

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.1A-201, 8.2-103, 8.2-104, 8.2-310, 8.2-323, 8.2-401, 8.2-503, 8.2-505, 8.2-506, 8.2-509, 8.2-605, 8.2-705, 8.2A-103, 8.2A-514, 8.2A-526, 8.4-104, 8.4-208, 8.7-102, 8.7-103, 8.7-104, 8.7-202, 8.7-203, 8.7-204, 8.7-205, 8.7-206, 8.7-208, 8.7-209, 8.7-210, 8.7-301, 8.7-302, 8.7-303, 8.7-305, 8.7-307, 8.7-309, 8.7-401, 8.7-402, 8.7-403, 8.7-404, 8.7-501, 8.7-502, 8.7-503, 8.7-504, 8.7-505, 8.7-506, 8.7-507, 8.7-509, 8.7-601, 8.7-602, 8.7-603, 8.8A-103, 8.9A-102, 8.9A-203, 8.9A-207, 8.9A-208, 8.9A-301, 8.9A-310, 8.9A-312, 8.9A-313, 8.9A-314, 8.9A-317, 8.9A-338, and 8.9A-601 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 8.7-105.1 and 8.7-106, and to repeal § 8.7-105 of the Code of Virginia, relating to Article 7 of the Uniform Commercial Code - Documents of Title.

Approved

[S 119]

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.1A-201, 8.2-103, 8.2-104, 8.2-310, 8.2-323, 8.2-401, 8.2-503, 8.2-505, 8.2-506, 8.2-509, 8.2-605, 8.2-705, 8.2A-103, 8.2A-514, 8.2A-526, 8.4-104, 8.4-208, 8.7-102, 8.7-103, 8.7-104, 8.7-202, 8.7-203, 8.7-204, 8.7-205, 8.7-206, 8.7-208, 8.7-209, 8.7-210, 8.7-301, 8.7-302, 8.7-303, 8.7-305, 8.7-307, 8.7-309, 8.7-401, 8.7-402, 8.7-403, 8.7-404, 8.7-501, 8.7-502, 8.7-503, 8.7-504, 8.7-505, 8.7-506, 8.7-507, 8.7-509, 8.7-601, 8.7-602, 8.7-603, 8.8A-103, 8.9A-102, 8.9A-203, 8.9A-207, 8.9A-208, 8.9A-301, 8.9A-310, 8.9A-312, 8.9A-313, 8.9A-314, 8.9A-317, 8.9A-338, and 8.9A-601 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.7-105.1 and 8.7-106 as follows:

§ 8.1A-201. General definitions.

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

(b) Subject to definitions contained in other titles of the Uniform Commercial Code that apply to particular titles or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 8.1A-303.

(4) "Bank" means 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 a person in *control of a negotiable electronic document or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.*

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of *directly or indirectly* transporting or forwarding goods. *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 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 that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. 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. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire 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 Title 8.2 may be a buyer in ordinary course of business. "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.

ENROLLED

SB119ER

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against ~~which~~ *whom* 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 heading in capitals 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 in the body of a record or display in larger type 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.

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

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(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.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to *an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.*

(16) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document that 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 it the record is entitled to receive, control, hold, and dispose of the document record 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 that are either identified or are fungible portions of an identified mass 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, and order for delivery of goods. 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.~~

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

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

(B) goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith" means honesty in fact in the conduct or transaction concerned.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; ~~or~~

(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.*

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

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

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

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

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

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) "Person" means an individual, 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.

(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.

(29) "Purchase" 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.

(30) "Purchaser" means a person 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.

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

(33) "Representative" 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.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures that 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 Title 8.9A. "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 § 8.2-401, but a buyer may also acquire a "security interest" by complying with Title 8.9A. Except as otherwise provided in § 8.2-505, the right of a seller or lessor of goods under Title 8.2 or Title 8.2A 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 Title 8.9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 8.2-401 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 § 8.1A-203.

(36) "Send" in connection with 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; or

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

(37) "Signed" includes using any symbol executed or adopted with present intention to 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.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

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

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

§ 8.2-103. Definitions and index of definitions.

(1) In this title 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.

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

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

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

"Acceptance." § 8.2-606.

"Banker's credit." § 8.2-325.

"Between merchants." § 8.2-104.

"Cancellation." § 8.2-106 (4).

179 "Commercial unit." § 8.2-105.
 180 "Confirmed credit." § 8.2-325.
 181 "Conforming to contract." § 8.2-106.
 182 "Contract for sale." § 8.2-106.
 183 "Cover." § 8.2-712.
 184 "Entrusting." § 8.2-403.
 185 "Financing agency." § 8.2-104.
 186 "Future goods." § 8.2-105.
 187 "Goods." § 8.2-105.
 188 "Identification." § 8.2-501.
 189 "Installment contract." § 8.2-612.
 190 "Letter of credit." § 8.2-325.
 191 "Lot." § 8.2-105.
 192 "Merchant." § 8.2-104.
 193 "Overseas." § 8.2-323.
 194 "Person in position of seller." § 8.2-707.
 195 "Present sale." § 8.2-106.
 196 "Sale." § 8.2-106.
 197 "Sale on approval." § 8.2-326.
 198 "Sale or return." § 8.2-326.
 199 "Termination." § 8.2-106.
 200 (3) The following definitions in other titles apply to this title:
 201 "Check." § 8.3A-104.
 202 "Consignee." § 8.7-102.
 203 "Consignor." § 8.7-102.
 204 "Consumer goods." § 8.9A-102.
 205 "*Control*." § 8.7-106.
 206 "Dishonor." § 8.3A-502.
 207 "Draft." § 8.3A-104.
 208 (4) In addition Title 8.1A contains general definitions and principles of construction and
 209 interpretation applicable throughout this title.
 210 § 8.2-104. Definitions: "Merchant"; "financing agency"; "between merchants".
 211 (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds
 212 himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or
 213 to whom such knowledge or skill may be attributed by his employment of an agent or broker or other
 214 intermediary who by his occupation holds himself out as having such knowledge or skill.
 215 (2) "Financing agency" means a bank, finance company or other person who in the ordinary course
 216 of business makes advances against goods or documents of title or who by arrangement with either the
 217 seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the
 218 contract for sale, as by purchasing or paying the seller's draft or making advances against it or by
 219 merely taking it for collection whether or not documents of title accompany *or are associated with* the
 220 draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons
 221 who are in the position of seller and buyer in respect to the goods (§ 8.2-707).
 222 (3) "Between merchants" means in any transaction with respect to which both parties are chargeable
 223 with the knowledge or skill of merchants.
 224 § 8.2-310. Open time for payment or running of credit; authority to ship under reservation.
 225 Unless otherwise agreed:
 226 (a) payment is due at the time and place at which the buyer is to receive the goods even though the
 227 place of shipment is the place of delivery; and
 228 (b) if the seller is authorized to send the goods he may ship them under reservation, and may tender
 229 the documents of title, but the buyer may inspect the goods after their arrival before payment is due
 230 unless such inspection is inconsistent with the terms of the contract (§ 8.2-513); and
 231 (c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b)
 232 then payment is due *regardless of where the goods are to be received (i) at the time and place at which*
 233 *the buyer is to receive delivery of the tangible documents regardless of where the goods are to be*
 234 *received or (ii) at the time the buyer is to receive delivery of the electronic documents and at the*
 235 *seller's place of business or if none, the seller's residence; and*
 236 (d) where the seller is required or authorized to ship the goods on credit the credit period runs from
 237 the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the
 238 starting of the credit period.
 239 § 8.2-323. Form of bill of lading required in overseas shipment; "Overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(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 title on cure of improper delivery (subsection (1) of § 8.2-508); 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.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

§ 8.2-401. Passing of title; reservation for security; limited application of this section.

Each provision of this title with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this title and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (§ 8.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the title on secured transactions (Title 8.9A), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(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.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance, reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

§ 8.2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this title, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section [§ 8.2-504] respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(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 Title 8.9A, 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 title with respect to bills of lading in a set (subsection (2) of § 8.2-323); and

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

§ 8.2-505. Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(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 § 8.2-507) 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 [§ 8.2-504] 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.

§ 8.2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(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.

§ 8.2-509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (§ 8.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(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 acknowledgement 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 § 8.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this title on sale on approval (§ 8.2-327) and on effect of breach on risk of loss (§ 8.2-510).

§ 8.2-605. Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

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

§ 8.2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he

discovers the buyer to be insolvent (§ 8.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman~~ *a warehouse*; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(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.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§ 8.2A-103. Definitions and index of definitions.

(1) In this title unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her 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 preexisting 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.

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

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

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

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.

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

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

(i) The lessor does not select, manufacture, or supply the goods;

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

(iii) One of the following occurs:

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

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

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

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this title to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the

goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 8.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

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

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

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

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

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

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

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her 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 preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

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

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

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

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

(u) "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 was not manifestly unreasonable at the time the transaction was 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.

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

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

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

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

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

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

"Accessions" § 8.2A-310 (1).

"Construction mortgage" § 8.2A-309 (1) (d).

"Encumbrance" § 8.2A-309 (1) (e).

"Fixtures" § 8.2A-309 (1) (a).

"Fixture filing" § 8.2A-309 (1) (b).

"Purchase money lease" § 8.2A-309 (1) (c).

(3) The following definitions in other titles apply to this title:

"Account" § 8.9A-102 (a) (2).

"Between merchants" § 8.2-104 (3).

"Buyer" § 8.2-103 (1) (a).

"Chattel paper" § 8.9A-102 (a) (11).

"Consumer goods" § 8.9A-102 (a) (23).

"Document" § 8.9A-102 (a) (30).

"Entrusting" § 8.2-403 (3).

"General intangible" § 8.9A-102 (a) (42).

"Good faith" § 8.2-103 (1) (b).

"Instrument" § 8.9A-102 (a) (47).

"Merchant" § 8.2-104 (1).

"Mortgage" § 8.9A-102 (a) (55).

"Pursuant to commitment" § 8.9A-102 (a) (68).

"Receipt" § 8.2-103 (1) (c).

"Sale" § 8.2-106 (1).

"Sale on approval" § 8.2-326.

"Sale or return" § 8.2-326.

"Seller" § 8.2-103 (1) (d).

(4) In addition, Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.2A-514. Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (§ 8.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(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.

§ 8.2A-526. Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ *a warehouse*.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§ 8.4-104. Definitions and index of definitions.

(a) In this title, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank including demand, time savings passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, but shall not include Saturday, Sunday or a legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft; or a draft to be presented for acceptance or payment if specified documents, certificated securities (§ 8.8A-102) or instructions for uncertified securities (§ 8.8A-102), or other certificates, statements, or the like are to be received by the

drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in § 8.3A-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

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

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

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

(b) Other definitions applying to this title and the sections in which they appear are:

"Agreement for electronic presentment" § 8.4-110.

"Bank" § 8.4-105.

"Collecting bank" § 8.4-105.

"Depository bank" § 8.4-105.

"Intermediary bank" § 8.4-105.

"Payor bank" § 8.4-105.

"Presenting bank" § 8.4-105.

"Presentment notice" § 8.4-110.

(c) The following definitions in other titles apply to this title:

"Acceptance" § 8.3A-409.

"Alteration" § 8.3A-407.

"Cashier's check" § 8.3A-104.

"Certificate of deposit" § 8.3A-104.

"Certified check" § 8.3A-409.

"Check" § 8.3A-104.

"Control" § 8.7-106.

"Draft" § 8.3A-104.

"Good faith" § 8.3A-103.

"Holder in due course" § 8.3A-302.

"Instrument" § 8.3A-104.

"Notice of dishonor" § 8.3A-503.

"Order" § 8.3A-103.

"Ordinary care" § 8.3A-103.

"Person entitled to enforce" § 8.3A-301.

"Presentment" § 8.3A-501.

"Promise" § 8.3A-103.

"Prove" § 8.3A-103.

"Teller's check" § 8.3A-104.

"Unauthorized signature" § 8.3A-403.

(d) In addition Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.4-208. Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(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* accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Title 8.9A but:

(1) no security agreement is necessary to make the security interest enforceable (subdivision (b) (3) (A) of § 8.9A-203); and

(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.

§ 8.7-102. Definitions and index of definitions.

(1) In this title, unless the context otherwise requires:

(a) "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.

(b) "Carrier" means a person that issues a bill of lading.

(b c) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(e d) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d e) "Delivery order" means a ~~written~~ 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.

(e f) "Document" means document of title as defined in the general definitions in Title 8.1A (§ 8.1A-201).

(g) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

(g i) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any 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, ~~notwithstanding that even if~~ the issuer received no goods, ~~or that~~ the goods were misdescribed, or ~~that~~ in any other respect the agent or employee violated ~~his~~ the issuer's instructions.

(j) "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.

(k) "Shipper" means a person that enters into a contract of transportation with a carrier.

(l) "Sign" means, with present intent to authenticate or adopt a record (1) to execute or adopt a tangible symbol or (2) to attach to or logically associate with the record an electronic sound, symbol, or process.

(h m) "Warehouseman" is a person engaged in the business of storing goods for hire.

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

"Duly negotiate." § 8.7-501.

"Person entitled under the document." § 8.7-403(4).

(3) Definitions in other titles applying to this title and the sections in which they appear are:

"Contract for sale." § 8.2-106.

"Lessee in ordinary course." § 8.2A-103.

"Overseas." § 8.2-323.

"Receipt" of goods. § 8.2-103.

(4) In addition Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.7-103. Relation of title to treaty or statute.

(1) To the extent that any treaty or statute of the United States, or regulatory statute of this State or tariff classification or regulation filed or issued pursuant thereto is applicable, the provisions of this title are subject thereto.

(2) This article 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 article. However, violation of such a law does not affect the status of a document that otherwise is within the definition of a document.

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

667 Section 103 (b) of that act (15 U.S.C. § 7003 (b)).

668 (4) To the extent there is a conflict between the Uniform Electronic Transactions Act (§ 59.1-479 et
669 seq.) and this article this article governs.

670 § 8.7-104. Negotiable and nonnegotiable documents.

671 (1) Except as otherwise provided in subsection 3, a warehouse receipt, bill of lading or other
672 document of title is negotiable:

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

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

675 (2) ~~Any other~~ A document other than one described in subsection 1 is nonnegotiable. A bill of
676 lading in which it is stated that the goods are consigned to a named person is not made negotiable by a
677 provision that the goods are to be delivered only against a ~~written~~ an order in a record signed by the
678 same or another named person.

679 (3) A document is nonnegotiable if, at the time it is issued, the document has a conspicuous legend,
680 however expressed, that it is nonnegotiable.

681 § 8.7-105.1. Reissuance in alternative medium.

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

684 (a) the person entitled under the electronic document surrenders control of the document to the
685 issuer; and

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

688 (2) Upon issuance of a tangible document in substitution for an electronic document in accordance
689 with subsection (1):

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

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

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

696 (a) the person entitled under the tangible document surrenders possession of the document to the
697 issuer; and

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

700 (4) Upon issuance of an electronic document in substitution for a tangible document in accordance
701 with subsection (3):

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

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

706 § 8.7-106. Control of electronic document.

707 (1) A person has control of an electronic document if a system employed for evidencing the transfer
708 of interests in the electronic document reliably establishes that person as the person to which the
709 electronic document was issued or transferred.

710 (2) A system satisfies subsection (1), and a person is deemed to have control of an electronic
711 document, if the document is created, stored, and assigned in such a manner that:

712 (a) a single authoritative copy of the document exists that is unique, identifiable, and, except as
713 otherwise provided in subdivisions (c), (d), and (e), unalterable;

714 (b) the authoritative copy identifies the person asserting control as:

715 (i) the person to whom the document was issued; or

716 (ii) if the authoritative copy indicates that the document has been transferred, the person to whom
717 the document was most recently transferred;

718 (c) the authoritative copy is communicated to and maintained by the person asserting control or his
719 designated custodian;

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

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

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

725 § 8.7-202. Form of warehouse receipt; essential terms; optional terms.

726 (1) A warehouse receipt need not be in any particular form.

727 (2) Unless a warehouse receipt embodies within its written or printed terms provides for each of the

following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

- (a) the location of the warehouse where the goods are stored;
- (b) the date of issue of the receipt;
- (c) the consecutive number of the receipt;
- (d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) 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;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouseman, which may be made by his authorized agent;
- (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (§ 8.7-209). 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 warehouseman or to his agent who ~~issues it~~ *issued the receipt*, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms ~~which~~ *that* are not contrary to the provisions of this act and do not impair his obligation of delivery (§ 8.7-403) or his duty of care (§ 8.7-204). Any contrary provisions shall be ineffective.

§ 8.7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document ~~of title~~ other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously 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 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 such indication be true, or the party or purchaser otherwise has notice.

§ 8.7-204. Duty of care; contractual limitation of warehouseman's liability.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages ~~which~~ *that* could not have been avoided by the exercise of such care.

(2) 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, ~~and setting forth a specific liability per article or item, or value per unit of weight,~~ beyond which the warehouseman shall not be liable; ~~provided, however, that such liability may on written~~ *On request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouseman's liability may be increased on part or all of the goods thereunder.* In ~~which this~~ 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.

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

§ 8.7-205. Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes *the goods* free of any claim under a warehouse receipt even though ~~it the receipt is negotiable and~~ has been duly negotiated.

§ 8.7-206. Termination of storage at warehouseman's option.

(1) A warehouseman 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~~ 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (§ 8.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) ~~for notification, advertisement and sale,~~ the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman 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 warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

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

(5) The warehouseman may satisfy his 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 would have been bound to deliver the goods.

§ 8.7-208. Altered warehouse receipts.

Where a blank in a negotiable 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* receipt enforceable against the issuer according to its original tenor.

§ 8.7-209. Lien of warehouseman.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt *or storage agreement* or on the proceeds thereof in his 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 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 warehouseman also has a lien against ~~him~~ *the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in his possession* for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman'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 goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman 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), such as for money advanced and interest. Such a security interest is governed by the title on secured transactions (Title 8.9A).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) 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 but is not effective against a person as to ~~whom the document confers no right in the goods covered by it under § 8.7-503, who before issuance of a document had a legal interest or a perfected security interest in the goods and that did not:~~

(i) ~~deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:~~

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

(B) *power to obtain delivery under § 8.7-403; or*

(C) *power of disposition under §§ 8.2-403, 8.2A-304(2), 8.2A-305(2), 8.9A-320, or § 8.9A-321(c) or other statute or rule of law; or*

(ii) *acquiesce in the procurement by the bailor or its nominee of any document.*

(b) (4) A warehouseman's lien under subsection (1) on household goods for charges and expenses in relation to the goods is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. The term "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling. Such lien shall be effective against a prior security interest ~~which that~~ has been otherwise perfected as required by law only to the extent of ~~one hundred fifty~~ *\$150* dollars.

(4) (5) A warehouseman loses his lien on any goods ~~which that~~ he voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

§ 8.7-210. Enforcement of warehouseman's lien.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, 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 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 warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold 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 satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) 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:

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

(b) 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 10 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) The sale must conform to the terms of the notification.

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

(f) 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 15 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 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) 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 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 title.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) 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) The warehouseman may satisfy his 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 he would have been bound to deliver the goods.

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

(8) Where 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) or (2).

(9) The warehouseman 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.

§ 8.7-301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.

(1) A consignee of a nonnegotiable bill of lading who has given value in good faith, or a holder to whom a negotiable bill has been duly negotiated, relying in either case upon the description therein of the goods, or upon the date therein shown, 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 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 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, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier of a bill of lading, the issuer must count the packages of goods, if package freight shipped in packages, and ascertain the kind and quantity if shipped in bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight goods concealed by packages.

(3) When bulk freight is goods are loaded by a shipper who makes available to the issuer of a bill of lading adequate facilities for weighing such freight goods, the issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving, in a record, the written

shipper's request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

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

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

§ 8.7-302. Through bills of lading and similar documents.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by ~~connecting carriers~~ a performing carrier is liable to anyone entitled to recover on the document for any breach by such other persons or by a ~~connecting~~ performing carrier of its obligation under the document. ~~but~~ However, to the extent that the bill 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 may be varied by agreement of the parties.

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

(3) The issuer of such through bill of lading or other document shall be 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 document occurred, (a) the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and (b) the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

§ 8.7-303. Diversion; reconsignment; change of instructions.

(1) Unless the bill of lading otherwise provides, the 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) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) 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) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

§ 8.7-305. Destination bills.

(1) 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) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer, *subject to* § 8.7-105.1, may procure a substitute bill to be issued at any place designated in the request.

§ 8.7-307. Lien of carrier.

(1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in his possession for charges subsequent to the date of its 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) A lien for charges and expenses under subsection (1) 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 charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice

that the bailor lacked such authority.

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

§ 8.7-309. Duty of care; contractual limitation of carrier's liability.

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

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document 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~~ and he is otherwise advised of such opportunity; ~~but~~ *However*, no such limitation is effective with respect to the carrier's liability for conversion to ~~its~~ *his* own use.

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

§ 8.7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this title on an issuer apply to a document of title ~~regardless of the fact that even if:~~

(a) the document may not comply with the requirements of this title or of any other law or regulation regarding its issue, form or content; or

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

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

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

§ 8.7-402. Duplicate receipt or bill; overissue.

Neither a duplicate nor any other document ~~of title~~ purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of *tangible* bills 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 § 8.7-105.1. But~~ The issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation ~~on its face~~.

§ 8.7-403. Obligation of bailee to deliver; excuse.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

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

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

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to ~~the provisions of the title on Sales (§ 8.2-705)~~ § 8.2-705 or by a lessor of his right to stop delivery pursuant to § 8.2A-526;

(e) a diversion, reconsignment or other disposition pursuant to ~~the provisions of this title (§ 8.7-303)~~ or ~~tariff~~ *regulating such right*;

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

(g) any other lawful excuse.

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

(3) Unless the person claiming *the goods* is one against whom the document confers no right under § 8.7-503 (1), he must surrender *possession or control*, for cancellation or notation of partial deliveries, any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom 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 *of the goods* is to be made by the terms of, or pursuant to ~~written~~ instructions *in a record* under, a nonnegotiable document.

§ 8.7-404. No liability for good faith delivery pursuant to receipt or bill.

A bailee who in good faith ~~including observance of reasonable commercial standards~~ has received goods and delivered or otherwise disposed of them according to the terms of the document ~~of title~~ or pursuant to this title is not liable therefor. This rule applies even though (a) the person from whom he received the goods had no authority to procure the document or to dispose of the goods ~~and even~~

though or (b) the person to whom he delivered the goods had no authority to receive them.

§ 8.7-501. Form of negotiation and requirements of "due negotiation".

(1) A negotiable document of title running *The following rules apply to a negotiable tangible document:*

(a) *If the document's original terms run to the order of a named person, the document is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it the document by delivery alone.*

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

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

(3) *d) 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 as well as delivery.*

(4) *e) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section subsection to a holder who 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.*

(2) *The following rules apply to a negotiable electronic document:*

(a) *If the document's original terms run to the order of a named person or to 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.*

(b) *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.*

(c) *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.*

(§ 3) Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

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

§ 8.7-502. Rights acquired by due negotiation.

(1) Subject to the following section [§ 8.7-503] and to the provisions of §§ 8.7-205 and 8.7-503 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) 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) 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 except those arising under the terms of the document or under this title. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section [§ 8.7-503], title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though (a) the negotiation or any prior negotiation constituted a breach of duty, or even though (b) 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 even though (c) a previous sale or other transfer of the goods or document has been made to a third person.

§ 8.7-503. Document to goods defeated in certain cases.

(1) 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 them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with (i) actual or apparent authority to ship, store or sell or with, (ii) power to obtain delivery under this title (§§ 8.7-403), or with (iii) power of disposition under this act (§§ 8.2-403, 8.2A-304(2), 8.2A-305(2), and 8.9A-320, or § 8.9A-321(c)) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.
 (2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section (§ 8.7-504) to the same extent as the rights of the issuer or a transferee from the issuer.

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

§ 8.7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

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

(2) 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:

(a) by those creditors of the transferor who could treat the sale as void under § 8.2-402 or § 8.2A-308; or

(b) 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 rights; or

(c) *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*

(e *d*) as against the bailee by good faith dealings of the bailee with the transferor.

(3) 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 have been delivered to a buyer or *lessee* in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under § 8.2-705 *or a lessor under § 8.2A-526*, and subject to the requirement of due notification there provided. 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.

§ 8.7-505. Indorser not a guarantor for other parties.

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.

§ 8.7-506. Delivery without indorsement; right to compel indorsement.

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§ 8.7-507. Warranties on negotiation or delivery of receipt or bill.

Where a person negotiates or ~~transfers~~ *delivers* a document of title for value otherwise than as a mere intermediary under the next following section [§ 8.7-508], then, unless otherwise agreed, he warrants to his immediate purchaser, ~~only~~ in addition to any warranty made in selling *or leasing* the goods, *that*:

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

(b) ~~that~~ he has no knowledge of any fact ~~which~~ *that* would impair ~~its~~ *the document's* validity or worth; and

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

§ 8.7-509. Receipt or bill; when adequate compliance with commercial contract.

~~The question~~ Whether a document 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 by the titles on sales (Title 8.2) ~~and on, leases (Title 8.2A), or letters of credit (Title 8.5A).~~

§ 8.7-601. Lost, stolen or destroyed documents.

(1) If a document has been 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 order. If the document was negotiable, *a court may not order delivery of the goods or issuance of a substitute document without the claimant must post claimant's posting security approved by the court to indemnify any person unless it finds that any person who 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, ~~such security may be required at the discretion of 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) A bailee who, without court order, delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby; ~~and~~. If the delivery is not in good faith, ~~the~~ *bailee* 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 files a notice of claim within one year after the delivery.

§ 8.7-602. Attachment of goods covered by a negotiable document.

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches 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 negotiation is enjoined; ~~and~~. The bailee shall not be compelled to deliver the goods pursuant to process until *possession or control of* the document is surrendered to him or ~~impounded~~ by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

§ 8.7-603. Conflicting claims; interpleader.

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 for~~ interpleader; ~~whichever is appropriate. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.~~

§ 8.8A-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this title, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this title and not by Title 8.3A, even though it also meets the requirements of that title. However, a negotiable instrument governed by Title 8.3A is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in subdivision (a) (15) of § 8.9A-102, is not a security or a financial asset.

(g) *A document of title is not a financial asset unless subdivision (a) (9) (iii) of § 8.8A-102 applies.*

§ 8.9A-102. Definitions and index of definitions.

(a) Title 8.9A definitions. In this title:

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

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument

1216 constitutes part of chattel paper.

1217 (4) "Accounting," except as used in "accounting for," means a record:

1218 (A) authenticated by a secured party;

1219 (B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or
1220 35 days later than the date of the record; and

1221 (C) identifying the components of the obligations in reasonable detail.

1222 (5) "Agricultural lien" means an interest, other than a security interest, in farm products:

1223 (A) which secures payment or performance of an obligation for:

1224 (i) goods or services furnished in connection with a debtor's farming operation; or

1225 (ii) rent on real property leased by a debtor in connection with its farming operation;

1226 (B) which is created by statute in favor of a person that:

1227 (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a
1228 debtor's farming operation; or

1229 (ii) leased real property to a debtor in connection with the debtor's farming operation; and

1230 (C) whose effectiveness does not depend on the person's possession of the personal property.

1231 (6) "As-extracted collateral" means:

1232 (A) oil, gas, or other minerals that are subject to a security interest that:

1233 (i) is created by a debtor having an interest in the minerals before extraction; and

1234 (ii) attaches to the minerals as extracted; or

1235 (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in
1236 which the debtor had an interest before extraction.

1237 (7) "Authenticate" means:

1238 (A) to sign; or

1239 (B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in
1240 part, with the present intent of the authenticating person to identify the person and adopt or accept a
1241 record.

1242 (8) "Bank" means an organization that is engaged in the business of banking. The term includes
1243 savings banks, savings and loan associations, credit unions, and trust companies.

1244 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

1245 (10) "Certificate of title" means a certificate of title with respect to which a statute provides for the
1246 security interest in question to be indicated on the certificate as a condition or result of the security
1247 interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

1248 (11) "Chattel paper" means a record or records that evidence both a monetary obligation and a
1249 security interest in specific goods, a security interest in specific goods and software used in the goods, a
1250 security interest in specific goods and license of software used in the goods, a lease of specific goods,
1251 or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary
1252 obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and
1253 includes a monetary obligation with respect to software used in the goods. The term does not include (i)
1254 charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to
1255 payment arising out of the use of a credit or charge card or information contained on or for use with the
1256 card. If a transaction is evidenced by records that include an instrument or series of instruments, the
1257 group of records taken together constitutes chattel paper.

1258 (12) "Collateral" means the property subject to a security interest or agricultural lien. The term
1259 includes:

1260 (A) proceeds to which a security interest attaches;

1261 (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

1262 (C) goods that are the subject of a consignment.

1263 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

1264 (A) the claimant is an organization; or

1265 (B) the claimant is an individual and the claim:

1266 (i) arose in the course of the claimant's business or profession; and

1267 (ii) does not include damages arising out of personal injury to or the death of an individual.

1268 (14) "Commodity account" means an account maintained by a commodity intermediary in which a
1269 commodity contract is carried for a commodity customer.

1270 (15) "Commodity contract" means a commodity futures contract, an option on a commodity futures
1271 contract, a commodity option, or another contract if the contract or option is:

1272 (A) traded on or subject to the rules of a board of trade that has been designated as a contract
1273 market for such a contract pursuant to federal commodities laws; or

1274 (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books
1275 of a commodity intermediary for a commodity customer.

1276 (16) "Commodity customer" means a person for which a commodity intermediary carries a

- commodity contract on its books.
- (17) "Commodity intermediary" means a person that:
- (A) is registered as a futures commission merchant under federal commodities law; or
- (B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) "Communicate" means:
- (A) to send a written or other tangible record;
- (B) to transmit a record by any means agreed upon by the persons sending and receiving the record;
- or
- (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (19) "Consignee" means a merchant to which goods are delivered in a consignment.
- (20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (A) the merchant:
- (i) deals in goods of that kind under a name other than the name of the person making delivery;
- (ii) is not an auctioneer; and
- (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
- (C) the goods are not consumer goods immediately before delivery; and
- (D) the transaction does not create a security interest that secures an obligation.
- (21) "Consignor" means a person that delivers goods to a consignee in a consignment.
- (22) "Consumer debtor" means a debtor in a consumer transaction.
- (23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.
- (24) "Consumer-goods transaction" means a consumer transaction in which:
- (A) an individual incurs an obligation primarily for personal, family, or household purposes; and
- (B) a security interest in consumer goods secures the obligation.
- (25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.
- (26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
- (27) "Continuation statement" means an amendment of a financing statement which:
- (A) identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- (28) "Debtor" means:
- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (C) a consignee.
- (29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.
- (30) "Document" means a document of title or a receipt of the type described in subdivision (2) of § 8.7-201.
- (31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
- (32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
- (33) "Equipment" means goods other than inventory, farm products, or consumer goods.
- (34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
- (A) crops grown, growing, or to be grown, including:
- (i) crops produced on trees, vines, and bushes; and
- (ii) aquatic goods produced in aquacultural operations;
- (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (C) supplies used or produced in a farming operation; or
- (D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to subsection (a) of § 8.9A-519.

(37) "Filing office" means an office designated in § 8.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to § 8.9A-526.

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

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of § 8.9A-502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

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

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) an assignee for benefit of creditors from the time of assignment;
- (C) a trustee in bankruptcy from the date of the filing of the petition; or

1399 (D) a receiver in equity from the time of appointment.

1400 (53) "Manufactured home" means a structure, transportable in one or more sections, which, in the
 1401 traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected
 1402 on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used
 1403 as a dwelling with or without a permanent foundation when connected to the required utilities, and
 1404 includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term
 1405 includes any structure that meets all of the requirements of this paragraph except the size requirements
 1406 and with respect to which the manufacturer voluntarily files a certification required by the United States
 1407 Secretary of Housing and Urban Development and complies with the standards established under Title
 1408 42 of the United States Code.

1409 (54) "Manufactured-home transaction" means a secured transaction:

1410 (A) that creates a purchase-money security interest in a manufactured home, other than a
 1411 manufactured home held as inventory; or

1412 (B) in which a manufactured home, other than a manufactured home held as inventory, is the
 1413 primary collateral.

1414 (55) "Mortgage" means a consensual interest in real property, including fixtures, which secures
 1415 payment or performance of an obligation.

1416 (56) "New debtor" means a person that becomes bound as debtor under *subsection (d) of § 8.9A-203*
 1417 ~~(d)~~ by a security agreement previously entered into by another person.

1418 (57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii)
 1419 release by a transferee of an interest in property previously transferred to the transferee. The term does
 1420 not include an obligation substituted for another obligation.

1421 (58) "Noncash proceeds" means proceeds other than cash proceeds.

1422 (59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or
 1423 an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has
 1424 provided property other than the collateral to secure payment or other performance of the obligation, or
 1425 (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation.
 1426 The term does not include issuers or nominated persons under a letter of credit.

1427 (60) "Original debtor," except as used in subsection (c) of § 8.9A-310, means a person that, as
 1428 debtor, entered into a security agreement to which a new debtor has become bound under subsection (d)
 1429 of § 8.9A-203.

1430 (61) "Payment intangible" means a general intangible under which the account debtor's principal
 1431 obligation is a monetary obligation.

1432 (62) "Person related to," with respect to an individual, means:

1433 (A) the spouse of the individual;

1434 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;

1435 (C) an ancestor or lineal descendant of the individual or the individual's spouse; or

1436 (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares
 1437 the same home with the individual.

1438 (63) "Person related to," with respect to an organization, means:

1439 (A) a person directly or indirectly controlling, controlled by, or under common control with the
 1440 organization;

1441 (B) an officer or director of, or a person performing similar functions with respect to, the
 1442 organization;

1443 (C) an officer or director of, or a person performing similar functions with respect to, a person
 1444 described in subparagraph (A);

1445 (D) the spouse of an individual described in subparagraph (A), (B), or (C); or

1446 (E) an individual who is related by blood or marriage to an individual described in subparagraph (A),
 1447 (B), (C), or (D) and shares the same home with the individual.

1448 (64) "Proceeds," except as used in subsection (b) of § 8.9A-609, means the following property:

1449 (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

1450 (B) whatever is collected on, or distributed on account of, collateral;

1451 (C) rights arising out of collateral;

1452 (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or
 1453 interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

1454 (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured
 1455 party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in,
 1456 or damage to, the collateral.

1457 (65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation,
 1458 does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank
 1459 has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 8.9A-620, 8.9A-621, and 8.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

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

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under §§ 8.2-401, 8.2-505, 8.2-711 (3), 8.2A-508 (5), 8.4-210, or § 8.5A-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "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.

(77) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

1521 (b) Definitions in other titles. The following definitions in other titles apply to this title:

1522 "Applicant" § 8.5A-102.

1523 "Beneficiary" § 8.5A-102.

1524 "Broker" § 8.8A-102.

1525 "Certificated security" § 8.8A-102.

1526 "Check" § 8.3A-104.

1527 "Clearing corporation" § 8.8A-102.

1528 "Contract for sale" § 8.2-106.

1529 "*Control*" § 8.7-106.

1530 "Customer" § 8.4-104.

1531 "Entitlement holder" § 8.8A-102.

1532 "Financial asset" § 8.8A-102.

1533 "Holder in due course" § 8.3A-302.

1534 "Issuer" (with respect to a letter of credit or letter-of-credit right) § 8.5A-102.

1535 "Issuer" (with respect to a security) § 8.8A-201.

1536 "*Issuer*" (*with respect to documents of title*) § 8.7-102.

1537 "Lease" § 8.2A-103.

1538 "Lease agreement" § 8.2A-103.

1539 "Lease contract" § 8.2A-103.

1540 "Leasehold interest" § 8.2A-103.

1541 "Lessee" § 8.2A-103.

1542 "Lessee in ordinary course of business" § 8.2A-103.

1543 "Lessor" § 8.2A-103.

1544 "Lessor's residual interest" § 8.2A-103.

1545 "Letter of credit" § 8.5A-102.

1546 "Merchant" § 8.2-104.

1547 "Negotiable instrument" § 8.3A-104.

1548 "Nominated person" § 8.5A-102.

1549 "Note" § 8.3A-104.

1550 "Proceeds of a letter of credit" § 8.5A-114.

1551 "Prove" § 8.3A-103.

1552 "Sale" § 8.2-106.

1553 "Securities account" § 8.8A-501.

1554 "Securities intermediary" § 8.8A-102.

1555 "Security" § 8.8A-102.

1556 "Security certificate" § 8.8A-102.

1557 "Security entitlement" § 8.8A-102.

1558 "Uncertificated security" § 8.8A-102.

1559 (c) Title 8.1A definitions and principles. Title 8.1A contains general definitions and principles of
1560 construction and interpretation applicable throughout this title.

1561 § 8.9A-203. Attachment and enforceability of security interest; proceeds, supporting obligations;
1562 formal requisites.

1563 (a) Attachment. A security interest attaches to collateral when it becomes enforceable against the
1564 debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

1565 (b) Enforceability. Except as otherwise provided in subsections (c) through (i), a security interest is
1566 enforceable against the debtor and third parties with respect to the collateral only if:

1567 (1) value has been given;

1568 (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured
1569 party; and

1570 (3) one of the following conditions is met:

1571 (A) the debtor has authenticated a security agreement that provides a description of the collateral and,
1572 if the security interest covers timber to be cut, a description of the land concerned;

1573 (B) the collateral is not a certificated security and is in the possession of the secured party under
1574 § 8.9A-313 pursuant to the debtor's security agreement;

1575 (C) the collateral is a certificated security in registered form and the security certificate has been
1576 delivered to the secured party under § 8.8A-301 pursuant to the debtor's security agreement; or

1577 (D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit
1578 rights, *or electronic documents*, and the secured party has control under §§ 8.7-106, 8.9A-104, 8.9A-105,
1579 8.9A-106, or § 8.9A-107 pursuant to the debtor's security agreement.

1580 (c) Other Uniform Commercial Code provisions. Subsection (b) is subject to § 8.4-210 on the
1581 security interest of a collecting bank, § 8.5A-118 on the security interest of a letter-of-credit issuer or

nominated person, § 8.9A-110 on a security interest arising under Title 8.2 or Title 8.2A, and § 8.9A-206 on security interests in investment property.

(d) When person becomes bound by another person's security agreement. A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this title or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or
(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subdivision (b) (3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 8.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) Security entitlement carried in securities account. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

§ 8.9A-207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under §§ 8.7-106, 8.9A-104, 8.9A-105, 8.9A-106, or § 8.9A-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.

(d) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

§ 8.9A-208. Additional duties of secured party having control of collateral.

(a) Applicability of section. This section applies to cases in which there is no outstanding secured

obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ~~ten~~ 10 days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under § 8.9A-104 (a) (2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under § 8.9A-104 (a) (3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under § 8.9A-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper 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 chattel paper 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;

(4) a secured party having control of investment property under § 8.8A-106 (d) (2) or § 8.9A-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 § 8.9A-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 that add or change an identified assignee of the authoritative copy without the consent of the secured party.

§ 8.9A-301. Law governing perfection and priority of security interests.

Except as otherwise provided in §§ 8.9A-303 through 8.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while *tangible* negotiable documents, goods, instruments, money, or tangible chattel paper are 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.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§ 8.9A-310. When filing required to perfect security interest or agricultural lien; security interests and

- 1704 agricultural liens to which filing provisions do not apply.
- 1705 (a) General rule; perfection by filing. Except as otherwise provided in subsection (b) and § 8.9A-312
- 1706 (b), a financing statement must be filed to perfect all security interests and agricultural liens.
- 1707 (b) Exceptions; filing not necessary. The filing of a financing statement is not necessary to perfect a
- 1708 security interest:
- 1709 (1) that is perfected under § 8.9A-308 (d), (e), (f), or (g);
- 1710 (2) that is perfected under § 8.9A-309 when it attaches;
- 1711 (3) in property subject to a statute, regulation, or treaty described in § 8.9A-311 (a);
- 1712 (4) in goods in possession of a bailee ~~which~~ *that* is perfected under § 8.9A-312 (d) (1) or (2);
- 1713 (5) in certificated securities, documents, goods, or instruments ~~which~~ *that* is perfected without filing,
- 1714 *control*, or possession under § 8.9A-312 (e), (f), or (g);
- 1715 (6) in collateral in the secured party's possession under § 8.9A-313;
- 1716 (7) in a certificated security which is perfected by delivery of the security certificate to the secured
- 1717 party under § 8.9A-313;
- 1718 (8) in deposit accounts, electronic chattel paper, *electronic documents*, investment property, or
- 1719 letter-of-credit rights which is perfected by control under § 8.9A-314;
- 1720 (9) in proceeds which is perfected under § 8.9A-315; or
- 1721 (10) that is perfected under § 8.9A-316.
- 1722 (c) Assignment of perfected security interest. If a secured party assigns a perfected security interest
- 1723 or agricultural lien, a filing under this title is not required to continue the perfected status of the security
- 1724 interest against creditors of and transferees from the original debtor.
- 1725 § 8.9A-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods
- 1726 covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by
- 1727 permissive filing, temporary perfection without filing or transfer of possession.
- 1728 (a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents,
- 1729 instruments, or investment property may be perfected by filing.
- 1730 (b) Control or possession of certain collateral. Except as otherwise provided in § 8.9A-315 (c) and
- 1731 (d) for proceeds:
- 1732 (1) a security interest in a deposit account may be perfected only by control under § 8.9A-314;
- 1733 (2) except as otherwise provided in § 8.9A-308 (d), a security interest in a letter-of-credit right may
- 1734 be perfected only by control under § 8.9A-314; and
- 1735 (3) a security interest in money may be perfected only by the secured party's taking possession under
- 1736 § 8.9A-313.
- 1737 (c) Goods covered by negotiable document. While goods are in the possession of a bailee that has
- 1738 issued a negotiable document covering the goods:
- 1739 (1) a security interest in the goods may be perfected by perfecting a security interest in the
- 1740 document; and
- 1741 (2) a security interest perfected in the document has priority over any security interest that becomes
- 1742 perfected in the goods by another method during that time.
- 1743 (d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that
- 1744 has issued a nonnegotiable document covering the goods, a security interest in the goods may be
- 1745 perfected by:
- 1746 (1) issuance of a document in the name of the secured party;
- 1747 (2) the bailee's receipt of notification of the secured party's interest; or
- 1748 (3) filing as to the goods.
- 1749 (e) Temporary perfection; new value. A security interest in certificated securities, negotiable
- 1750 documents, or instruments is perfected without filing or the taking of possession *or control* for a period
- 1751 of ~~twenty~~ 20 days from the time it attaches to the extent that it arises for new value given under an
- 1752 authenticated security agreement.
- 1753 (f) Temporary perfection; goods or documents made available to debtor. A perfected security interest
- 1754 in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable
- 1755 document for the goods, remains perfected for ~~twenty~~ 20 days without filing if the secured party makes
- 1756 available to the debtor the goods or documents representing the goods for the purpose of:
- 1757 (1) ultimate sale or exchange; or
- 1758 (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise
- 1759 dealing with them in a manner preliminary to their sale or exchange.
- 1760 (g) Temporary perfection; delivery of security certificate or instrument to debtor. A perfected security
- 1761 interest in a certificated security or instrument remains perfected for ~~twenty~~ 20 days without filing if the
- 1762 secured party delivers the security certificate or instrument to the debtor for the purpose of:
- 1763 (1) ultimate sale or exchange; or
- 1764 (2) presentation, collection, enforcement, renewal, or registration of transfer.

1765 (h) Expiration of temporary perfection. After the ~~twenty~~ 20-day period specified in subsection (e), (f),
 1766 or (g) expires, perfection depends upon compliance with this title.

1767 § 8.9A-313. When possession by or delivery to secured party perfects security interest without filing.

1768 (a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured
 1769 party may perfect a security interest in *tangible* negotiable documents, goods, instruments, money, or
 1770 tangible chattel paper by taking possession of the collateral. A secured party may perfect a security
 1771 interest in certificated securities by taking delivery of the certificated securities under § 8.8A-301.

1772 (b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued
 1773 by this Commonwealth, a secured party may perfect a security interest in the goods by taking possession
 1774 of the goods only in the circumstances described in § 8.9A-316 (d).

1775 (c) Collateral in possession of person other than debtor. With respect to collateral other than
 1776 certificated securities and goods covered by a document, a secured party takes possession of collateral in
 1777 the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the
 1778 debtor in the ordinary course of the debtor's business, when:

1779 (1) the person in possession authenticates a record acknowledging that it holds possession of the
 1780 collateral for the secured party's benefit; or

1781 (2) the person takes possession of the collateral after having authenticated a record acknowledging
 1782 that it will hold possession of collateral for the secured party's benefit.

1783 (d) Time of perfection by possession; continuation of perfection. If perfection of a security interest
 1784 depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time
 1785 the secured party takes possession and continues only while the secured party retains possession.

1786 (e) Time of perfection by delivery; continuation of perfection. A security interest in a certificated
 1787 security in registered form is perfected by delivery when delivery of the certificated security occurs
 1788 under § 8.8A-301 and remains perfected by delivery until the debtor obtains possession of the security
 1789 certificate.

1790 (f) Acknowledgment not required. A person in possession of collateral is not required to
 1791 acknowledge that it holds possession for a secured party's benefit.

1792 (g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it
 1793 holds possession for the secured party's benefit:

1794 (1) the acknowledgment is effective under subsection (c) or § 8.8A-301 (a), even if the
 1795 acknowledgment violates the rights of a debtor; and

1796 (2) unless the person otherwise agrees or law other than this title otherwise provides, the person does
 1797 not owe any duty to the secured party and is not required to confirm the acknowledgment to another
 1798 person.

1799 (h) Secured party's delivery to person other than debtor. A secured party having possession of
 1800 collateral does not relinquish possession by delivering the collateral to a person other than the debtor or
 1801 a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person
 1802 was instructed before the delivery or is instructed contemporaneously with the delivery:

1803 (1) to hold possession of the collateral for the secured party's benefit; or

1804 (2) to redeliver the collateral to the secured party.

1805 (i) Effect of delivery under subsection (h); no duties or confirmation. A secured party does not
 1806 relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to
 1807 which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not
 1808 required to confirm the delivery to another person unless the person otherwise agrees or law other than
 1809 this title otherwise provides.

1810 § 8.9A-314. Perfection by control.

1811 (a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit
 1812 rights, ~~or~~ electronic chattel paper, *or electronic documents* may be perfected by control of the collateral
 1813 under §§ 8.7-106, 8.9A-104, 8.9A-105, 8.9A-106 or § 8.9A-107.

1814 (b) Specified collateral; time of perfection by control; continuation of perfection. A security interest
 1815 in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, *or electronic documents* is
 1816 perfected by control under §§ 8.7-106, 8.9A-104, 8.9A-105 or § 8.9A-107 when the secured party
 1817 obtains control and remains perfected by control only while the secured party retains control.

1818 (c) Investment property; time of perfection by control; continuation of perfection. A security interest
 1819 in investment property is perfected by control under § 8.9A-106 from the time the secured party obtains
 1820 control and remains perfected by control until:

1821 (1) the secured party does not have control; and

1822 (2) one of the following occurs:

1823 (A) if the collateral is a certificated security, the debtor has or acquires possession of the security
 1824 certificate;

1825 (B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as

the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§ 8.9A-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under § 8.9A-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in subdivision (b) (3) of § 8.9A-203 is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, *tangible* documents, goods, instruments, or a security certificate 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) Lessees that receive delivery. 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) Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of 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.

(e) Purchase-money security interest. Except as otherwise provided in §§ 8.9A-320 and 8.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

§ 8.9A-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in § 8.9A-516 (b) (5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(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.

§ 8.9A-601. Rights after default; judicial enforcement, consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in § 8.9A-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under §§ 8.7-106, 8.9A-104, 8.9A-105, 8.9A-106, or § 8.9A-107 has the rights and duties provided in § 8.9A-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) and § 8.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

1887 (3) any date specified in a statute under which the agricultural lien was created.
1888 (f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or
1889 agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase
1890 at the sale and thereafter hold the collateral free of any other requirements of this title.
1891 (g) Consignor or buyer of certain rights to payment. Except as otherwise provided in § 8.9A-607 (c),
1892 this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel
1893 paper, payment intangibles, or promissory notes.
1894 **2. That § 8.7-105 of the Code of Virginia is repealed.**