such as those fixing or authorizing a commission to fix rates and prescribe services, authorizing different charges for goods of different values, and limiting liability for loss to the declared value on which the charge was based) are not affected by the Article and are controlling on the matters which they cover unless preempted by federal law. The reference in former Section 7‑103 to tariffs, classifications, and regulations filed or issued pursuant to regulatory state statutes has been deleted as inappropriate in the modern era of diminished regulation of carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that tariff or classification would be given effect via the state regulatory scheme that this Article recognizes as controlling. Permissive tariffs or classifications would not displace the provisions of this act, pursuant to this section, but may be given effect through the ability of parties to incorporate those terms by reference into their agreement.

3. The document of title provisions of this act supplement the federal law and regulatory state law governing bailees. This Article focuses on the commercial importance and usage of documents of title. State ex. rel Public Service Commission v. Gunkelman & Sons, Inc., 219 N.W.2d 853 (N.D. 1974).

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article and the conforming amendments to other articles of the Uniform Commercial Code promulgated as part of the revision of this article. Section 102 of the federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of the federal act. See the comments to Revised Article 1, Section 1‑108.

5. Subsection (d) makes clear that once this article is in effect, its provisions regarding electronic commerce and regarding electronic documents of title control in the event there is a conflict with the provisions of the Uniform Electronic Transactions Act or other applicable state law governing electronic transactions.

Cross References:

Sections 1‑108, 7‑201, 7‑202, 7‑204, 7‑206, 7‑309, 7‑401, 7‑403.

Definitional Cross Reference:

‘Bill of lading’. Section 1‑201.

Section 36‑7‑104. (a) Except as provided in subsection (c), a warehouse receipt, bill of lading, or other document of title is negotiable:

(1) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(2) where recognized in overseas trade, if it runs to a named person or assigns.

(b) Any other document is nonnegotiable. A bill of lading stating the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order in a record signed by the same or another named person.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑104.

Changes: Subsection (a) is revised to reflect modern style and trade practice. Subsection (b) is revised for style and medium neutrality. Subsection (c) is new.

Purposes:

1. This Article deals with a class of commercial paper representing commodities in storage or transportation. This ‘commodity paper’ is to be distinguished from what might be called ‘money paper’ dealt with in the Article of this Act on Commercial Paper (Article 3) and ‘investment paper’ dealt with in the Article of this Act on Investment Securities (Article 8). The class of ‘commodity paper’ is designated ‘document of title’ following the terminology of the Uniform Sales Act Section 76. Section 1‑201. The distinctions between negotiable and nonnegotiable documents in this section makes the most important subclassification employed in the Article, in that the holder of negotiable documents may acquire more rights than its transferor had (See Section 7‑502). The former Section 7‑104, which provided that a document of title was negotiable if it runs to a named person or assigns if such designation was recognized in overseas trade, has been deleted as not necessary in light of current commercial practice.

A document of title is negotiable only if it satisfies this section. ‘Deliverable on proper indorsement and surrender of this receipt’ will not render a document negotiable. Bailees often include such provisions as a means of insuring return of nonnegotiable receipts for record purposes. Such language may be regarded as insistence by the bailee upon a particular kind of receipt in connection with delivery of the goods. Subsection (a) makes it clear that a document is not negotiable which provides for delivery to order or bearer only if written instructions to that effect are given by a named person. Either tangible or electronic documents of title may be negotiable if the document meets the requirement of this section.

2. Subsection (c) is derived from Section 3‑104(d). Prior to issuance of the document of title, an issuer may stamp or otherwise provide by a notation on the document that it is nonnegotiable even if the document would otherwise comply with the requirement of subsection (a). Once issued as a negotiable document of title, the document cannot be changed from a negotiable document to a nonnegotiable document. A document of title that is nonnegotiable cannot be made negotiable by stamping or providing a notation that the document is negotiable. The only way to make a document of title negotiable is to comply with subsection (a). A negotiable document of title may fail to be duly negotiated if the negotiation does not comply with the requirements for ‘due negotiation’ stated in Section 7‑501.

Cross Reference: Sections 7‑501 and 7‑502.

Definitional Cross References:

‘Bearer’. Section 1‑201.

‘Bill of lading’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Person’. Section 1‑201.

‘Sign’. Section 7‑102

‘Warehouse receipt’. Section 1‑201.

Section 36‑7‑105. (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

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

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Draft Instrument on the Carriage of Goods by SeaTransport Law.

Purpose:

1. This section allows for documents of title issued in one medium to be reissued in another medium. This section applies to both negotiable and nonnegotiable documents. This section sets forth minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternative medium and if the issuer chooses to do so, it may impose additional requirements. Because a document of title imposes obligations on the issuer of the document, it is imperative for the issuer to be the one who issues the substitute document in order for the substitute document to be effective and valid.

2. The request must be made to the issuer by the person entitled to enforce the document of title (Section 7‑102(a)(9)) and that person must surrender possession or control of the original document to the issuer. The reissued document must have a notation that it has been issued as a substitute for the original document. These minimum requirements must be met in order to give the substitute document effect and validity. If these minimum requirements are not met for issuance of a substitute document of title, the original document of title continues to be effective and valid. Section 7‑402. However, if the minimum requirements imposed by this section are met, in addition to any other requirements that the issuer may impose, the substitute document will be the document that is effective and valid.

3. To protect parties who subsequently take the substitute document of title, the person who procured issuance of the substitute document warrants that it was a person entitled under the original document at the time it surrendered possession or control of the original document to the issuer. This warranty is modeled after the warranty found in Section 4‑209.

Cross Reference: Sections 7‑106, 7‑402 and 7‑601.

Definitional Cross Reference: ‘Person entitled to enforce’, Section 7‑102.

Section 36‑7‑106. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Uniform Electronic Transactions Act Section 16.

Purpose:

1. The section defines ‘control’ for electronic documents of title and derives its rules from the Uniform Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16, however, a document of title may be reissued in an alternative medium pursuant to Section 7‑105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA § 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

2. Control of an electronic document of title substitutes for the concept of indorsement and possession in the tangible document of title context. See Section 7‑501. A person with a tangible document of title delivers the document by voluntarily transferring possession and a person with an electronic document of title delivers the document by voluntarily transferring control. (Delivery is defined in Section 1‑201).

3. Subsection (a) sets forth the general rule that the ‘system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred’. The key to having a system that satisfies this test is that identity of the person to which the document was issued or transferred must be reliably established. Of great importance to the functioning of the control concept is to be able to demonstrate, at any point in time, the person entitled under the electronic document. For example, a carrier may issue an electronic bill of lading by having the required information in a database that is encrypted and accessible by virtue of a password. If the computer system in which the required information is maintained identifies the person as the person to which the electronic bill of lading was issued or transferred, that person has control of the electronic document of title. That identification may be by virtue of passwords or other encryption methods. Registry systems may satisfy this test. For example, see the electronic warehouse receipt system established pursuant to 7 C.F.R. Part 735. This Article leaves to the market place the development of sufficient technologies and business practices that will meet the test.

An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. Section 1‑201. For example, a record in a computer database could be an electronic document of title assuming that it otherwise meets the definition of document of title. To the extent that third parties wish to deal in paper mediums, Section 7‑105 provides a mechanism for exiting the electronic environment by having the issuer reissue the document of title in a tangible medium. Thus if a person entitled to enforce an electronic document of title causes the information in the record to be printed onto paper without the issuer’s involvement in issuing the document of title pursuant to Section 7‑105, that paper is not a document of title.

4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a). The test in subsection (b) is also used in Section 9‑105 although Section 9‑105 does not include the general test of subsection (a). Under subsection (b), at any point in time, a party should be able to identify the single authoritative copy which is unique and identifiable as the authoritative copy. This does not mean that once created that the authoritative copy need be static and never moved or copied from its original location. To the extent that backup systems exist which result in multiple copies, the key to this idea is that at any point in time, the one authoritative copy needs to be unique and identifiable.

Parties may not by contract provide that control exists. The test for control is a factual test that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is satisfied.

5. Article 7 has historically provided for rights under documents of title and rights of transferees of documents of title as those rights relate to the goods covered by the document. Third parties may possess or have control of documents of title. While misfeasance or negligence in failure to transfer or misdelivery of the document by those third parties may create serious issues, this Article has never dealt with those issues as it relates to tangible documents of title, preferring to leave those issues to the law of contracts, agency and tort law. In the electronic document of title regime, third party registry systems are just beginning to develop. It is very difficult to write rules regulating those third parties without some definitive sense of how the third party registry systems will be structured. Systems that are evolving to date tend to be ‘closed’ systems in which all participants must sign on to the master agreement which provides for rights as against the registry system as well as rights among the members. In those closed systems, the document of title never leaves the system so the parties rely upon the master agreement as to rights against the registry for its failures in dealing with the document. This article contemplates that those ‘closed’ systems will continue to evolve and that the control mechanism in this statute provides a method for the participants in the closed system to achieve the benefits of obtaining control allowed by this article.

This article also contemplates that parties will evolve open systems where parties need not be subject to a master agreement. In an open system a party that is expecting to obtain rights through an electronic document may not be a party to the master agreement. To the extent that open systems evolve by use of the control concept contained in this section, the law of contracts, agency, and torts as it applies to the registry’s misfeasance or negligence concerning the transfer of control of the electronic document will allocate the risks and liabilities of the parties as that other law now does so for third parties who hold tangible documents and fail to deliver the documents.

Cross Reference: Sections 7‑105 and 7‑501.

Definitional Cross‑References:

‘Delivery’. 1‑201.

‘Document of title’. 1‑201.

PART 2

Warehouse Receipts: Special Provisions

Section 36‑7‑201. (a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even if issued by a person who is the owner of the goods and is not a warehouseman.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑201.

Changes: Update for style only.

Purposes:

It is not intended by re‑enactment of subsection (a) to repeal any provisions of special licensing or other statutes regulating who may become a warehouse. Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. Section 7‑103. Compare Section 7‑401(4) on the liability of the issuer in such cases. Subsection (b) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. Chapter 51.

Cross References: Sections 7‑103, 7‑401.

Definitional Cross References:

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑202. (a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused by the omission to a person injured thereby:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or of the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods of which the warehouseman is owner, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest pursuant to Section 36‑7‑209. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of this title and do not impair its obligation of delivery pursuant to Section 36‑7‑403 or his duty of care pursuant to Section 36‑7‑204. Any contrary provisions is ineffective.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑202.

Changes: Language is updated to accommodate electronic commerce and to reflect modern style.

Purposes:

1. This section does not displace any particular legislation that requires other terms in a warehouse receipt or that may require a particular form of a warehouse receipt. This section does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long as the receipt falls within the definition of ‘warehouse receipt’ in Article 1. Thus the title has been changed to eliminate the phrase ‘essential terms” as provided in prior law. The only consequence of a warehouse receipt not containing any term listed in subsection (b) is that a person injured by a term’s omission has a right as against the warehouse for harm caused by the omission. Cases, such as In re Celotex Corp., 134 B. R. 993 (Bankr. M.D. Fla. 1991), that held that in order to have a valid warehouse receipt all of the terms listed in this section must be contained in the receipt, are disapproved.

2. The unique identification code referred to in subsection (b)(3) can include any combination of letters, number, signs, and/or symbols that provide a unique identification. Whether an electronic or tangible warehouse receipt contains a signature will be resolved with the definition of sign in Section 7‑102.

Cross References: Sections 7‑103 and 7‑401.

Definitional Cross References:

‘Bearer’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

‘Security interest’. Section 1‑201.

‘Sign’. Section 7‑102.

‘Term’. Section 1‑201.

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑203. A party to or purchaser for value in good faith of a document of title other than a bill of lading that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by ‘contents, condition and quality unknown’, ‘said to contain’ or the like, if the indication is true; or

(2) the party or purchaser has notice of the nonreceipt or misdescription.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑203.

Changes: Changes to this section are for style only.

Purpose:

This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor. The issuer is liable on documents issued by an agent, contrary to instructions of its principal, without receiving goods. No disclaimer of the latter liability is permitted.

Cross Reference: Section 7‑301.

Definitional Cross References:

‘Conspicuous’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Good Faith’. Section 1‑201. [7‑102]

‘Issuer’. Section 7‑102.

‘Notice’. Section 1‑202.

‘Party’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Receipt of goods’. Section 2‑103.

‘Value’. Section 1‑204.

Section 36‑7‑204. (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to them as the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. This limitation is not effective with respect to the liability of the warehouse for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the liability of the warehouse may be increased on part or on all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be changed based on an increased valuation of the goods.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑204.

Changes: Updated to reflect modern, standard commercial practices.

Purposes of Changes:

1. Subsection (a) continues the rule without change from former Section 7‑204 on the warehouse’s obligation to exercise reasonable care.

2. Former Section 7‑204(2) required that the term limiting damages do so by setting forth a specific liability per article or item or of a value per unit of weight. This requirement has been deleted as out of step with modern industry practice. Under subsection (b) a warehouse may limit its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or storage agreement without the term constituting an impermissible disclaimer of the obligation of reasonable care. The parties cannot disclaim by contract the warehouse’s obligation of care. Section 1‑302. For example, limitations based upon per unit of weight, per package, per occurrence, or per receipt as well as limitations based upon a multiple of the storage rate may be commercially appropriate. As subsection (d) makes clear, the states or the federal government may supplement this section with more rigid standards of responsibility for some or all bailees.

3. Former Section 7‑204(2) also provided that an increased rate cannot be charged if contrary to a tariff. That language has been deleted. If a tariff is required under state or federal law, pursuant to Section 7‑103(a), the tariff would control over the rule of this section allowing an increased rate. The provisions of a non‑mandatory tariff may be incorporated by reference in the parties’ agreement. See Comment 2 to Section 7‑103. Subsection (c) deletes the reference to tariffs for the same reason that the reference has been omitted in subsection (b).

4. As under former Section 7‑204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse’s own use. See Adams v. Ryan & Christie Storage, Inc., 563 F. Supp. 409 (E.D. Pa. 1983) aff’d 725 F.2d 666 (3rd Cir. 1983). Cases such as I.C.C. Metals Inc. v. Municipal Warehouse Co., 409 N.E. 2d 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a presumption of conversion to the warehouse’s own use are disapproved. ‘Conversion to its own use’ is narrower than the idea of conversion generally. Cases such as Lipman v. Peterson, 575 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.

5. Storage agreements commonly establish the contractual relationship between warehouses and depositors who have an on‑going relationship. The storage agreement may allow for the movement of goods into and out of a warehouse without the necessity of issuing or amending a warehouse receipt upon each entry or exit of goods from the warehouse.

Cross References: Sections 1‑302, 7‑103, 7‑309 and 7‑403.

Definitional Cross References:

‘Goods’. Section 7‑102.

‘Reasonable time’. Section 1‑204.

‘Sign’. Section 7‑102.

‘Term’. Section 1‑201.

‘Value’. Section 1‑204.

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑205. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that also is in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑205.

Changes: Changes for style only.

Purposes:

1. The typical case covered by this section is that of the warehouse‑dealer in grain, and the substantive question at issue is whether in case the warehouse becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces the purchaser completely to the status of general creditor in a situation where there was very little the purchaser could do to guard against the loss. Compare 15 U.S.C. Section 714p enacted in 1955.

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in 7‑501. The definition of ‘buyer in ordinary course’ is in Article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. See amended Section 2‑103. This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

Cross References: Sections 2‑403 and 9‑320.

Definitional Cross References:

‘Buyer in ordinary course of business’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Fungible goods’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Value’. Section 1‑204.

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑206. (a) A warehouse may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them pursuant to Section 36‑7‑210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time prescribed in subsection (a) and Section 36‑7‑210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse had no notice at the time of deposit, the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(e) The warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑206.

Changes: Changes for style.

Purposes:

1. This section provides for three situations in which the warehouse may terminate storage for reasons other than enforcement of its lien as permitted by Section 7‑210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse’s power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of ‘any charges’, but does not depend on the existence of unpaid charges.

2. In permitting expeditious disposition of perishable and hazardous goods the pre‑Code Uniform Warehouse Receipts Act, Section 34, made no distinction between cases where the warehouse knowingly undertook to store such goods and cases where the goods were discovered to be of that character subsequent to storage. The former situation presents no such emergency as justifies the summary power of removal and sale. Subsections (b) and (c) distinguish between the two situations. The reason of this section should apply if the goods become hazardous during the course of storage. The process for selling the goods described in Section 7‑210 governs the sale of goods under this section except as provided in subsections (b) and (c) for the situations described in those subsections respectively.

3. Protection of its lien is the only interest which the warehouse has to justify summary sale of perishable goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouse’s security.

4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of some states forbidding warehouses from discriminating among customers. Nor does the section relieve the warehouse of any obligation under the state laws to secure the approval of a public official before disposing of deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Section 7‑103.

Cross References: Sections 7‑103 and 7‑403.

Definitional Cross References:

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑102.

‘Good faith’. Section 1‑201 [7‑102].

‘Goods’. Section 7‑102.

‘Notice’. Section 1‑202.

‘Notification’. Section 1‑202.

‘Person’. Section 1‑201.

‘Reasonable time’. Section 1‑205.

‘Value”. Section 1‑204.

‘Warehouse’. Section 7‑102.

Section 36‑7‑207. (a) Unless the warehouse receipt otherwise provides, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(b) Fungible goods of different lots that are commingled are owned in common by the persons entitled to them and the warehouse is severally liable to each owner for the share of that owner. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑207.

Changes: Changes for style only.

Purposes:

No change of substance is made from former Section 7‑207. Holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional Cross References:

‘Delivery’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Fungible goods’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Holder’. Section 1‑201.

‘Person’. Section 1‑201.

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑208. Where a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good‑faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑208.

Changes: To accommodate electronic documents of title.

Purpose:

1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence which is a limited exception to the general rule in the second sentence. Electronic document of title systems should have protection against unauthorized access and unauthorized changes. See Section 7‑106. Thus the protection for good faith purchasers found in the first sentence is not necessary in the context of electronic documents.

2. Under the second sentence of this section, an unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouse. The rule stated in the second sentence applies to both tangible and electronic warehouse receipts.

Definitional Cross References:

‘Good faith’. Section 1‑201 [7‑102].

‘Issuer’. Section 7‑102.

‘Notice’. Section 1‑202.

‘Purchaser’. Section 1‑201.

‘Value’. Section 1‑204.

‘Warehouse receipt’. Section 1‑201.

Section 36‑7‑209. (a) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or storage equipment or on the proceeds thereof in his possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or present or future charges in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds of them in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse’s lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, then to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse also may reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by the chapter on secured transactions (Chapter 9).

(c) A warehouseman’s lien for charges and expenses under subsection (a) or a security interest under subsection (b) also is effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good‑faith purchaser for value would have been valid but is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the nominee of the bailor with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7‑403; or

(C) power of disposition under Sections 36‑2‑403, 36‑2A‑304(2), 36‑2A‑305(2), 36‑9‑320, or 36‑9‑321(c), or other statute of rule of law; or

(2) acquiesce in the procurement of the bailor or its nominee of any document.

(d) The lien of a warehouse on household goods for charges and expenses in relation to the goods under subsection (a) also is effective against all other persons if the depositor was the legal possessor of the goods at the time of the deposit. In this subsection, ‘household goods’ mean furniture, furnishings, or personal effects used by the depositor in a dwelling.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Sections 7‑209 and 7‑503.

Changes: Expanded to recognize warehouse lien when a warehouse receipt is not issued but goods are covered by a storage agreement.

Purposes:

1. Subsection (a) defines the warehouse’s statutory lien. Other than allowing a warehouse to claim a lien under this section when there is a storage agreement and not a warehouse receipt, this section remains unchanged in substance from former Section 7‑209(1). Under the first sentence, a specific lien attaches automatically without express notation on the receipt or storage agreement with regard to goods stored under the receipt or the storage agreement. That lien is limited to the usual charges arising out of a storage transaction.

Example 1: Bailor stored goods with a warehouse and the warehouse issued a warehouse receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the charges for storage and the other expenses of those goods. The warehouse may enforce its lien under Section 7‑210 as against the bailor. Whether the warehouse receipt is negotiable or nonnegotiable is not important to the warehouse’s rights as against the bailor.

Under the second sentence, by notation on the receipt or storage agreement, the lien can be made a general lien extending to like charges in relation to other goods. Both the specific lien and general lien are as to goods in the possession of the warehouse and extend to proceeds from the goods as long as the proceeds are in the possession of the warehouse. The same rules apply whether the receipt is negotiable or nonnegotiable.

Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will also have a lien on goods covered by the warehouse receipt for storage charges and the other expenses for any other goods that are stored with the warehouse by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored other goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless of whether the receipt is negotiable or nonnegotiable.

Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of that receipt by due negotiation is limited to the amount or rate specified on the receipt for the specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the specific goods covered by the receipt for storage after the date of the receipt.

Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable and has been duly negotiated (Section 7‑501) to a person other than the bailor. Under the last sentence of subsection (a), the warehouse may enforce its lien against the bailor’s goods stored in the warehouse as against the person to whom the negotiable warehouse receipt has been duly negotiated. Section 7‑502. That lien is limited to the charges or rates specified in the receipt or a reasonable charge for storage as stated in the last sentence of subsection (a).

Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has been duly negotiated (Section 7‑501) to a person other than the bailor. Under the last sentence of subsection (a), the lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is not enforceable as against the person to whom the receipt has been duly negotiated. Without a statement of a specified amount or rate for the general lien, the warehouse’s general lien is not enforceable as against the person to whom the negotiable document has been duly negotiated. However, the warehouse lien for charges and expenses related to storage of lot A goods is still enforceable as against the person to whom the receipt was duly negotiated.

Example 5: Same facts as Examples 2 and 4 except the warehouse had stated on the negotiable warehouse receipt a specified amount or rate for the general lien on other goods (lot B). Under the last sentence of subsection (a), the general lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is enforceable as against the person to whom the receipt has been duly negotiated.

2. Subsection (b) provides for a security interest based upon agreement. Such a security interest arises out of relations between the parties other than bailment for storage or transportation, as where the bailee assumes the role of financier or performs a manufacturing operation, extending credit in reliance upon the goods covered by the receipt. Such a security interest is not a statutory lien. Compare Sections 9‑109 and 9‑333. It is governed in all respects by Article 9, except that subsection (b) requires that the receipt specify a maximum amount and limits the security interest to the amount specified. A warehouse could also take a security interest to secure its charges for storage and the other expenses listed in subsection (a) to protect these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses possession of the goods as provided in subsection (e).

Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse receipt that states that the warehouse is taking a security interest in the bailed goods for charges of storage, expenses, for money advanced, for manufacturing services rendered, and all other obligations that the bailor may owe the warehouse. That is a security interest covered in all respects by Article 9. Subsection (b). As allowed by this section, a warehouse may rely upon its statutory possessory lien to protect its charges for storage and the other expenses related to storage. For those storage charges covered by the statutory possessory lien, the warehouse is not required to use a security interest under subsection (b).

3. Subsections (a) and (b) validate the lien and security interest ‘against the bailor’. Under basic principles of derivative rights as provided in Section 7‑504, the warehouse lien is also valid as against parties who obtain their rights from the bailor except as otherwise provided in subsection (a), third sentence, or subsection (c).

Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt that also claims a general lien in other goods stored with the warehouse. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the bailee acknowledges that fact to the Buyer. Section 2‑503. The warehouse lien for storage of those goods is effective against Buyer for both the specific lien and the general lien. Section 7‑504.

Example 8: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the goods while the goods are in the warehouse’s possession to Secured Party (SP) who properly perfects a security interest in the goods. See Revised Section 9‑312(d). The warehouse lien is superior in priority over SP’s security interest. See Revised Section 9‑203(b)(2) (debtor can grant a security interest to the extent of debtor’s rights in the collateral).

Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the negotiable document to SP. SP properly perfects its interest in the negotiable document by taking possession through a ‘due negotiation’. Revised Section 9‑312(c). SP’s security interest is subordinate to the warehouse lien. Section 7‑209(a), third sentence. Given that bailor’s rights are subject to the warehouse lien, the bailor cannot grant to the SP greater rights than the bailor has under Section 9‑203(b)(2), perfection of the security interest in the negotiable document and the goods covered by the document through SP’s filing of a financing statement should not give a different result.

As against third parties who have interests in the goods prior to the storage with the warehouse, subsection (c) continues the rule under the prior uniform statutory provision that to validate the lien or security interest of the warehouse, the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner’s interest will not be subjected to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be protected because of the actual, implied or apparent authority of the depositor, because of a Factor’s Act, or because of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under the second sentence of subsection (c). The language of Section 7‑503 is brought into subsection (c) for purposes of clarity. The comments to Section 7‑503 are helpful in interpreting delivery, entrustment or acquiescence.

Where the third party is the holder of a security interest, obtained prior to the issuance of a negotiable warehouse receipt, the rights of the warehouse depend on the priority given to a hypothetical bona fide pledgee by Article 9, particularly Section 9‑322. Thus the special priority granted to statutory liens by Section 9‑333 does not apply to liens under subsection (a) of this section, since subsection (c), second sentence, ‘expressly provides otherwise’ within the meaning of Section 9‑333.

As to household goods, however, subsection (d) makes the warehouse’s lien ‘for charges and expenses in relation to the goods’ effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouse to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency.

Example 10: Bailor grants a perfected security interest in the goods to SP prior to storage of the goods with the warehouse. Bailor then stores goods with the warehouse and the warehouse issues a warehouse receipt for the goods. A warehouse lien on the bailed goods for the charges for storage or other expenses arises under subsection (a). The warehouse lien is not effective as against SP unless SP entrusted the goods to the bailor with actual or apparent authority to ship store, or sell the goods or with power of disposition under subsection (c)(1) or acquiesced in the bailor’s procurement of a document of title under subsection (c)(2). This result obtains whether the receipt is negotiable or nonnegotiable.

Example 11: Sheriff who had lawfully repossessed household goods in an eviction action stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The lien is effective as against the owner of the goods. Subsection (d).

4. As under previous law, this section creates a statutory possessory lien in favor of the warehouse on the goods stored with the warehouse or on the proceeds of the goods. The warehouse loses its lien if it loses possession of the goods or the proceeds. Subsection (e).

5. Where goods have been stored under a nonnegotiable warehouse receipt and are sold by the person to whom the receipt has been issued, frequently the goods are not withdrawn by the new owner. The obligations of the seller of the goods in this situation are set forth in Section 2‑503(4) on tender of delivery and include procurement of an acknowledgment by the bailee of the buyer’s right to possession of the goods. If a new receipt is requested, such an acknowledgment can be withheld until storage charges have been paid or provided for. The statutory lien for charges on the goods sold, granted by the first sentence of subsection (a), continues valid unless the bailee gives it up. See Section 7‑403. But once a new receipt is issued to the buyer, the buyer becomes ‘the person on whose account the goods are held” under the second sentence of subsection (a); unless the buyer undertakes liability for charges in relation to other goods stored by the seller, there is no general lien against the buyer for such charges. Of course, the bailee may preserve the general lien in such a case either by an arrangement by which the buyer ‘is liable for’ such charges, or by reserving a security interest under subsection (b).

6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the bailment have a storage agreement or a warehouse receipt is issued. In the modern warehouse, the bailor and the bailee may enter into a master contract governing the bailment with the bailee and bailor keeping track of the goods stored pursuant to the master contract by notation on their respective books and records and the parties send notification via electronic communication as to what goods are covered by the master contract. Warehouse receipts are not issued. See Comment 4 to Section 7‑204. There is no particular form for a warehouse receipt and failure to contain any of the terms listed in Section 7‑202 does not deprive the warehouse of its lien that arises under subsection (a). See the comment to Section 7‑202.

Cross References:

Point 1: Sections 7‑501 and 7‑502.

Point 2: Sections 9‑109 and 9‑333.

Point 3: Sections 2‑503, 7‑503, 7‑504, 9‑203, 9‑312, and 9‑322 .

Point 4: Sections 2‑503, 7‑501, 7‑502, 7‑504, 9‑312, 9‑331, 9‑333, 9‑401.

Point 5: Sections 2‑503 and 7‑403.

Point 6: Sections 7‑202 and 7‑204.

Definitional Cross References:

‘Delivery’. Section 1‑201.

‘Document of Title’. Section 1‑201

‘Goods’. Section 7‑102.

‘Money’. Section 1‑201.

‘Person’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Right’. Section 1‑201.

‘Security interest’. Section 1‑201.

‘Value’. Section 1‑204.

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑210. (a) Except as provided in subsection (b), a warehouse’s lien may be enforced by public or private sale of the goods in block or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. This notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if it sells the goods in the usual manner in any recognized market for the goods it sells at the price current in that market at the time of the sale, or otherwise sells the goods in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of his business, only if the following requirements are satisfied:

(1) all persons known to claim an interest in the goods must be notified;

(2) the notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified;

(3) the notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place;

(4) the sale must conform to the terms of the notification;

(5) the sale must be held at the nearest suitable place to that where the goods are held or stored; and

(6) after the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

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

(d) A warehouse may buy at any public sale pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse’s lien takes the goods free of any rights of persons against which the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

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

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

(h) Where a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with either subsection (a) or (b).

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑210.

Changes: Update to accommodate electronic commerce and for style.

Purposes:

1. Subsection (a) makes ‘commercial reasonableness’ the standard for foreclosure proceedings in all cases except noncommercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale are retained in subsection (b) with one change. The requirement in former Section 7‑210(2)(b) that the notification must be sent in person or by registered or certified mail has been deleted. Notification may be sent by any reasonable means as provided in Section 1‑202. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Compare seller’s power of resale on breach by buyer under the provisions of the Article on Sales (Section 2‑706). Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

2. The provisions of subsections (d) and (e) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices and remain unchanged from former Section 7‑210.

3. A warehouse may have recourse to an interpleader action in appropriate circumstances. See Section 7‑603.

4. If a warehouse has both a warehouse lien and a security interest, the warehouse may enforce both the lien and the security interest simultaneously by using the procedures of Article 9. Section 7‑210 adopts as its touchstone ‘commercial reasonableness’ for the enforcement of a warehouse lien. Following the procedures of Article 9 satisfies ‘commercial reasonableness’.

Cross Reference: Sections 2‑706, 7‑403, 7‑603 and Part 6 of Article 9.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Conspicuous’. Section 1‑201.

‘Creditor’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Document of Title’. Section 1‑201.

‘Good faith’. Section 1‑201 [7‑102].

‘Goods’. Section 7‑102.

‘Notification’. Section 1‑202.

‘Notifies’. Section 1‑202.

‘Person’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Rights’. Section 1‑201.

‘Term’. Section 1‑201.

‘Warehouse’. Section 7‑102.

PART 3

Bills of Lading: Special Provisions

Section 36‑7‑301. (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying in either case upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as in a case where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by ‘contents or condition of contents of packages unknown’, ‘said to contain’, ‘shipper’s weight, load, and count’ or words of similar import, if that indication is true.

(b) When goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if package freight and ascertain the kind and quantity if bulk freight;

(2) ‘shipper’s weight, load, and count’ or words of similar import indicating that the description was made by the shipper are ineffective except as to freight concealed in packages.

(c) When bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In that case ‘shipper’s weight’ or other words of similar import are ineffective.

(d) The issuer of a bill of lading, by including the words ‘shipper’s weight, load, and count’ or other words of similar import indicate that the goods were loaded by the shipper, and if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of those words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. The right of the issuer to this indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑301.

Changes: Changes for clarity, style and to recognize deregulation in the transportation industry.

Purposes:

1. This section continues the rules from former Section 7‑301 with one substantive change. The obligations of the issuer of the bill of lading under former subsections (2) and (3) were limited to issuers who were common carriers. Subsections (b) and (c) apply the same rules to all issuers not just common carriers. This section is compatible with the policies stated in the federal Bills of Lading Act, 49 U.S.C. Section 80113 (2000).

2. The language of the pre‑Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. D. H. Overmyer Co. v. Nelson Brantley Glass Go., 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under pre‑Code law a carrier was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper’s faulty loading in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper’s loading, liability to a good faith purchaser. There is no implication that decisions such as Modern Tool Corp. v. Pennsylvania R. Co., 100 F.Supp. 595 (D.N.J.1951), are disapproved.

3. This section is a restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor or shipper. The wording in this section – ‘contents or condition of contents of packages unknown’ or ‘shipper’s weight, load and count’ – to indicate that the shipper loaded the goods or that the carrier does not know the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood in the transportation industry. The reasons for this wording are as important in 2002 as when the prior section initially was approved. The issuer is liable on documents issued by an agent, contrary to instructions of his principal, without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the care of the goods or their description.

4. The shipper’s erroneous report to the carrier concerning the goods may cause damage to the carrier. Subsection (e) therefore provides appropriate indemnity.

5. The word ‘freight’ in the former Section 7‑301 has been changed to ‘goods’ to conform to international and domestic land transport usage in which ‘freight’ means the price paid for carriage of the goods and not the goods themselves. Hence, changing the word ‘freight’ to the word ‘goods’ is a clarifying change that fits both international and domestic practice.

Cross References: Sections 7‑203, 7‑309 and 7‑501.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Consignee’. Section 7‑102.

‘Document of Title’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Good faith’. Section 1‑201. [7‑102].

‘Goods’. Section 7‑102.

‘Holder’. Section 1‑201.

‘Issuer’. Section 7‑102.

‘Notice’. Section 1‑202.

‘Party’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Receipt of Goods’. Section 2‑103.

‘Value’. Section 1‑204.

Section 36‑7‑302. (a) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to anyone entitled to recover on the bill for any breach by the other person or by the performing carrier of its obligation under the bill. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) Where goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in his possession to the obligation of the issuer. The person’s obligation is discharged by delivery of the goods to another person pursuant to the document, and does not include liability for breach by any other persons or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier or other person in possession of the goods when the breach of the obligation under the document occurred:

(1) the amount it may be required to pay to anyone entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and (2) the amount of any expense reasonably incurred by the insurer in defending any action brought by anyone entitled to recover on the document for the breach.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑302.

Changes: To conform to current terminology and for style.

Purposes:

1. This section continues the rules from former Section 7‑302 without substantive change. The term ‘performing carrier’ is substituted for the term ‘connecting carrier’ to conform the terminology of this section with terminology used in recent UNCITRAL and OAS proposals concerning transportation and through bills of lading. This change in terminology is not substantive. This section is compatible with liability on carriers under federal law. See 49 U.S.C. Sections 11706, 14706 and 15906.

The purpose of this section is to subject the initial carrier under a through bill to suit for breach of the contract of carriage by any performing carrier and to make it clear that any such performing carrier holds the goods on terms which are defined by the document of title even though such performing carrier did not issue the document. Since the performing carrier does hold the goods on the terms of the document, it must honor a proper demand for delivery or a diversion order just as the original bailee would have to. Similarly it has the benefits of the excuses for nondelivery and limitations of liability provided for the original bailee who issued the bill. Unlike the original bailee‑issuer, the performing carrier’s responsibility is limited to the period while the goods are in its possession. The section does not impose any obligation to issue through bills.

2. The reference to documents other than through bills looks to the possibility that multipurpose documents may come into use, e.g., combination warehouse receipts and bills of lading. As electronic documents of title come into common usage, storage documents (e.g. warehouse receipts) and transportation documents (e.g. bills of lading) may merge seamlessly into one electronic document that can serve both the storage and transportation segments of the movement of goods.

3. Under subsection (a) the issuer of a through bill of lading may become liable for the fault of another person. Subsection (c) gives the issuer appropriate rights of recourse.

4. Despite the broad language of subsection (a), Section 7‑302 is subject to preemption by federal laws and treaties. Section 7‑103. The precise scope of federal preemption in the transportation sector is a question determined under federal law.

Cross reference: Section 7‑103

Definitional Cross References:

‘Agreement’. Section 1‑201.

‘Bailee’. Section 7‑102.

‘Bill of lading’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Issuer’. Section 7‑102.

‘Party’. Section 1‑201.

‘Person’. Section 1‑201.

Section 36‑7‑303. (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods without liability on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, notwithstanding contrary instructions from the consignee;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill if the cosignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑303.

Changes: To accommodate electronic documents and for style.

Purposes:

1. Diversion is a very common commercial practice which defeats delivery to the consignee originally named in a bill of lading. This section continues former Section 7‑303’s safe harbor rules for carriers in situations involving diversion and adapts those rules to electronic documents of title. This section works compatibly with Section 2‑705. Carriers may as a business matter be willing to accept instructions from consignees in which case the carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods under subsection (a)(4). The section imposes no duty on carriers to undertake diversion. The carrier is of course subject to the provisions of mandatory filed tariffs as provided in Section 7‑103.

2. It should be noted that the section provides only an immunity for carriers against liability for ‘misdelivery.’ It does not, for example, defeat the title to the goods which the consignee‑buyer may have acquired from the consignor‑seller upon delivery of the goods to the carrier under a nonnegotiable bill of lading. Thus if the carrier, upon instructions from the consignor, returns the goods to the consignor, the consignee may recover the goods from the consignor or the consignor’s insolvent estate. However, under certain circumstances, the consignee’s title may be defeated by diversion of the goods in transit to a different consignee. The rights that arise between the consignor‑seller and the consignee‑buyer out of a contract for the sale of goods are governed by Article 2.

Cross References:

Point 1: Sections 2‑705 and 7‑103.

Point 2: Article 2, Sections 7‑403 and 7‑504(3).

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Bill of lading’. Section 1‑201.

‘Carrier’. Section 7‑102

‘Consignee’. Section 7‑102.

‘Consignor’. Section 7‑102.

‘Delivery’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Holder’. Section 1‑201.

‘Notice’. Section 1‑202.

‘Person’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Term’. Section 1‑201.

Section 36‑7‑304. (a) Except where customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(c) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier’s obligation by surrendering its part.

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

(e) The bailee shall deliver in accordance with Part 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee’s obligation on the whole bill.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑304.

Changes: To limit bills in a set to tangible bills of lading and to use terminology more consistent with modern usage.

Purposes:

1. Tangible bills of lading in a set are still used in some nations in international trade. Consequently, a tangible bill of lading part of a set could be at issue in a lawsuit that might come within Article 7. The statement of the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are recognized by this Article. Tangible bills of lading in a set are prohibited in domestic trade.

2. Electronic bills of lading in domestic or international trade will not be issued in a set given the requirements of control necessary to deliver the bill to another person. An electronic bill of lading will be a single, authoritative copy. Section 7‑106. Hence, this section differentiates between electronic bills of lading and tangible bills of lading. This section does not prohibit electronic data messages about goods in transit because these electronic data messages are not the issued bill of lading. Electronic data messages contain information for the carrier’s management and handling of the cargo but this information for the carrier’s use is not the issued bill of lading.

Cross Reference: Section 7‑103, 7‑303 and 7‑106.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Bill of lading’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Good faith’. Section 1‑201. [7‑102].

‘Goods’. Section 7‑102.

‘Holder’. Section 1‑201.

‘Issuer’. Section 7‑102.

‘Person’. Section 1‑201.

‘Receipt of goods’. Section 2‑103.

Section 36‑7‑305. (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 36‑7‑105, may procure a substitute bill to be issued at any place designated in the request.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑305.

Changes: To accommodate electronic bills of lading and for style.

Purposes:

1. Subsection (a) continues the rules of former Section 7‑305(1) without substantive change. This proposal is designed to facilitate the use of order bills in connection with fast shipments. Use of order bills on high speed shipments is impeded by the fact that the goods may arrive at destination before the documents, so that no one is ready to take delivery from the carrier. This is especially inconvenient for carriers by truck and air, who do not have terminal facilities where shipments can be held to await the consignee’s appearance. Order bills would be useful to take advantage of bank collection. This may be preferable to C.O.D. shipment in which the carrier, e.g. a truck driver, is the collecting and remitting agent. Financing of shipments under this plan would be handled as follows: seller at San Francisco delivers the goods to an airline with instructions to issue a bill in New York to a named bank. Seller receives a receipt embodying this undertaking to issue a destination bill. Airline wires its New York freight agent to issue the bill as instructed by the seller. Seller wires the New York bank a draft on buyer. New York bank indorses the bill to buyer when the buyer honors the draft. Normally seller would act through its own bank in San Francisco, which would extend credit in reliance on the airline’s contract to deliver a bill to the order of its New York correspondent. This section is entirely permissive; it imposes no duty to issue such bills. Whether a performing carrier will act as issuing agent is left to agreement between carriers.

2. Subsection (b) continues the rule from former Section 7‑305(2) with accommodation for electronic bills of lading. If the substitute bill changes from an electronic to a tangible medium or vice versa, the issuance of the substitute bill must comply with Section 7‑105 to give the substitute bill validity and effect.

Cross Reference: Section 7‑105.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Consignor’. Section 7‑102.

‘Goods’. Section 7‑102.

‘Issuer’. Section 7‑102.

‘Receipt of goods’. Section 2‑103.

Section 36‑7‑306. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑306.

Changes: None

Purposes:

An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not relieve the issuer of its liability on the document as originally executed. This section applies to both tangible and electronic bills of lading, applying the same rule to both types of bills of lading. The control concept of Section 7‑106 requires that any changes to the electronic document of title be readily identifiable as authorized or unauthorized. Section 7‑306 should be compared to Section 7‑208 where a different rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.

Cross Reference: Sections 7‑106 and 7‑208.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Issuer’. Section 7‑102.

Section 36‑7‑307. (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier’s lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, then to a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to these charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses his lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑307.

Changes: Expanded to cover proceeds of the goods transported.

Purposes:

1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehouses by the first sentence of Section 7‑209(a) and extends that lien to the proceeds of the goods as long as the carrier has possession of the proceeds. But because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7‑209(a) and (b) are omitted. Carriers may utilize Article 9 to obtain a security interest and become a secured party or a carrier may agree to limit its lien rights in a transportation agreement with the shipper. As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (b) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner’s interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. The crucial mental element is the carrier’s knowledge or reason to know of the bailor’s lack of authority. If the carrier does not know or have reason to know of the bailor’s lack of authority, the carrier has a lien under this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, Sections 7‑307 and 9‑333 combine to give priority to a carrier’s lien over security interests in the goods. In this regard, the judicial decision in In re Sharon Steel Corp., 25 U.C.C. Rep.2d 503, 176 B.R. 384 (W.D. Pa. 1995) is correct and is the controlling precedent.

2. The reference to charges in this section means charges relating to the bailment relationship for transportation. Charges does not mean that the bill of lading must state a specific rate or a specific amount. However, failure to state a specific rate or a specific amount has legal consequences under the second sentence of subsection (a).

3. The carrier’s specific lien under this section is a possessory lien. See subsection (c). Part 3 of Article 7 does not require any particular form for a bill of lading. The carrier’s lien arises when the carrier has issued a bill of lading.

Cross References:

Point 1: Sections 7‑209, 9‑109 and 9‑333.

Point 3: Section 7‑202 and 7‑209.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Carrier’. Section 7‑102.

‘Consignor’. Section 7‑102.

‘Delivery’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Value’. Section 1‑204.

Section 36‑7‑308. (a) A carrier’s lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, he sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

(g) A carrier’s lien may be enforced pursuant to either subsection (a) or the procedure set forth in subsection (b) of Section 7‑210.

(h) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section, and in case of wilful violation, is liable for conversion.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑308.

Changes: To conform language to modern usage and for style.

Purposes:

This section is intended to give the carrier an enforcement procedure of its lien coextensive with that given the warehouse in cases other than those covering noncommercial storage by the warehouse. See Section 7‑210 and comments.

Cross Reference: Section 7‑210.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Carrier’. Section 7‑102.

‘Creditor’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Good faith’. Section 1‑201. [7‑102]

‘Goods’. Section 7‑102.

‘Notification’. Section 1‑202.

‘Notifies’. Section 1‑202.

‘Person’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Rights’. Section 1‑201.

‘Term’. Section 1‑201.

Section 36‑7‑309. (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

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

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑309.

Changes: References to tariffs eliminated because of deregulation, adding reference to transportation agreements, and for style.

Purposes:

1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The parties cannot disclaim by contract the carrier’s obligation of care. Section 1‑302.

Federal statutes and treaties for air, maritime and rail transport may alter the standard of care. These federal statutes and treaties preempt this section when applicable. Section 7‑103. Subsection (a) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (b), however, applies to the common carrier’s liability as an insurer as well as to liability based on negligence. Subsection (b) allows the term limiting damages to appear either in the bill of lading or in the parties’ transportation agreement. Compare 7‑204(b). Subsection (c) allows the parties to agree to provisions regarding time and manner of presenting claims or commencing actions if the provisions are either in the bill of lading or the transportation agreement. Compare 7‑204(c). Transportation agreements are commonly used to establish agreed terms between carriers and shippers that have an on‑going relationship.

2. References to public tariffs in former Section 7‑309(2) and (3) have been deleted in light of the modern era of deregulation. See Comment 2 to Section 7‑103. If a tariff is required under state or federal law, pursuant to Section 7‑103(a), the tariff would control over the rule of this section. As governed by contract law, parties may incorporate by reference the limits on the amount of damages or the reasonable provisions as to the time and manner of presenting claims set forth in applicable tariffs, e.g. a maximum unit value beyond which goods are not taken or a disclaimer of responsibility for undeclared articles of extraordinary value.

3. As under former Section 7‑309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier’s own use. ‘Conversion to its own use’ is narrower than the idea of conversion generally. Art Masters Associates, Ltd. v. United Parcel Service, 77 N.Y.2d 200, 567 N.E.2d 226 (1990); See, Kemper Ins. Co. v. Fed. Ex. Corp., 252 F.3d 509 (1st Cir), cert. denied 534 U.S. 1020 (2001) (opinion interpreting federal law).

4. As used in this section, damages may include damages arising from delay in delivery. Delivery dates and times are often specified in the parties’ contract. See Section 7‑403.

Cross Reference: Sections 1‑302, 7‑103, 7‑204, 7‑403.

Definitional Cross References:

‘Action’. Section 1‑201.

‘Bill of lading’. Section 1‑201.

‘Carrier’. Section 7‑102.

‘Consignor’. Section 7‑102.

‘Document of Title’. Section 1‑102.

‘Goods’. Section 7‑102.

‘Value’. Section 1‑204.

PART 4

Warehouse Receipts and Bill of Lading: General Obligations

Section 36‑7‑401. The obligations imposed by this chapter on an issuer apply to a document of title even if:

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

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued; or

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑401.

Changes: Changes for style only.

Purposes:

The bailee’s liability on its document despite nonreceipt or misdescription of the goods is affirmed in Sections 7‑203 and 7‑301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid its obligation to deliver the goods (Section 7‑403) or its obligation of due care with respect to them (Sections 7‑204 and 7‑309) by taking the position that no valid ‘document” was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. Tate v. Action Moving & Storage, Inc., 383 S.E.2d 229 (N.C. App. 1989), rev. denied 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. See Section 7‑103.

Cross References: Sections 7‑103, 7‑203, 7‑204, 7‑301, 7‑309.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Document of title’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Issuer’. Section 7‑102.

‘Person’. Section 1‑201.

‘Warehouse receipt’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑402. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitutes documents issued pursuant to Section 36‑7‑105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑402.

Changes: Changes to accommodate electronic documents.

Purposes:

1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. But parts of a tangible bill lawfully issued in a set of parts are not ‘overissue’ (Section 7‑304). Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the issuer is not liable for preparing and delivering such a duplicate copy.

Section 7‑105 allows documents of title to be reissued in another medium. Reissuance of a document in an alternative medium under Section 7‑105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the substitute document is not issued in compliance with Section 7‑105, then the document should be treated as a duplicate under this section.

2. The section applies to nonnegotiable documents to the extent of providing an action for damages for one who acquires an unmarked duplicate from a transferor who knew the facts and would therefore have had no cause of action against the issuer of the duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights of its transferor.

3. Overissue is defined so as to exclude the common situation where two valid documents of different issuers are outstanding for the same goods at the same time. Thus freight forwarders commonly issue bills of lading to their customers for small shipments to be combined into carload shipments for which the railroad will issue a bill of lading to the forwarder. So also a warehouse receipt may be outstanding against goods, and the holder of the receipt may issue delivery orders against the same goods. In these cases dealings with the subsequently issued documents may be effective to transfer title; e.g. negotiation of a delivery order will effectively transfer title in the ordinary case where no dishonesty has occurred and the goods are available to satisfy the orders. Section 7‑503 provides for cases of conflict between documents of different issuers.

Cross References:

Point 1: Sections 7‑105, 7‑207, 7‑304, and 7‑601.

Point 3: Section 7‑503.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Conspicuous’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Fungible goods’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Issuer’. Section 7‑102.

‘Right’. Section 1‑201.

Section 36‑7‑403. (a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse’s lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to the provisions of Section 36‑2‑705 or by a lessor of its right to stop delivery pursuant to Section 36‑2A‑526;

(5) a diversion, reconsignment, or other disposition pursuant to Section 36‑7‑303;

(6) release, satisfaction, or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee’s lien where the bailee so requests if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless the person claiming the goods is a person against which the document of title does not confer a right under Section 36‑7‑503(a):

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiable.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑403.

Changes: Definition in former Section 7‑403(4) moved to Section 7‑102; bracketed language in former Section 7‑403(1)(b) deleted; added cross reference to Section 2A‑526; changes for style.

Purposes:

1. The present section, following former Section 7‑403, is constructed on the basis of stating what previous deliveries or other circumstances operate to excuse the bailee’s normal obligation on the document. Accordingly, ‘justified’ deliveries under the pre‑Code uniform acts now find their place as ‘excuse” under subsection (a).

2. The principal case covered by subsection (a)(1) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse facility and takes a negotiable receipt, the warehouse is not liable on the receipt if it has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See Section 7‑503(a). However, if the owner entrusted the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner receiving delivery would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the bailee a defense against such a holder. See Sections 7‑502(a)(2) and 7‑503(a)(1).

3. Subsection (a)(2) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this Act. Much of the applicable law as to responsibility of bailees for the preservation of the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by Section 7‑103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Sections 7‑204 and 7‑309 of this Article.

The bracketed language found in former Section 7‑403(1)(b) has been deleted thereby leaving the allocations of the burden of going forward with the evidence and the burden of proof to the procedural law of the various states.

Subsection (a)(4) contains a cross reference to both the seller’s and the lessor’s rights to stop delivery under Article 2 and Article 2A respectively.

4. As under former Section 7‑403, there is no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the bailee must request payment of the amount of its lien when asked to deliver, and only in case this request is refused is it justified in declining to deliver because of nonpayment of charges. Where delivery without payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction with the priorities given to the warehouse lien and the carrier lien under Sections 7‑209 and 7‑307, respectively. If the parties are in dispute about whether the request for payment of the lien is legally proper, the bailee may have recourse to interpleader. See Section 7‑603.

5. Subsection (c) states the obvious duty of a bailee to take up a negotiable document or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that stated in subsection (a)(1) of this section and in Section 7‑503(a). Subsection (c) is limited to cases of delivery to a claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to enforce the bailee’s lien.

6. When courts are considering subsection (a)(7), ‘any other lawful excuse’, among others, refers to compliance with court orders under Sections 7‑601, 7‑602 and 7‑603.

Cross References:

Point 2: Sections 7‑502 and 7‑503.

Point 3: Sections 2‑705, 2A‑526, 7‑103, 7‑204, and 7‑309 and 10‑103.

Point 4: Sections 7‑209, 7‑307 and 7‑603.

Point 5: Section 7‑503(1).

Point 6: Sections 7‑601, 7‑602, and 7‑603.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Conspicuous’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Goods’. Section 7‑102.

‘Lessor’. Section 2A‑103.

‘Person’. Section 1‑201.

‘Receipt of goods’. Section 2‑103.

‘Right’. Section 1‑201.

‘Terms’. Section 1‑201.

‘Warehouse’. Section 7‑102.

Section 36‑7‑404. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable if:

(1) the person from which the bailee received the goods had no authority to procure the document or to dispose of the goods; or

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑404.

Changes: Changes reflect the definition of good faith in Section 1‑201 [7‑102] and for style.

Purposes:

This section uses the test of good faith, as defined in Section 1‑201 [7‑102], to continue the policy of former Section 7‑404. Good faith now means ‘honesty in fact and the observance of reasonable commercial standards of fair dealing’. The section states explicitly that the common law rule of ‘innocent conversion’ by unauthorized ‘intermeddling” with another’s property is inapplicable to the operations of commercial carriers and warehousemen that in good faith perform obligations that they have assumed and that generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well as to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a bailee may use interpleader or other dispute resolution process. See Section 7‑603.

Cross Reference: Section 7‑603.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Good faith’. Section 1‑201. [7‑102].

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

‘Receipt of goods’. Section 2‑103.

‘Term’. Section 1‑201.

PART 5

Warehouse Receipts and Bills of Lading: Negotiation and Transfer

Section 36‑7‑501. (a) The following rules apply to a negotiable instrument of title:

(1) A negotiable tangible document of title running to the order of a named person and it is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) If the document’s original terms run to bearer, it is negotiated by delivery above.

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

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

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

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

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

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

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

(4) Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee’s rights.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑501.

Changes: To accommodate negotiable electronic documents of title.

Purpose:

1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise remains unchanged in substance from the rules in former Section 7‑501. Subsection (b) is new and applies to negotiable electronic documents of title. Delivery of a negotiable electronic document is through voluntary transfer of control. Section 1‑201 definition of ‘delivery’. The control concept as applied to negotiable electronic documents of title is the substitute for both possession and indorsement as applied to negotiable tangible documents of title. Section 7‑106.

Article 7 does not separately define the term ‘duly negotiated’. However, the elements of ‘duly negotiated’ are set forth in subsection (a)(5) for tangible documents and (b)(3) for electronic documents. As under former Section 7‑501, in order to effect a ‘due negotiation’ the negotiation must be in the ‘regular course of business or financing’ in order to transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away rights which are not its own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.

There are two aspects to the usual and normal course of mercantile dealings, namely, the person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose possession or control appears, commercially, to be in order is almost invariably a person in the trade. No commercial purpose is served by allowing a tramp or a professor to ‘duly negotiate’ an order bill of lading for hides or cotton not their own, and since such a transfer is obviously not in the regular course of business, it is excluded from the scope of the protection of subsection (a)(5) or (b)(3).

The second question posed by the ‘regular course’ qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor itself may not have such rights to pass, and even though the transferor may be acting in breach of duty? In raising this question the ‘regular course’ criterion has the further advantage of limiting, the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: it is also clearly outside the range of regular course.

Any notice on the document sufficient to put a merchant on inquiry as to the ‘regular course’ quality of the transaction will frustrate a ‘due negotiation’. Thus irregularity of the document or unexplained staleness of a bill of lading may appropriately be recognized as negating a negotiation in ‘regular’ course.

A preexisting claim constitutes value, and ‘due negotiation’ does not require ‘new value’. A usual and ordinary transaction in which documents are received as security for credit previously extended may be in ‘regular’ course, even though there is a demand for additional collateral because the creditor ‘deems himself insecure’. But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is ‘paid’ in commodity paper, any question of ‘regular’ course disappears, as the case is explicitly excepted from ‘due negotiation’.

2. Negotiation under this section may be made by any holder no matter how the holder acquired possession or control of the document.

3. Subsections (a)(3) and (b)(2) make explicit a matter upon which the intent of the pre‑Code law was clear but the language somewhat obscure: a negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation; it may very well be in ‘regular course’.

4. This Article does not contain any provision creating a presumption of due negotiation to, and full rights in, a holder of a document of title akin to that created by Uniform Commercial Code Article 3. But the reason of the provisions of this Act (Section 1‑307) on the prima facie authenticity and accuracy of third party documents, joins with the reason of the present section to work such a presumption in favor of any person who has power to make a due negotiation. It would not make sense for this Act to authorize a purchaser to indulge the presumption of regularity if the courts were not also called upon to do so. Allocations of the burden of going forward with the evidence and the burden of proof are left to the procedural law of the various states.

5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible and electronic documents of title.

Cross References: Sections 1‑307, 7‑502 and 7‑503.

Definitional Cross References:

‘Bearer’. Section 1‑201.

‘Control’. Section 7‑106.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Good faith’. Section 1‑201 [7‑102].

‘Holder’. Section 1‑201.

‘Notice’. Section 1‑202.

‘Person’. Section 1‑201.

‘Purchase’. Section 1‑201.

‘Rights’. Section 1‑201.

‘Term’. Section 1‑201.

‘Value’. Section 1‑204.

Section 36‑7‑502. (a) Subject to Section 36‑7‑205 and Section 36‑7‑503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter. In the case of a delivery order, the bailee’s obligation accrues only upon the bailee’s acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Section 36‑7‑503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑502.

Changes: To accommodate electronic documents of title and for style.

Purpose:

1. This section applies to both tangible and electronic documents of title. The elements of duly negotiated, which constitutes a due negotiation, are set forth in Section 7‑501. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section (Section 7‑503).

2. Subsection (a)(3) covers the case of ‘feeding’ of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection (a)(4) of the bailee’s direct obligation to the holder precludes the defense that the document in question was ‘spent’ after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as non‑negligent destruction even though not apparent on the document. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 7‑503(b) and Comment.

4. Subsection (b) continues the law which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in subsection (a), but it has been included since such explicit reference was provided under former Section 7‑502 to preserve the right of a purchaser by due negotiation. The listing is not exhaustive. The language ‘any stoppage’ is included lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser’s rights.

Cross References: Sections 7‑103, 7‑205, 7‑403, 7‑501, and 7‑503.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Control’. Section 7‑106.

‘Delivery’. Section 1‑201.

‘Delivery order’. Section 7‑102.

‘Document of title’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Fungible’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Holder’. Section 1‑201.

‘Issuer’. Section 7‑102.

‘Person’. Section 1‑201.

‘Rights’. Section 1‑201.

‘Term’. Section 1‑201.

‘Warehouse receipt’. Section 1‑201.

Section 36‑7‑503. (a) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in the goals and that did not:

(1) deliver or entrust the goods or any document of title covering them to the bailor or his nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) power to obtain delivery under Section 36‑7‑403; or

(C) power of disposition under Section 36‑2‑403, 36‑2A‑304(2), 36‑2A‑305(2), 36‑9‑320, or 36‑9‑321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document of title.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 36‑7‑504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges the carrier’s obligation to deliver.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑503.

Changes: Changes to cross‑reference to Article 2A and for style.

Purposes:

1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief’s own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, ‘acquiescence” by the landlord or mortgagee does not require active consent under subsection (a)(2) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat the landlord’s or the mortgagee’s rights as against one who takes by due negotiation of a negotiable document. In re Sharon Steel, 176 B.R. 384 (Bankr. W.D. Pa. 1995); In re R.V. Segars Co, 54 B.R. 170 (Bankr. S.C. 1985); In re Jamestown Elevators, Inc., 49 B.R. 661 (Bankr. N.D. 1985).

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in its duty to sell for cash, the goods are ‘entrusted’ to the factor ‘with actual authority to sell’ under subsection (a)(1), and if the factor procures a negotiable document of title it can transfer the owner’s interest to a purchaser by due negotiation. Further, where the factor is in the business of selling, goods entrusted to it simply for safekeeping or storage may be entrusted under circumstances which give the factor ‘apparent authority to ship, store or sell’ under subsection (a)(1), or power of disposition under Section 2‑403, 2A‑304(2), 2A‑305(2), 7‑205, 9‑320, or 9‑321(c) or under a statute such as the earlier Factors Acts, or under a rule of law giving effect to apparent ownership. See Section 1‑103.

Persons having an interest in goods also frequently deliver or entrust them to agents or servants other than factors for the purpose of shipping or warehousing or under circumstances reasonably contemplating such action. This Act is clear that such persons assume full risk that the agent to whom the goods are so delivered may ship or store in breach of duty, take a document to the agent’s own order and then proceed to misappropriate the negotiable document of title that embodies the goods. This Act makes no distinction between possession or mere custody in such situations and finds no exception in the case of larceny by a bailee or the like. The safeguard in such situations lies in the requirement that a due negotiation can occur only ‘in the regular course of business or financing’ and that the purchase be in good faith and without notice. See Section 7‑501. Documents of title have no market among the commercially inexperienced and the commercially experienced do not take them without inquiry from persons known to be truck drivers or petty clerks even though such persons purport to be operating in their own names.

Again, where the seller allows a buyer to receive goods under a contract for sale, though as a ‘conditional delivery’ or under ‘cash sale’ terms and on explicit agreement for immediate payment, the buyer thereby acquires power to defeat the seller’s interest by transfer of the goods to certain good faith purchasers. See Section 2‑403. Both in policy and under the language of subsection (a)(1) that same power must be extended to accomplish the same result if the buyer procures a negotiable document of title to the goods and duly negotiates it.

This comment 1 should be considered in interpreting delivery, entrustment or acquiescence in application of Section 7‑209(c).

2. Under subsection (a) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (a)(1) or (2). Thus the rights of a transferee of a nonnegotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee ‘delivers or entrusts’ to the ‘person procuring’ the delivery order or ‘acquiesces’ in that person’s procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under Section 7‑402. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way that the rights of a transferee may be defeated under Section 7‑504. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer’s rights before notification of the holder’s rights. Section 7‑504(b)(2). But an accepted delivery order has the same effect as a document issued by the bailee.

3. Under subsection (c) a bill of lading issued to a freight forwarder is subordinated to the freight forwarder’s document of title, since the bill on its face gives notice of the fact that a freight forwarder is in the picture and the freight forwarder has in all probability issued a document of title. But the carrier is protected in following the terms of its own bill of lading.

Cross References:

Point 1: Sections 1‑103, 2‑403, 2A‑304(2), 2A‑305(2), 7‑205, 7‑209, 7‑501, 9‑320, 9‑321(c), and 9‑331.

Point 2: Sections 7‑402 and 7‑504.

Point 3: Sections 7‑402, 7‑403 and 7‑404.

Definitional Cross References:

‘Bill of lading’. Section 1‑201.

‘Contract for sale’. Section 2‑106.

‘Delivery’. Section 1‑201.

‘Delivery order’. Section 7‑102.

‘Document of title’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

‘Right’. Section 1‑201.

‘Warehouse receipt’. Section 1‑201.

Section 36‑7‑504. (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor who could treat the sale as void under Sections 36‑2‑402 or 36‑2A‑308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer’s rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee’s rights; or

(4) as against the bailee by good‑faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading that causes the bailee not to deliver the goods to the consignee defeats the consignee’s title to the goods if the goods have been delivered to a buyer in ordinary course of business and, in any event, defeats the consignee’s rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Section 36‑2‑705 or a lessor under Section 36‑2A‑526, subject to the requirement of due notification provided in this section. A bailee honoring the seller’s or lessor’s instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑504.

Changes: To include cross‑references to Article 2A and for style.

Purposes:

1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than the transferor has, even when the negotiation is formally perfect. This section recognizes the transferor’s power to transfer rights which the transferor has or has ‘actual authority to convey’. Thus, where a negotiable document of title is being transferred the operation of the principle of estoppel is not recognized, as contrasted with situations involving the transfer of the goods themselves. (Compare Section 2‑403 on good faith purchase of goods.) This section applies to both tangible and electronic documents of title.

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if the purchaser had purchased the goods themselves. True, the purchaser’s rights are not subject to defeat by attachment of the goods or surrender of them to the purchaser’s transferor (contrast subsection (b)); but on the other hand, the purchaser cannot acquire enforceable rights to control or receive the goods over the bailee’s objection merely by giving notice to the bailee. Similarly, a consignee who makes payment to its consignor against a straight bill of lading can thereby acquire the position of a good faith purchaser of goods under provisions of the Article of this Act on Sales (Section 2‑403), whereas the same payment made in good faith against an unendorsed order bill would not have such effect. The appropriate remedy of a purchaser in such a situation is to regularize its status by compelling indorsement of the document (see Section 7‑506).

2. As in the case of transfer‑‑as opposed to ‘due negotiation’‑‑of negotiable documents, subsection (a) empowers the transferor of a nonnegotiable document to transfer only such rights as the transferor has or has ‘actual authority’ to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than the transferor actually has. Subsection (b) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his transferor by giving notice of the transfer to the bailee. New subsection (b)(3) provides for the rights of a lessee in the ordinary course.

Subsection (b)(2) and (3) require delivery of the goods. Delivery of the goods means the voluntary transfer of physical possession of the goods. See amended Section 2‑103.

3. Subsection (c) is in part a reiteration of the carrier’s immunity from liability if it honors instructions of the consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under pre‑Code passage‑of‑title‑by‑appropriation doctrine A might reclaim the goods from B. However, no consideration of commercial policy supports this involvement of an innocent third party in the default of the manufacturer on his contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in accordance with this subsection. The same result should obtain if the substituted consignee is a lessee in ordinary course. The extent of the lessee’s interest in the goods is less than a buyer’s interest in the goods. However, as against the first consignee and the lessee in ordinary course as the substituted consignee, the lessee’s rights in the goods as granted under the lease are superior to the first consignee’s rights.

4. Subsection (d) gives the carrier an express right to indemnity where the carrier honors a seller’s request to stop delivery.

5. Section 1‑202 gives the bailee protection, if due diligence is exercised where the bailee’s organization has not had time to act on a notification.

Cross References:

Point 1: Sections 2‑403 and 7‑506.

Point 2: Sections 2‑403 and 2A‑304.

Point 3: Sections 7‑303, 7‑403(a)(5) and 7‑404.

Point 4: Sections 2‑705 and 7‑403(a)(4).

Point 5: Section 1‑202.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Bill of lading’. Section 1‑201.

‘Buyer in ordinary course of business’. Section 1‑201.

‘Consignee’. Section 7‑102.

‘Consignor’. Section 7‑102.

‘Creditor’. Section 1‑201.

‘Delivery’. Section 1‑201.

‘Document of Title’. Section 1‑201.

‘Duly negotiate’. Section 7‑501.

‘Good faith’. Section 1‑201. [7‑102].

‘Goods’. Section 7‑102.

‘Honor’. Section 1‑201.

‘Lessee in ordinary course’. Section 2A‑103.

‘Notification’. Section 1‑202.

‘Purchaser’. Section 1‑201.

‘Rights’. Section 1‑201.

Section 36‑7‑505. The indorsement of a document of a tangible title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑505.

Changes: Limited to tangible documents of title.

Purposes:

This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7‑106. The indorsement of a tangible document of title is generally understood to be directed towards perfecting the transferee’s rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an indorsement given for value guarantees future action, namely, that in which the bailee has not yet become liable upon the document at the time of the indorsement. Under such circumstances the indorser, of course, engages that appropriate honor of the document by the bailee will occur. See Section 7‑502(a)(4) as to negotiable delivery orders. However, even in such a case, once the bailee attorns to the transferee, the indorser’s obligation has been fulfilled and the policy of this section excludes any continuing obligation on the part of the indorser for the bailee’s ultimate actual performance.

Cross Reference: Sections 7‑106 and 7‑502.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Document of title’. Section 1‑201.

‘Party’. Section 1‑201.

Section 36‑7‑506. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑506.

Changes: Limited to tangible documents of title.

Purposes:

1. This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7‑106. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized its position until such indorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this Article (Section 7‑501(a)(5)) on ‘due negotiation’. Similarly, despite the transfer to the transferee of the transferor’s title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See Section 7‑403(c).

Cross References:

Point 1: Sections 7‑106 and 7‑505.

Point 2: Sections 7‑501(a)(5) and 7‑403(c).

Definitional Cross References:

‘Document of title’. Section 1‑201.

‘Rights’. Section 1‑201.

Section 36‑7‑507. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 36‑7‑508, then unless otherwise agreed, the transferor warrants to its immediate purchaser only that:

(1) the document is genuine;

(2) transferor has no knowledge of any fact which would impair its validity or worth; and

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑507.

Changes: Substitution of the word ‘delivery’ for the word ‘transfer’, reference leasing transactions and style.

Purposes:

1. Delivery of goods by use of a document of title does not limit or displace the ordinary obligations of a seller or lessor as to any warranties regarding the goods that arises under other law. If the transfer of documents attends or follows the making of a contract for the sale or lease of goods, the general obligations on warranties as to the goods (Sections 2‑312 through 2‑318 and Sections 2A‑210 through 2A‑316) are brought to bear as well as the special warranties under this section.

2. The limited warranties of a delivering or collecting intermediary, including a collecting bank, are stated in Section 7‑508.

Cross References:

Point 1: Sections 2‑312 through 2‑318 and 2A‑310‑through 2A‑316.

Point 2: Section 7‑508.

Definitional Cross References:

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Genuine’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

‘Purchaser’. Section 1‑201.

‘Value’. Section 1‑204.

Section 36‑7‑508. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority. This rule applies even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑508.

Changes: Changes for style only.

Purposes:

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See Section 4‑203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7‑507.

3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5. On the meaning of draft, see Section 4‑104 and Section 5‑102, comment 11.

Cross References:

Sections 4‑104, 4‑203, 4‑501 through 4‑504, 5‑102, and 7‑507.

Definitional Cross References:

‘Collecting bank’. Section 4‑105.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑102.

‘Documentary draft’. Section 4‑104.

‘Intermediary bank’. Section 4‑105.

‘Good faith’. Section 1‑201 [7‑102.]

Section 36‑7‑509. The question whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by the chapters on sales (Chapter 2), leases (Chapter 2A), and on letters of credit (Chapter 5).

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑509

Changes: To reference Article 2A.

Purposes:

To reference the Articles of this Act which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

Cross References: Articles 2, 2A and 5.

Definitional Cross References:

‘Contract for sale’. Section 2‑106.

‘Document of title’. Section 1‑201.

‘Lease’. Section 2A‑103.

PART 6

Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

Section 36‑7‑601. (a) If a document is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss because of nonsurrender of possession or control of the document is adequately protected against the law. If the document was nonnegotiable, the court may require security. The court also may order payment of the bailee’s reasonable costs and attorney’s fees in any action under this subsection.

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

OFFICIAL COMMENT

Prior Uniform Statutory Provision: Former Section 7‑601.

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

Purposes:

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

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

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

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

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

Cross References:

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

Point 2: Section 7‑105.

Point 3: Section 7‑403.

Point 4: Section 7‑403.

Point 5: Sections 7‑209 and 7‑307.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Good faith’. Section 1‑201 [7‑102].

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

Section 36‑7‑602. Unless a document of title was originally issued upon delivery of the goods by a person that had no power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document’s negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: Former Section 7‑602.

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

Purposes:

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

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

Cross Reference:

Sections 7‑106 and 7‑501 through 7‑503.

Definitional Cross References:

‘Bailee’. Section 7‑102.

‘Delivery’. Section 1‑201.

‘Document of title’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Notice’. Section 1‑202.

‘Person’. Section 1‑201.

‘Purchase’. Section 1‑201.

‘Value’. Section 1‑204.

Section 36‑7‑603. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.”

OFFICIAL COMMENT

Prior Uniform Statutory Provisions: Former Section 7‑603.

Changes: Changes for style only.

Purposes:

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

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

Cross reference:

Point 1: Section 7‑403.

Definitional Cross References:

‘Action’. Section 1‑201.

‘Bailee’. Section 7‑102.

‘Delivery’. Section 1‑201.

‘Goods’. Section 7‑102.

‘Person’. Section 1‑201.

‘Reasonable time’. Section 1‑205.”

SECTION 2. This act takes effect upon approval by the Governor.

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