

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5327**

A bill to amend 1962 PA 174, entitled
"Uniform commercial code,"
by amending sections 1105, 2512, 5101, 5102, 5103, 5104, 5105,
5106, 5107, 5108, 5109, 5110, 5111, 5112, 5113, 5114, 5115, 5116,
5117, 9103, 9104, 9105, 9106, 9304, and 9305 (MCL 440.1105,
440.2512, 440.5101, 440.5102, 440.5103, 440.5104, 440.5105,
440.5106, 440.5107, 440.5108, 440.5109, 440.5110, 440.5111,
440.5112, 440.5113, 440.5114, 440.5115, 440.5116, 440.5117,
440.9103, 440.9104, 440.9105, 440.9106, 440.9304, and 440.9305),
sections 1105, 5114, 9103, 9105, 9106, 9304, and 9305 as amended
by 1998 PA 278.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1105. (1) Except as provided hereafter in this
2 section, when a transaction bears a reasonable relation to this
3 state and also to another state or nation the parties may agree

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1 that the law either of this state or of such other state or
2 nation shall govern their rights and duties. Failing such agree-
3 ment this act applies to transactions bearing an appropriate
4 relation to this state.

5 (2) Where 1 of the following provisions of this act speci-
6 fies the applicable law, that provision governs and a contrary
7 agreement is effective only to the extent permitted by the law
8 (including the conflict of laws rules) so specified:

9 Rights of creditors against sold goods.	Section 2402.
10 Applicability of the article on bank deposits and	
11 collections.	Section 4102.
12 Governing law in the article on funds transfers.	Section 4A502.
13 LETTERS OF CREDIT.	SECTION 5116.
14 Bulk transfers subject to the article on bulk	
15 transfers.	Section 6102.
16 Applicability of the article on investment	
17 securities.	Section 8110.
18 Applicability of the article on leases. Sections 2A105 and 2A106.	
19 Perfection provisions of the article on secured	
20 transactions.	Section 9103.

21 Sec. 2512. (1) ~~Where~~ IF the contract requires payment
22 before inspection nonconformity of the goods does not excuse the
23 buyer from so making payment unless

24 (a) the nonconformity appears without inspection; or

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1 (b) despite tender of the required documents the
2 circumstances would justify injunction against honor under ~~the~~
3 ~~provisions of~~ this act (section ~~5114~~ 5109(B)).

4 (2) Payment pursuant to subsection (1) does not constitute
5 an acceptance of goods or impair the buyers right to inspect or
6 any of his OR HER remedies.

7 Sec. 5101. This article ~~shall be known and~~ may be cited
8 as uniform commercial code--letters of credit.

9 Sec. 5102. ~~(1) This article applies~~

10 ~~(a) to a credit issued by a bank if the credit requires a~~
11 ~~documentary draft or a documentary demand for payment; and~~

12 ~~(b) to a credit issued by a person other than a bank if the~~
13 ~~credit requires that the draft or demand for payment be accom-~~
14 ~~panied by a document of title; and~~

15 ~~(c) to a credit issued by a bank or other person if the~~
16 ~~credit is not within subparagraphs (a) or (b) but conspicuously~~
17 ~~states that it is a letter of credit or is conspicuously so~~
18 ~~entitled.~~

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

23 ~~(3) This article deals with some but not all of the rules~~
24 ~~and concepts of letters of credit as such rules or concepts have~~
25 ~~developed prior to this act or may hereafter develop. The fact~~
26 ~~that this article states a rule does not by itself require, imply~~
27 ~~or negate application of the same or a converse rule to a~~

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1 ~~situation not provided for or to a person not specified by this~~
2 ~~article.~~

3 (1) AS USED IN THIS ARTICLE:

4 (A) "ADVISER" MEANS A PERSON WHO, AT THE REQUEST OF THE
5 ISSUER, A CONFIRMER, OR ANOTHER ADVISER, NOTIFIES OR REQUESTS
6 ANOTHER ADVISER TO NOTIFY THE BENEFICIARY THAT A LETTER OF CREDIT
7 HAS BEEN ISSUED, CONFIRMED, OR AMENDED.

8 (B) "APPLICANT" MEANS A PERSON AT WHOSE REQUEST OR FOR WHOSE
9 ACCOUNT A LETTER OF CREDIT IS ISSUED. THE TERM INCLUDES A PERSON
10 WHO REQUESTS AN ISSUER TO ISSUE A LETTER OF CREDIT ON BEHALF OF
11 ANOTHER IF THE PERSON MAKING THE REQUEST UNDERTAKES AN OBLIGATION
12 TO REIMBURSE THE ISSUER.

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

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

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

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

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1 (i) PRESENTED IN A WRITTEN OR OTHER MEDIUM PERMITTED BY THE
2 LETTER OF CREDIT OR, UNLESS PROHIBITED BY THE LETTER OF CREDIT,
3 BY THE STANDARD PRACTICE REFERRED TO IN SECTION 5108(5).

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

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

8 (H) "HONOR" OF A LETTER OF CREDIT MEANS PERFORMANCE OF THE
9 ISSUER'S UNDERTAKING IN THE LETTER OF CREDIT TO PAY OR DELIVER AN
10 ITEM OF VALUE. UNLESS THE LETTER OF CREDIT OTHERWISE PROVIDES,
11 "HONOR" OCCURS:

12 (i) UPON PAYMENT.

13 (ii) IF THE LETTER OF CREDIT PROVIDES FOR ACCEPTANCE, UPON
14 ACCEPTANCE OF A DRAFT AND, AT MATURITY, ITS PAYMENT.

15 (iii) IF THE LETTER OF CREDIT PROVIDES FOR INCURRING A
16 DEFERRED OBLIGATION, UPON INCURRING THE OBLIGATION AND, AT MATU-
17 RITY, ITS PERFORMANCE.

18 (I) "ISSUER" MEANS A BANK OR OTHER PERSON THAT ISSUES A
19 LETTER OF CREDIT, BUT DOES NOT INCLUDE AN INDIVIDUAL WHO MAKES AN
20 ENGAGEMENT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

21 (J) "LETTER OF CREDIT" MEANS A DEFINITE UNDERTAKING THAT
22 SATISFIES THE REQUIREMENTS OF SECTION 5104 BY AN ISSUER TO A BEN-
23 EFICIARY AT THE REQUEST OR FOR THE ACCOUNT OF AN APPLICANT OR, IN
24 THE CASE OF A FINANCIAL INSTITUTION, TO ITSELF OR FOR ITS OWN
25 ACCOUNT, TO HONOR A DOCUMENTARY PRESENTATION BY PAYMENT OR DELIV-
26 ERY OF AN ITEM OF VALUE.

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1 (K) "NOMINATED PERSON" MEANS BOTH OF THE FOLLOWING:

2 (i) A PERSON WHOM THE ISSUER DESIGNATES OR AUTHORIZES TO
3 PAY, ACCEPT, NEGOTIATE, OR OTHERWISE GIVE VALUE UNDER A LETTER OF
4 CREDIT.

5 (ii) A PERSON WHOM THE ISSUER UNDERTAKES BY AGREEMENT OR
6 CUSTOM AND PRACTICE TO REIMBURSE.

7 (L) "PRESENTATION" MEANS DELIVERY OF A DOCUMENT TO AN ISSUER
8 OR NOMINATED PERSON FOR HONOR OR GIVING OF VALUE UNDER A LETTER
9 OF CREDIT.

10 (M) "PRESENTER" MEANS A PERSON MAKING A PRESENTATION AS OR
11 ON BEHALF OF A BENEFICIARY OR NOMINATED PERSON.

12 (N) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGI-
13 BLE MEDIUM, OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM
14 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

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

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

23 "ACCEPT" OR "ACCEPTANCE" SECTION 3409.

24 "VALUE" SECTIONS 3303 AND 4211.

25 (3) ARTICLE 1 CONTAINS CERTAIN ADDITIONAL GENERAL DEFINI-
26 TIONS AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION
27 APPLICABLE THROUGHOUT THIS ARTICLE.

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1 Sec. 5103. ~~(1) In this article unless the context~~
2 ~~otherwise requires~~

3 ~~(a) "Credit" or "letter of credit" means an engagement by a~~
4 ~~bank or other person made at the request of a customer and of a~~
5 ~~kind within the scope of this article (section 5102) that the~~
6 ~~issuer will honor drafts or other demands for payment upon com-~~
7 ~~pliance with the conditions specified in the credit. A credit~~
8 ~~may be either revocable or irrevocable. The engagement may be~~
9 ~~either an agreement to honor or a statement that the bank or~~
10 ~~other person is authorized to honor.~~

11 ~~(b) A "documentary draft" or a "documentary demand for~~
12 ~~payment" is one honor of which is conditioned upon the presenta-~~
13 ~~tion of a document or documents. "Document" means any paper~~
14 ~~including document of title, security, invoice, certificate,~~
15 ~~notice of default and the like.~~

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

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

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

21 ~~(f) A "confirming bank" is a bank which engages either that~~
22 ~~it will itself honor a credit already issued by another bank or~~
23 ~~that such a credit will be honored by the issuer or a third~~
24 ~~bank.~~

25 ~~(g) A "customer" is a buyer or other person who causes an~~
26 ~~issuer to issue a credit. The term also includes a bank which~~

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1 ~~procures issuance or confirmation on behalf of that bank's~~
2 ~~customer.~~

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

5

6 ~~"Notation of credit". Section 5108.~~

7 ~~"Presenter". Section 5112(3).~~

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

10

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

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

13 ~~"Draft". Section 3104.~~

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

15 ~~"Midnight deadline". Section 4104.~~

16 ~~"Security". Section 8102.~~

17 ~~(4) In addition, article 1 contains general definitions and~~
18 ~~principles of construction and interpretation applicable through-~~
19 ~~out this article.~~

20 (1) THIS ARTICLE APPLIES TO LETTERS OF CREDIT AND TO CERTAIN
21 RIGHTS AND OBLIGATIONS ARISING OUT OF TRANSACTIONS INVOLVING LET-
22 TERS OF CREDIT.

23 (2) THE STATEMENT OF A RULE IN THIS ARTICLE DOES NOT BY
24 ITSELF REQUIRE, IMPLY, OR NEGATE APPLICATION OF THE SAME OR A
25 DIFFERENT RULE TO A SITUATION NOT PROVIDED FOR, OR TO A PERSON
26 NOT SPECIFIED, IN THIS ARTICLE.

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

10 (4) RIGHTS AND OBLIGATIONS OF AN ISSUER TO A BENEFICIARY OR
11 A NOMINATED PERSON UNDER A LETTER OF CREDIT ARE INDEPENDENT OF
12 THE EXISTENCE, PERFORMANCE, OR NONPERFORMANCE OF A CONTRACT OR
13 ARRANGEMENT OUT OF WHICH THE LETTER OF CREDIT ARISES OR WHICH
14 UNDERLIES IT, INCLUDING CONTRACTS OR ARRANGEMENTS BETWEEN THE
15 ISSUER AND THE APPLICANT AND BETWEEN THE APPLICANT AND THE
16 BENEFICIARY.

17 Sec. 5104. ~~(1) Except as otherwise required in subsection~~
18 ~~(1) (c) of section 5102 on scope, no particular form of phrasing~~
19 ~~is required for a credit. A credit must be in writing and signed~~
20 ~~by the issuer and a confirmation must be in writing and signed by~~
21 ~~the confirming bank. A modification of the terms of a credit or~~
22 ~~confirmation must be signed by the issuer or confirming bank.~~

23 ~~(2) A telegram may be a sufficient signed writing if it~~
24 ~~identifies its sender by an authorized authentication. The~~
25 ~~authentication may be in code and the authorized naming of the~~
26 ~~issuer in an advice of credit is a sufficient signing. A LETTER~~
27 OF CREDIT, CONFIRMATION, ADVICE, TRANSFER, AMENDMENT, OR

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1 CANCELLATION MAY BE ISSUED IN ANY FORM THAT IS A RECORD AND IS
2 AUTHENTICATED BY 1 OR MORE OF THE FOLLOWING:

3 (A) A SIGNATURE.

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

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

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

10 Sec. 5106. ~~(1) Unless otherwise agreed a credit is estab-
11 lished~~

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

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

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

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

25 ~~(4) Notwithstanding any modification or revocation of a
26 revocable credit any person authorized to honor or negotiate
27 under the terms of the original credit is entitled to~~

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1 ~~reimbursement for or honor of any draft or demand for payment~~
2 ~~duly honored or negotiated before receipt of notice of the modi-~~
3 ~~fication or revocation and the issuer in turn is entitled to~~
4 ~~reimbursement from its customer.~~

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

10 (2) AFTER A LETTER OF CREDIT IS ISSUED, RIGHTS AND OBLIGA-
11 TIONS OF A BENEFICIARY, APPLICANT, CONFIRMER, AND ISSUER ARE NOT
12 AFFECTED BY AN AMENDMENT OR CANCELLATION TO WHICH THAT PERSON HAS
13 NOT CONSENTED EXCEPT TO THE EXTENT THE LETTER OF CREDIT PROVIDES
14 THAT IT IS REVOCABLE OR THAT THE ISSUER MAY AMEND OR CANCEL THE
15 LETTER OF CREDIT WITHOUT THAT CONSENT.

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

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

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

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

5 ~~(3) Even though an advising bank incorrectly advises the~~
6 ~~terms of a credit it has been authorized to advise the credit is~~
7 ~~established as against the issuer to the extent of its original~~
8 ~~terms.~~

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

12 (1) A CONFIRMER IS DIRECTLY OBLIGATED ON A LETTER OF CREDIT
13 AND HAS THE RIGHTS AND OBLIGATIONS OF AN ISSUER TO THE EXTENT OF
14 ITS CONFIRMATION. THE CONFIRMER ALSO HAS RIGHTS AGAINST AND
15 OBLIGATIONS TO THE ISSUER AS IF THE ISSUER WERE AN APPLICANT AND
16 THE CONFIRMER HAD ISSUED THE LETTER OF CREDIT AT THE REQUEST AND
17 FOR THE ACCOUNT OF THE ISSUER.

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

20 (3) A PERSON REQUESTED TO ADVISE MAY DECLINE TO ACT AS AN
21 ADVISER. AN ADVISER THAT IS NOT A CONFIRMER IS NOT OBLIGATED TO
22 HONOR OR GIVE VALUE FOR A PRESENTATION. AN ADVISER UNDERTAKES TO
23 THE ISSUER AND TO THE BENEFICIARY ACCURATELY TO ADVISE THE TERMS
24 OF THE LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE
25 RECEIVED BY THAT PERSON AND UNDERTAKES TO THE BENEFICIARY TO
26 CHECK THE APPARENT AUTHENTICITY OF THE REQUEST TO ADVISE. EVEN

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1 IF THE ADVICE IS INACCURATE, THE LETTER OF CREDIT, CONFIRMATION,
2 OR AMENDMENT IS ENFORCEABLE AS ISSUED.

3 (4) A PERSON WHO NOTIFIES A TRANSFEREE BENEFICIARY OF THE
4 TERMS OF A LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE
5 HAS THE RIGHTS AND OBLIGATIONS OF AN ADVISER UNDER SUBSECTION
6 (3). THE TERMS IN THE NOTICE TO THE TRANSFEREE BENEFICIARY MAY
7 DIFFER FROM THE TERMS IN ANY NOTICE TO THE TRANSFEROR BENEFICIARY
8 TO THE EXTENT PERMITTED BY THE LETTER OF CREDIT, CONFIRMATION,
9 AMENDMENT, OR ADVICE RECEIVED BY THE PERSON WHO SO NOTIFIES.

10 Sec. 5108. ~~(1) A credit which specifies that any person~~
11 ~~purchasing or paying drafts drawn or demands for payment made~~
12 ~~under it must note the amount of the draft or demand on the~~
13 ~~letter or advice of credit is a "notation of credit".~~

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

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

20 ~~(b) unless the credit or a signed statement that an appro-~~
21 ~~priate notation has been made accompanies the draft or demand for~~
22 ~~payment the issuer may delay honor until evidence of notation has~~
23 ~~been procured which is satisfactory to it but its obligation and~~
24 ~~that of its customer continue for a reasonable time not exceeding~~
25 ~~30 days to obtain such evidence.~~

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

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

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

8 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 5109, AN ISSUER
9 SHALL HONOR A PRESENTATION THAT, AS DETERMINED BY THE STANDARD
10 PRACTICE REFERRED TO IN SUBSECTION (5), APPEARS ON ITS FACE
11 STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF
12 CREDIT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 5113 AND UNLESS
13 OTHERWISE AGREED WITH THE APPLICANT, AN ISSUER SHALL DISHONOR A
14 PRESENTATION THAT DOES NOT APPEAR TO COMPLY.

15 (2) AN ISSUER HAS A REASONABLE TIME AFTER PRESENTATION, BUT
16 NOT BEYOND THE END OF THE SEVENTH BUSINESS DAY OF THE ISSUER
17 AFTER THE DAY OF ITS RECEIPT OF DOCUMENTS TO DO 1 OR MORE OF THE
18 FOLLOWING:

19 (A) TO HONOR.

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

23 (C) TO GIVE NOTICE TO THE PRESENTER OF DISCREPANCIES IN THE
24 PRESENTATION.

25 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), AN
26 ISSUER IS PRECLUDED FROM ASSERTING AS A BASIS FOR DISHONOR ANY

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1 DISCREPANCY IF TIMELY NOTICE IS NOT GIVEN, OR ANY DISCREPANCY NOT
2 STATED IN THE NOTICE IF TIMELY NOTICE IS GIVEN.

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

8 (5) AN ISSUER SHALL OBSERVE STANDARD PRACTICE OF FINANCIAL
9 INSTITUTIONS THAT REGULARLY ISSUE LETTERS OF CREDIT.
10 DETERMINATION OF THE ISSUER'S OBSERVANCE OF THE STANDARD PRACTICE
11 IS A MATTER OF INTERPRETATION FOR THE COURT. THE COURT SHALL
12 OFFER THE PARTIES A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE OF
13 THE STANDARD PRACTICE.

14 (6) AN ISSUER IS NOT RESPONSIBLE FOR:

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

17 (B) AN ACT OR OMISSION OF OTHERS.

18 (C) OBSERVANCE OR KNOWLEDGE OF THE USAGE OF A PARTICULAR
19 TRADE OTHER THAN THE STANDARD PRACTICE REFERRED TO IN SUBSECTION
20 (5).

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

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

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

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

6 (B) TAKES THE DOCUMENTS FREE OF CLAIMS OF THE BENEFICIARY OR
7 PRESENTER.

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

10 (D) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 5110 AND 5117,
11 IS PRECLUDED FROM RESTITUTION OF MONEY PAID OR OTHER VALUE GIVEN
12 BY MISTAKE TO THE EXTENT THE MISTAKE CONCERNS DISCREPANCIES IN
13 THE DOCUMENTS OR TENDER WHICH ARE APPARENT ON THE FACE OF THE
14 PRESENTATION.

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

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

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

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

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1 ~~(c) based on knowledge or lack of knowledge of any usage of~~
2 ~~any particular trade.~~

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

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

11 (1) IF A PRESENTATION IS MADE THAT APPEARS ON ITS FACE
12 STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF
13 CREDIT, BUT A REQUIRED DOCUMENT IS FORGED OR MATERIALLY FRAUDU-
14 LENT, OR HONOR OF THE PRESENTATION WOULD FACILITATE A MATERIAL
15 FRAUD BY THE BENEFICIARY ON THE ISSUER OR APPLICANT:

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

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

20 (ii) A CONFIRMER WHO HAS HONORED ITS CONFIRMATION IN GOOD
21 FAITH.

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

25 (iv) AN ASSIGNEE OF THE ISSUER'S OR NOMINATED PERSON'S
26 DEFERRED OBLIGATION THAT WAS TAKEN FOR VALUE AND WITHOUT NOTICE

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1 OF FORGERY OR MATERIAL FRAUD AFTER THE OBLIGATION WAS INCURRED BY
2 THE ISSUER OR NOMINATED PERSON.

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

5 (2) IF AN APPLICANT CLAIMS THAT A REQUIRED DOCUMENT IS
6 FORGED OR MATERIALLY FRAUDULENT OR THAT HONOR OF THE PRESENTATION
7 WOULD FACILITATE A MATERIAL FRAUD BY THE BENEFICIARY ON THE
8 ISSUER OR APPLICANT, A COURT OF COMPETENT JURISDICTION MAY TEMPO-
9 RARILY OR PERMANENTLY ENJOIN THE ISSUER FROM HONORING A PRESENTA-
10 TION OR GRANT SIMILAR RELIEF AGAINST THE ISSUER OR OTHER PERSONS
11 ONLY IF THE COURT FINDS ALL OF THE FOLLOWING:

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

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

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

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

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

25 ~~(2) Unless otherwise specified a person by presenting a doc-~~
26 ~~umentary draft or demand for payment under a credit relinquishes~~
27 ~~upon its honor all claims to the documents and a person by~~

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1 (1) IF AN ISSUER WRONGFULLY DISHONORS OR REPUDIATES ITS
2 OBLIGATION TO PAY MONEY UNDER A LETTER OF CREDIT BEFORE
3 PRESENTATION, THE BENEFICIARY, SUCCESSOR, OR NOMINATED PERSON
4 PRESENTING ON ITS OWN BEHALF MAY RECOVER FROM THE ISSUER THE
5 AMOUNT THAT IS THE SUBJECT OF THE DISHONOR OR REPUDIATION. IF
6 THE ISSUER'S OBLIGATION UNDER THE LETTER OF CREDIT IS NOT FOR THE
7 PAYMENT OF MONEY, THE CLAIMANT MAY OBTAIN SPECIFIC PERFORMANCE
8 OR, AT THE CLAIMANT'S ELECTION, RECOVER AN AMOUNT EQUAL TO THE
9 VALUE OF PERFORMANCE FROM THE ISSUER. IN EITHER CASE, THE CLAIM-
10 ANT MAY ALSO RECOVER INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES.
11 THE CLAIMANT IS NOT OBLIGATED TO TAKE ACTION TO AVOID DAMAGES
12 THAT MIGHT BE DUE FROM THE ISSUER UNDER THIS SUBSECTION. IF,
13 ALTHOUGH NOT OBLIGATED TO DO SO, THE CLAIMANT AVOIDS DAMAGES, THE
14 CLAIMANT'S RECOVERY FROM THE ISSUER MUST BE REDUCED BY THE AMOUNT
15 OF DAMAGES AVOIDED. THE ISSUER HAS THE BURDEN OF PROVING THE
16 AMOUNT OF DAMAGES AVOIDED. IN THE CASE OF REPUDIATION THE CLAIM-
17 ANT NEED NOT PRESENT ANY DOCUMENT.

18 (2) IF AN ISSUER WRONGFULLY DISHONORS A DRAFT OR DEMAND
19 PRESENTED UNDER A LETTER OF CREDIT OR HONORS A DRAFT OR DEMAND IN
20 BREACH OF ITS OBLIGATION TO THE APPLICANT, THE APPLICANT MAY
21 RECOVER DAMAGES RESULTING FROM THE BREACH, INCLUDING INCIDENTAL
22 BUT NOT CONSEQUENTIAL DAMAGES, LESS ANY AMOUNT SAVED AS A RESULT
23 OF THE BREACH.

24 (3) IF AN ADVISER OR NOMINATED PERSON OTHER THAN A CONFIRMER
25 BREACHES AN OBLIGATION UNDER THIS ARTICLE OR AN ISSUER BREACHES
26 AN OBLIGATION NOT COVERED IN SUBSECTION (1) OR (2), A PERSON TO
27 WHOM THE OBLIGATION IS OWED MAY RECOVER DAMAGES RESULTING FROM

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1 THE BREACH, INCLUDING INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES,
2 LESS ANY AMOUNT SAVED AS A RESULT OF THE BREACH. TO THE EXTENT
3 OF THE CONFIRMATION, A CONFIRMER HAS THE LIABILITY OF AN ISSUER
4 SPECIFIED IN THIS SUBSECTION AND SUBSECTIONS (1) AND (2).

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

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

12 (6) DAMAGES THAT WOULD OTHERWISE BE PAYABLE BY A PARTY FOR
13 BREACH OF AN OBLIGATION UNDER THIS ARTICLE MAY BE LIQUIDATED BY
14 AGREEMENT OR UNDERTAKING, BUT ONLY IN AN AMOUNT OR BY A FORMULA
15 THAT IS REASONABLE IN LIGHT OF THE HARM ANTICIPATED.

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

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

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

26 ~~(2) Upon dishonor the bank may unless otherwise instructed~~
27 ~~fulfill its duty to return the draft or demand and the documents~~

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1 ~~by holding them at the disposal of the presenter and sending him~~
2 ~~an advice to that effect.~~

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

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

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

14 (A) THE TRANSFER WOULD VIOLATE APPLICABLE LAW.

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

20 Sec. 5113. ~~(1) A bank seeking to obtain (whether for~~
21 ~~itself or another) honor, negotiation or reimbursement under a~~
22 ~~credit may give an indemnity to induce such honor, negotiation or~~
23 ~~reimbursement.~~

24 ~~(2) An indemnity agreement inducing honor, negotiation or~~
25 ~~reimbursement~~

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

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1 ~~(b) unless a longer time is explicitly agreed expires at the~~
2 ~~end of 10 business days following receipt of the documents by the~~
3 ~~ultimate customer unless notice of objection is sent before such~~
4 ~~expiration date. The ultimate customer may send notice of objec-~~
5 ~~tion to the person from whom he received the documents and any~~
6 ~~bank receiving such notice is under a duty to send notice to its~~
7 ~~transferor before its midnight deadline.~~

8 (1) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS,
9 SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF
10 VALUE IN THE NAME OF THE BENEFICIARY WITHOUT DISCLOSING ITS
11 STATUS AS A SUCCESSOR.

12 (2) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS,
13 SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF
14 VALUE IN ITS OWN NAME AS THE DISCLOSED SUCCESSOR OF THE
15 BENEFICIARY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), AN
16 ISSUER SHALL RECOGNIZE A DISCLOSED SUCCESSOR OF A BENEFICIARY AS
17 BENEFICIARY IN FULL SUBSTITUTION FOR ITS PREDECESSOR UPON COMPLI-
18 ANCE WITH THE REQUIREMENTS FOR RECOGNITION BY THE ISSUER OF A
19 TRANSFER OF DRAWING RIGHTS BY OPERATION OF LAW UNDER THE STANDARD
20 PRACTICE REFERRED TO IN SECTION 5108(5) OR, IN THE ABSENCE OF
21 SUCH A PRACTICE, COMPLIANCE WITH OTHER REASONABLE PROCEDURES SUFFI-
22 CIENT TO PROTECT THE ISSUER.

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

26 (4) HONOR OF A PURPORTED SUCCESSOR'S APPARENTLY COMPLYING
27 PRESENTATION UNDER SUBSECTION (1) OR (2) HAS THE CONSEQUENCES

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1 SPECIFIED IN SECTION 5108(9) EVEN IF THE PURPORTED SUCCESSOR IS
2 NOT THE SUCCESSOR OF A BENEFICIARY. DOCUMENTS SIGNED IN THE NAME
3 OF THE BENEFICIARY OR OF A DISCLOSED SUCCESSOR BY A PERSON WHO IS
4 NEITHER THE BENEFICIARY NOR THE SUCCESSOR OF THE BENEFICIARY ARE
5 FORGED DOCUMENTS FOR THE PURPOSES OF SECTION 5109.

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

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

13 Sec. 5114. ~~(1) An issuer must honor a draft or demand for~~
14 ~~payment which complies with the terms of the relevant credit~~
15 ~~regardless of whether the goods or documents conform to the~~
16 ~~underlying contract for sale or other contract between the cus-~~
17 ~~tommer and the beneficiary. The issuer is not excused from honor~~
18 ~~of such a draft or demand by reason of an additional general term~~
19 ~~that all documents must be satisfactory to the issuer, but an~~
20 ~~issuer may require that specified documents must be satisfactory~~
21 ~~to it.~~

22 ~~(2) Unless otherwise agreed when documents appear on their~~
23 ~~face to comply with the terms of a credit, but a required docu-~~
24 ~~ment does not in fact conform to the warranties made on negotia-~~
25 ~~tion or transfer of a document of title (section 7507) or of a~~
26 ~~certificated security (section 8108) or is forged or fraudulent~~
27 ~~or there is fraud in the transaction.~~

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1 ~~(a) the issuer must honor the draft on demand for payment if~~
2 ~~honor is demanded by a negotiating bank or other holder of the~~
3 ~~draft or demand which has taken the draft or demand under the~~
4 ~~credit and under circumstances which would make it a holder in~~
5 ~~due course (section 3302) and in an appropriate case would make~~
6 ~~it a person to whom a document of title has been duly negotiated~~
7 ~~(section 7502) or a bona fide purchaser of a certificated secur-~~
8 ~~ity (section 8302); and~~

9 ~~(b) in all other cases as against its customer, an issuer~~
10 ~~acting in good faith may honor the draft or demand for payment~~
11 ~~despite notification from the customer of fraud, forgery or other~~
12 ~~defect not apparent on the face of the documents but a court of~~
13 ~~appropriate jurisdiction may enjoin such honor.~~

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

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

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

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

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

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

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

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

18 (3) AN ISSUER OR NOMINATED PERSON NEED NOT RECOGNIZE AN
19 ASSIGNMENT OF PROCEEDS OF A LETTER OF CREDIT UNTIL IT CONSENTS TO
20 THE ASSIGNMENT.

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

26 (5) RIGHTS OF A TRANSFEREE BENEFICIARY OR NOMINATED PERSON
27 ARE INDEPENDENT OF THE BENEFICIARY'S ASSIGNMENT OF THE PROCEEDS

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1 OF A LETTER OF CREDIT AND ARE SUPERIOR TO THE ASSIGNEE'S RIGHT TO
2 THE PROCEEDS.

3 (6) THE RIGHTS RECOGNIZED BY THIS SECTION BETWEEN AN
4 ASSIGNEE AND AN ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED
5 PERSON OR THE ISSUER'S OR NOMINATED PERSON'S PAYMENT OF PROCEEDS
6 TO AN ASSIGNEE OR A THIRD PERSON DO NOT AFFECT THE RIGHTS BETWEEN
7 THE ASSIGNEE AND ANY PERSON OTHER THAN THE ISSUER, TRANSFEREE
8 BENEFICIARY, OR NOMINATED PERSON. THE MODE OF CREATING AND PER-
9 FECTING A SECURITY INTEREST IN OR GRANTING AN ASSIGNMENT OF A
10 BENEFICIARY'S RIGHTS TO PROCEEDS IS GOVERNED BY ARTICLE 9 OR
11 OTHER LAW. AGAINST PERSONS OTHER THAN THE ISSUER, TRANSFEREE
12 BENEFICIARY, OR NOMINATED PERSON, THE RIGHTS AND OBLIGATIONS
13 ARISING UPON THE CREATION OF A SECURITY INTEREST OR OTHER ASSIGN-
14 MENT OF A BENEFICIARY'S RIGHT TO PROCEEDS AND ITS PERFECTION ARE
15 GOVERNED BY ARTICLE 9 OR OTHER LAW.

16 Sec. 5115. ~~(1) When an issuer wrongfully dishonors a draft~~
17 ~~or demand for payment presented under a credit the person enti-~~
18 ~~ttled to honor has with respect to any documents the rights of a~~
19 ~~person in the position of a seller (section 2707) and may recover~~
20 ~~from the issuer the face amount of the draft or demand together~~
21 ~~with incidental damages under section 2710 on seller's incidental~~
22 ~~damages and interest but less any amount realized by resale or~~
23 ~~other use or disposition of the subject matter of the~~
24 ~~transaction. In the event no resale or other utilization is made~~
25 ~~the documents, goods or other subject matter involved in the~~
26 ~~transaction must be turned over to the issuer on payment of~~
27 ~~judgment.~~

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1 ~~(2) When an issuer wrongfully cancels or otherwise~~
2 ~~repudiates a credit before presentment of a draft or demand for~~
3 ~~payment drawn under it the beneficiary has the rights of a seller~~
4 ~~after anticipatory repudiation by the buyer under section 2610 if~~
5 ~~he learns of the repudiation in time reasonably to avoid procure-~~
6 ~~ment of the required documents. Otherwise the beneficiary has an~~
7 ~~immediate right of action for wrongful dishonor. AN ACTION TO~~
8 ~~ENFORCE A RIGHT OR OBLIGATION ARISING UNDER THIS ARTICLE MUST BE~~
9 ~~COMMENCED WITHIN 1 YEAR AFTER THE EXPIRATION DATE OF THE RELEVANT~~
10 ~~LETTER OF CREDIT OR 1 YEAR AFTER THE CAUSE OF ACTION ACCRUES,~~
11 ~~WHICHEVER OCCURS LATER. A CAUSE OF ACTION ACCRUES WHEN THE~~
12 ~~BREACH OCCURS, REGARDLESS OF THE AGGRIEVED PARTY'S LACK OF KNOWL-~~
13 ~~EDGE OF THE BREACH.~~

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

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

23 ~~(a) The assignment is ineffective until the letter of credit~~
24 ~~or advice of credit is delivered to the assignee which delivery~~
25 ~~constitutes perfection of the security interest under article 9;~~
26 ~~and~~

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1 ~~(b) The issuer may honor drafts or demands for payment drawn~~
2 ~~under the credit until it receives a notification of the~~
3 ~~assignment signed by the beneficiary which reasonably identifies~~
4 ~~the credit involved in the assignment and contains a request to~~
5 ~~pay the assignee; and~~

6 ~~(c) After what reasonably appears to be such a notification~~
7 ~~has been received the issuer may without dishonor refuse to~~
8 ~~accept or pay even to a person otherwise entitled to honor until~~
9 ~~the letter of credit or advice of credit is exhibited to the~~
10 ~~issuer.~~

11 ~~(3) Except where the beneficiary has effectively assigned~~
12 ~~his right to draw or his right to proceeds, nothing in this sec-~~
13 ~~tion limits his right to transfer or negotiate drafts or demands~~
14 ~~drawn under the credit.~~

15 (1) THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER
16 FOR ACTION OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION
17 CHOSEN BY AN AGREEMENT IN THE FORM OF A RECORD SIGNED OR OTHER-
18 WISE AUTHENTICATED BY THE AFFECTED PARTIES IN THE MANNER PROVIDED
19 IN SECTION 5104 OR BY A PROVISION IN THE PERSON'S LETTER OF
20 CREDIT, CONFIRMATION, OR OTHER UNDERTAKING. THE JURISDICTION
21 WHOSE LAW IS CHOSEN NEED NOT BEAR ANY RELATION TO THE
22 TRANSACTION.

23 (2) UNLESS SUBSECTION (1) APPLIES, THE LIABILITY OF AN
24 ISSUER, NOMINATED PERSON, OR ADVISER FOR ACTION OR OMISSION IS
25 GOVERNED BY THE LAW OF THE JURISDICTION IN WHICH THE PERSON IS
26 LOCATED. THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS
27 INDICATED IN THE PERSON'S UNDERTAKING. IF MORE THAN 1 ADDRESS IS

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1 INDICATED, THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS
2 FROM WHICH THE PERSON'S UNDERTAKING WAS ISSUED. FOR THE PURPOSE
3 OF JURISDICTION, CHOICE OF LAW, AND RECOGNITION OF INTERBRANCH
4 LETTERS OF CREDIT, BUT NOT ENFORCEMENT OF A JUDGMENT, ALL
5 BRANCHES OF A BANK ARE CONSIDERED SEPARATE JURIDICAL ENTITIES AND
6 A BANK IS CONSIDERED TO BE LOCATED AT THE PLACE WHERE ITS RELE-
7 VANT BRANCH IS CONSIDERED TO BE LOCATED UNDER THIS SUBSECTION.

8 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
9 LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER IS GOVERNED
10 BY ANY RULES OF CUSTOM OR PRACTICE, SUCH AS THE UNIFORM CUSTOMS
11 AND PRACTICE FOR DOCUMENTARY CREDITS, TO WHICH THE LETTER OF
12 CREDIT, CONFIRMATION, OR OTHER UNDERTAKING IS EXPRESSLY MADE
13 SUBJECT. IF THIS ARTICLE WOULD GOVERN THE LIABILITY OF AN
14 ISSUER, NOMINATED PERSON, OR ADVISER UNDER SUBSECTION (1) OR (2),
15 OR THE RELEVANT UNDERTAKING INCORPORATES RULES OF CUSTOM OR PRAC-
16 TICE, OR THERE IS CONFLICT BETWEEN THIS ARTICLE AND THOSE RULES
17 AS APPLIED TO THAT UNDERTAKING, THOSE RULES GOVERN EXCEPT TO THE
18 EXTENT OF ANY CONFLICT WITH THE NONVARIABLE PROVISIONS SPECIFIED
19 IN SECTION 5103(3).

20 (4) IF THERE IS CONFLICT BETWEEN THIS ARTICLE AND ARTICLE 3,
21 4, 4A, OR 9, THIS ARTICLE GOVERNS.

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

26 Sec. 5117. ~~(1) Where an issuer or an advising or~~
27 ~~confirming bank or a bank which has for a customer procured~~

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1 ~~issuance of a credit by another bank becomes insolvent before~~
2 ~~final payment under the credit and the credit is one to which~~
3 ~~this article is made applicable by paragraphs (a) or (b) of sec-~~
4 ~~tion 5102(1) on scope, the receipt or allocation of funds or col-~~
5 ~~lateral to secure or meet obligations under the credit shall have~~
6 ~~the following results:~~

7 ~~(a) to the extent of any funds or collateral turned over~~
8 ~~after or before the insolvency as indemnity against or specifi-~~
9 ~~cally for the purpose of payment of drafts or demands for payment~~
10 ~~drawn under the designated credit, the drafts or demands are~~
11 ~~entitled to payment in preference over depositors or other gen-~~
12 ~~eral creditors of the issuer or bank; and~~

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

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

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

26 (1) AN ISSUER THAT HONORS A BENEFICIARY'S PRESENTATION IS
27 SUBROGATED TO THE RIGHTS OF THE BENEFICIARY TO THE SAME EXTENT AS

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1 IF THE ISSUER WERE A SECONDARY OBLIGOR OF THE UNDERLYING
2 OBLIGATION OWED TO THE BENEFICIARY AND OF THE APPLICANT TO THE
3 SAME EXTENT AS IF THE ISSUER WERE THE SECONDARY OBLIGOR OF THE
4 UNDERLYING OBLIGATION OWED TO THE APPLICANT.

5 (2) AN APPLICANT THAT REIMBURSES AN ISSUER IS SUBROGATED TO
6 THE RIGHTS OF THE ISSUER AGAINST ANY BENEFICIARY, PRESENTER, OR
7 NOMINATED PERSON TO THE SAME EXTENT AS IF THE APPLICANT WERE THE
8 SECONDARY OBLIGOR OF THE OBLIGATIONS OWED TO THE ISSUER AND HAS
9 THE RIGHTS OF SUBROGATION OF THE ISSUER TO THE RIGHTS OF THE BEN-
10 EFICIARY STATED IN SUBSECTION (1).

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

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

17 (B) THE BENEFICIARY TO THE SAME EXTENT AS IF THE NOMINATED
18 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED
19 TO THE BENEFICIARY.

20 (C) THE APPLICANT TO THE SAME EXTENT AS IF THE NOMINATED
21 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED
22 TO THE APPLICANT.

23 (4) NOTWITHSTANDING ANY AGREEMENT OR TERM TO THE CONTRARY,
24 THE RIGHTS OF SUBROGATION STATED IN SUBSECTIONS (1) AND (2) DO
25 NOT ARISE UNTIL THE ISSUER HONORS THE LETTER OF CREDIT OR OTHER-
26 WISE PAYS AND THE RIGHTS IN SUBSECTION (3) DO NOT ARISE UNTIL THE
27 NOMINATED PERSON PAYS OR OTHERWISE GIVES VALUE. UNTIL THEN, THE

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1 ISSUER, NOMINATED PERSON, AND THE APPLICANT DO NOT DERIVE UNDER
2 THIS SECTION PRESENT OR PROSPECTIVE RIGHTS FORMING THE BASIS OF A
3 CLAIM, DEFENSE, OR EXCUSE.

4 Sec. 9103. (1) Documents, instruments, and ordinary goods.

5 (a) This subsection applies to documents, ~~and~~ instruments,
6 RIGHTS TO PROCEEDS OF WRITTEN LETTERS OF CREDIT, and ~~to~~ goods
7 other than those covered by a certificate of title described in
8 subsection (2), mobile goods described in subsection (3), and
9 minerals described in subsection (5).

10 (b) Except as otherwise provided in this subsection, perfec-
11 tion and the effect of perfection or nonperfection of a security
12 interest in collateral are governed by the law of the jurisdic-
13 tion where the collateral is when the last event occurs on which
14 is based the assertion that the security interest is perfected or
15 unperfected.

16 (c) If the parties to a transaction creating a purchase
17 money security interest in goods in 1 jurisdiction understand at
18 the time that the security interest attaches that the goods will
19 be kept in another jurisdiction, then the law of the other juris-
20 diction governs the perfection and the effect of perfection or
21 nonperfection of the security interest from the time it attaches
22 until 30 days after the debtor receives possession of the goods
23 and thereafter if the goods are taken to the other jurisdiction
24 before the end of the 30-day period.

25 (d) When collateral is brought into and kept in this state
26 while subject to a security interest perfected under the law of
27 the jurisdiction from which the collateral was removed, the

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1 security interest remains perfected, but if action is required by
2 part 3 of this article to perfect the security interest:

3 (i) If the action is not taken before the expiration of the
4 period of perfection in the other jurisdiction or the end of 4
5 months after the collateral is brought into this state, whichever
6 period first expires, the security interest becomes unperfected
7 at the end of that period and is thereafter deemed to have been
8 unperfected as against a person who became a purchaser after
9 removal.

10 (ii) If the action is taken before the expiration of the
11 period specified in subparagraph (i), the security interest con-
12 tinues perfected thereafter.

13 (iii) For the purpose of priority over a buyer of consumer
14 goods, (section 9307(14)), the period of the effectiveness of a
15 filing in the jurisdiction from which the collateral is removed
16 is governed by the rules relating to perfection in subparagraphs
17 (i) and (ii).

18 (2) Certificate of title.

19 (a) This subsection applies to goods covered by a certifi-
20 cate of title issued under a statute of this state or of another
21 jurisdiction under the law of which indication of a security
22 interest on the certificate is required as a condition of
23 perfection.

24 (b) Except as otherwise provided in this subsection, perfec-
25 tion and the effect of perfection or nonperfection of the secur-
26 ity interest are governed by the law (including the conflict of
27 laws rules) of the jurisdiction issuing the certificate until 4

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1 months after the goods are removed from that jurisdiction and
2 thereafter until the goods are registered in another jurisdic-
3 tion, but in any event not beyond surrender of the certificate.
4 After the expiration of that period, the goods are not covered by
5 the certificate of title within the meaning of this section.

6 (c) Except with respect to the rights of a buyer described
7 in the next paragraph, a security interest, perfected in another
8 jurisdiction otherwise than by notation on a certificate of
9 title, in goods brought into this state and thereafter covered by
10 a certificate of title issued by this state, is subject to the
11 rules stated in paragraph (d) of subsection (1).

12 (d) If goods are brought into this state while a security
13 interest therein is perfected in any manner under the law of the
14 jurisdiction from which the goods are removed and a certificate
15 of title is issued by the state and the certificate does not show
16 that the goods are subject to the security interest or that they
17 may be subject to security interests not shown on the certifi-
18 cate, the security interest is subordinate to the rights of a
19 buyer of the goods who is not in the business of selling goods of
20 that kind to the extent that he or she gives value and receives
21 delivery of the goods after issuance of the certificate and with-
22 out knowledge of the security interest.

23 (3) Accounts, general intangibles, and mobile goods.

24 (a) This subsection applies to accounts (other than an
25 account described in subsection (5) on minerals) and general
26 intangibles (other than uncertificated securities), and to goods
27 which are mobile and which are of a type normally used in more

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1 than 1 jurisdiction, such as motor vehicles, trailers, rolling
2 stock, airplanes, shipping containers, road building and con-
3 struction machinery, and commercial harvesting machinery and the
4 like, if the goods are equipment or are inventory leased or held
5 for lease by the debtor to others, and are not covered by a cer-
6 tificate of title described in subsection (2).

7 (b) The law (including the conflict of laws rules) of the
8 jurisdiction in which the debtor is located governs the perfec-
9 tion and the effect of perfection or nonperfection of the secur-
10 ity interest.

11 (c) If, however, the debtor is located in a jurisdiction
12 which is not a part of the United States, and which does not pro-
13 vide for perfection of the security interest by filing or record-
14 ing in that jurisdiction, the law of the jurisdiction in the
15 United States in which the debtor has its major executive office
16 in the United States governs the perfection and the effect of
17 perfection or nonperfection of the security interest through
18 filing. In the alternative, if the debtor is located in a juris-
19 diction which is not a part of the United States or Canada and
20 the collateral is accounts or general intangibles for money due
21 or to become due, the security interest may be perfected by noti-
22 fication to the account debtor. As used in this paragraph,
23 "United States" includes its territories and possessions and the
24 commonwealth of Puerto Rico.

25 (d) A debtor shall be deemed located at his or her place of
26 business if he or she has one, at his or her chief executive
27 office if he or she has more than 1 place of business, otherwise

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1 at his or her residence. If, however, the debtor is a foreign
2 air carrier under the federal aviation act of 1958, 49
3 U.S.C. 1301, it shall be deemed located at the designated office
4 of the agent upon whom service of process may be made on behalf
5 of the foreign air carrier.

6 (e) A security interest perfected under the law of the
7 jurisdiction of the location of the debtor is perfected until the
8 expiration of 4 months after a change of the debtor's location to
9 another jurisdiction, or until perfection would have ceased by
10 the law of the first jurisdiction, whichever period first
11 expires. Unless perfected in the new jurisdiction before the end
12 of that period, it becomes unperfected thereafter and is deemed
13 to have been unperfected as against a person who became a pur-
14 chaser after the change.

15 (4) Chattel paper.

16 The rules stated for goods in subsection (1) apply to a pos-
17 sessory security interest in chattel paper. The rules stated for
18 accounts in subsection (3) apply to a nonpossessory security
19 interest in chattel paper, but the security interest may not be
20 perfected by notification to the account debtor.

21 (5) Minerals.

22 Perfection and the effect of perfection or nonperfection of
23 a security interest which is created by a debtor who has an
24 interest in minerals or the like (including oil and gas) before
25 extraction and which attaches thereto as extracted, or which
26 attaches to an account resulting from the sale thereof at the
27 wellhead or minehead are governed by the law (including the

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1 conflict of laws rules) of the jurisdiction where the wellhead or
2 minehead is located.

3 (6) Investment property.

4 (a) This subsection applies to investment property.

5 (b) Except as otherwise provided in paragraph (f), during
6 the time that a security certificate is located in a jurisdic-
7 tion, perfection of a security interest, the effect of perfection
8 or nonperfection, and the priority of a security interest in the
9 certificated security represented thereby are governed by the
10 local law of that jurisdiction.

11 (c) Except as otherwise provided in paragraph (f), perfec-
12 tion of a security interest, the effect of perfection or nonper-
13 fection, and the priority of a security interest in an uncertifi-
14 cated security are governed by the local law of the issuer's
15 jurisdiction as specified in section 8110(4).

16 (d) Except as otherwise provided in paragraph (f), perfec-
17 tion of a security interest, the effect of perfection or nonper-
18 fection, and the priority of a security interest in a security
19 entitlement or securities account are governed by the local law
20 of the securities intermediary's jurisdiction as specified in
21 section 8110(5).

22 (e) Except as otherwise provided in paragraph (f), perfec-
23 tion of a security interest, the effect of perfection or nonper-
24 fection, and the priority of a security interest in a commodity
25 contract or commodity account are governed by the local law of
26 the commodity intermediary's jurisdiction. The following rules

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1 determine a "commodity intermediary's jurisdiction" for purposes
2 of this paragraph:

3 *(i)* If an agreement between the commodity intermediary and
4 commodity customer specifies that it is governed by the law of a
5 particular jurisdiction, that jurisdiction is the commodity
6 intermediary's jurisdiction.

7 *(ii)* If an agreement between the commodity intermediary and
8 commodity customer does not specify the governing law as provided
9 in subparagraph *(i)*, but expressly specifies that the commodity
10 account is maintained at an office in a particular jurisdiction,
11 that jurisdiction is the commodity intermediary's jurisdiction.

12 *(iii)* If an agreement between the commodity intermediary and
13 commodity customer does not specify a jurisdiction as provided in
14 subparagraph *(i)* or *(ii)*, the commodity intermediary's jurisdic-
15 tion is the jurisdiction in which is located the office identi-
16 fied in an account statement as the office serving the commodity
17 customer's account.

18 *(iv)* If an agreement between the commodity intermediary and
19 commodity customer does not specify a jurisdiction as provided in
20 subparagraph *(i)* or *(ii)* and an account statement does not iden-
21 tify an office serving the commodity customer's account as pro-
22 vided in subparagraph *(iii)*, the commodity intermediary's jurisdic-
23 tion is the jurisdiction in which is located the chief execu-
24 tive office of the commodity intermediary.

25 *(f)* Perfection of a security interest by filing, automatic
26 perfection of a security interest in investment property granted
27 by a broker or securities intermediary, and automatic perfection

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1 (h) To a right represented by a judgment, (other than a
2 judgment taken on a right to payment which was collateral); or

3 (i) To any right of setoff; or

4 (j) Except to the extent that provision is made for fixtures
5 in section 9313, to the creation or transfer of an interest in or
6 lien on real estate, including a lease or rents thereunder; or

7 (k) To a transfer in whole or in part of any claim arising
8 out of tort; or

9 (l) To a transfer of an interest in any deposit account
10 (section 9105(1)), except as provided with respect to proceeds
11 (section 9306) and priorities in proceeds (section 9312).

12 (M) TO A TRANSFER OF AN INTEREST IN A LETTER OF CREDIT OTHER
13 THAN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT.

14 Sec. 9105. (1) As used in this article unless the context
15 otherwise requires:

16 (a) "Account debtor" means the person who is obligated on an
17 account, chattel paper, or general intangible.

18 (b) "Chattel paper" means a writing or writings which evi-
19 dence both a monetary obligation and a security interest in or a
20 lease of specific goods, but a charter or other contract involv-
21 ing the use or hire of a vessel is not chattel paper. When a
22 transaction is evidenced both by such a security agreement or a
23 lease and by an instrument or a series of instruments, the group
24 of writings taken together constitutes chattel paper.

25 (c) "Collateral" means the property subject to a security
26 interest, and includes accounts and chattel paper which have been
27 sold.

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1 (d) "Debtor" means the person who owes payment or other
2 performance of the obligation secured, whether or not he or she
3 owns or has rights in the collateral, and includes the seller of
4 accounts or chattel paper. Where the debtor and the owner of the
5 collateral are not the same person, the term "debtor" means the
6 owner of the collateral in any provision of the article dealing
7 with the collateral, the obligor in any provision dealing with
8 the obligation, and may include both where the context so
9 requires.

10 (e) "Deposit account" means a demand, time, savings, pass-
11 book, or like account maintained with a bank, savings and loan
12 association, credit union, or like organization, other than an
13 account evidenced by a certificate of deposit.

14 (f) "Document" means document of title as defined in the
15 general definitions of article 1, section 1201 and a receipt of
16 the kind described in section 7201(2).

17 (g) "Encumbrance" includes real estate mortgages and other
18 liens on real estate and all other rights in real estate that are
19 not ownership interests.

20 (h) "Goods" includes all things which are movable at the
21 time the security interest attaches or which are fixtures as
22 described in section 9313, but does not include money, documents,
23 instruments, investment property, accounts, chattel paper, gen-
24 eral intangibles, or minerals or the like including, but not
25 limited to, oil and gas before extraction. Goods also include
26 standing timber which is to be cut and removed under a conveyance

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1 or contract for sale, the unborn young of animals, and growing
2 crops.

3 (i) "Instrument" means a negotiable instrument as defined in
4 section 3104 or any other writing which evidences a right to the
5 payment of money and is not itself a security agreement or lease
6 and is of a type which is in ordinary course of business trans-
7 ferred by delivery with any necessary indorsement or assignment.
8 The term does not include investment property.

9 (j) "Mortgage" means a consensual interest created by a real
10 estate mortgage, a trust deed on real estate, or the like.

11 (k) An advance is made "pursuant to commitment" if the
12 secured party has bound himself or herself to make it, whether or
13 not a subsequent event of default or other event not within his
14 or her control has relieved or may relieve him or her from his or
15 her obligation.

16 (l) "Security agreement" means an agreement which creates or
17 provides for a security interest.

18 (m) "Secured party" means a lender, seller, or other person
19 in whose favor there is a security interest, including a person
20 to whom accounts or chattel paper have been sold. When the hold-
21 ers of obligations issued under an indenture of trust, equipment
22 trust agreement, or the like are represented by a trustee or
23 other person, the representative is the secured party.

24 (n) "Tax identification number" means a social security
25 number or federal employer tax identification number.

26 (o) "Transmitting utility" means any person primarily
27 engaged in the railroad, street railway, or trolley bus business,

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1 the electric or electronics communications transmission business,
2 the transmission of goods by pipeline, or the transmission or the
3 production and transmission of electricity, steam, gas or water,
4 or the provision of sewer service.

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

7	"Account".	Section 9106.
8	"Attach".	Section 9203.
9	"Commodity contract".	Section 9115.
10	"Commodity customer".	Section 9115.
11	"Commodity intermediary".	Section 9115.
12	"Construction mortgage".	Section 9313(1).
13	"Consumer goods".	Section 9109(1).
14	"Control".	Section 9115.
15	"Equipment".	Section 9109(2).
16	"Farm products".	Section 9109(3).
17	"Fixture".	Section 9313.
18	"Fixture filing".	Section 9313.
19	"General intangibles".	Section 9106.
20	"Inventory".	Section 9109(4).
21	"Investment property".	Section 9115.
22	"Lien creditor".	Section 9301(3).
23	"Proceeds".	Section 9306(1).
24	"Purchase money security interest".	Section 9107.
25	"United States".	Section 9103.

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1 (3) The following definitions in other articles apply to
2 this article:

3	"Broker".	Section 8102.
4	"Certificated security".	Section 8102.
5	"Check".	Section 3104.
6	"Clearing corporation".	Section 8102.
7	"Contract for sale".	Section 2106.
8	"Control".	Section 8102.
9	"Delivery".	Section 8102.
10	"Entitlement holder".	Section 8102.
11	"Financial asset".	Section 8102.
12	"Holder in due course".	Section 3302.
13	"LETTER OF CREDIT".	SECTION 5102.
14	"Note".	Section 3104.
15	"PROCEEDS OF A LETTER OF CREDIT".	SECTION 5114.
16	"Sale".	Section 2106.
17	"Security intermediary".	Section 8102.
18	"Security".	Section 8102.
19	"Security certificate".	Section 8102.
20	"Security entitlement".	Section 8102.
21	"Uncertificated security".	Section 8102.

22 (4) In addition article 1 contains general definitions and
23 principles of construction and interpretation applicable through-
24 out this article.

25 Sec. 9106. "Account" means any right to payment for goods
26 sold or leased or for services rendered which is not evidenced by

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1 an instrument or chattel paper whether or not it has been earned
2 by performance. "General intangibles" means any personal prop-
3 erty (including things in action) other than goods, accounts,
4 chattel paper, documents, instruments, investment property,
5 RIGHTS TO PROCEEDS OF WRITTEN LETTERS OF CREDIT, and money. All
6 rights to payment earned or unearned under a charter or other
7 contract involving the use or hire of a vessel and all rights
8 incident to the charter or contract are accounts.

9 Sec. 9304. (1) A security interest in chattel paper or
10 negotiable documents may be perfected by filing. A SECURITY
11 INTEREST IN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT
12 CAN BE PERFECTED ONLY BY THE SECURED PARTY'S TAKING POSSESSION OF
13 THE LETTER OF CREDIT. A security interest in money or instru-
14 ments, other than instruments which constitute part of chattel
15 paper, can be perfected only by the secured party's taking pos-
16 session, except as provided in subsections (4) and (5) and sec-
17 tion 9306(2) and (3) on proceeds.

18 (2) During the period that goods are in the possession of
19 the issuer of a negotiable document therefor, a security interest
20 in the goods is perfected by perfecting a security interest in
21 the document, and a security interest in the goods otherwise per-
22 fected during such period is subject thereto.

23 (3) A security interest in goods in the possession of a
24 bailee other than one who has issued a negotiable document there-
25 for is perfected by issuance of a document in the name of the
26 security party or by the bailee's receipt of notification of the
27 secured party's interest or by filing as to the goods.

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1 (4) A security interest in instruments, certificated
2 securities, or negotiable documents is perfected without filing
3 or the taking of possession for a period of 21 days from the time
4 it attaches to the extent that it arises for a new value given
5 under a written security agreement.

6 (5) A security interest remains perfected for a period of 21
7 days without filing where a secured party having a perfected
8 security interest in an instrument, a certificated security, a
9 negotiable document, or goods in possession of a bailee other
10 than one who has issued a negotiable document therefor:

11 (a) Makes available to the debtor the goods or documents
12 representing the goods for the purpose of ultimate sale or
13 exchange or for the purpose of loading, unloading, storing, ship-
14 ping, transshipping, manufacturing, processing, or otherwise
15 dealing with them in a manner preliminary to their sale or
16 exchange; but priority between conflicting security interests in
17 the goods is subject to section 9312(3); or

18 (b) Delivers the instrument or certificated security to the
19 debtor for the purpose of ultimate sale or exchange or of presen-
20 tation, collection, renewal, or registration of transfer.

21 (6) After the 21-day period in subsections (4) and (5), per-
22 fection depends upon compliance with applicable provisions of
23 this article.

24 Sec. 9305. A security interest in letters of credit and
25 advices of credit (section 5116(2)(a)), goods, instruments,
26 money, negotiable documents, or chattel paper may be perfected by
27 the secured party's taking possession of the collateral. A

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1 SECURITY INTEREST IN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER
2 OF CREDIT CAN BE PERFECTED ONLY BY THE SECURED PARTY'S TAKING
3 POSSESSION OF THE LETTER OF CREDIT. If such collateral other than
4 goods covered by a negotiable document is held by a bailee, the
5 secured party is deemed to have possession from the time the
6 bailee receives notification of the secured party's interest. A
7 security interest is perfected by possession from the time pos-
8 session is taken without relation back and continues only so long
9 as possession is retained, unless otherwise specified in this
10 article. The security interest may be otherwise perfected as
11 provided in this article before or after the period of possession
12 by the secured party.

13 Enacting section 1. This amendatory act takes effect
14 January 1, 1999.