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FILED

**Jane Dee Hull
Secretary of State**

HOUSE BILL 2153

CHAPTER 5 AN ACT

AMENDING SECTIONS 47-1105, 47-2512, 47-9103, 47-9104, 47-9105, 47-9106, 47-9304 AND 47-9305, ARIZONA REVISED STATUTES; REPEALING TITLE 47, CHAPTER 5, ARIZONA REVISED STATUTES; AMENDING TITLE 47, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 5; RELATING TO THE UNIFORM COMMERCIAL CODE.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 47-1105, Arizona Revised Statutes, is amended to
3 read:

4 47-1105. Territorial application of the title; parties' power
5 to choose applicable law

6 A. Except as provided hereafter in this section, when a transaction
7 bears a reasonable relation to this state and also to another state or nation
8 the parties may agree that the law either of this state or of such other
9 state or nation shall govern their rights and duties. Failing such agreement
10 this title applies to transactions bearing an appropriate relation to this
11 state.

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

16 1. Rights of creditors against sold goods. Section 47-2402.

17 2. Applicability of the chapter on leases. Sections 47-2A105 and
18 47-2A106.

19 3. Applicability of the chapter on bank deposits and collections.
20 Section 47-4102.

21 4. LETTERS OF CREDIT. SECTION 47-5116.

1 5. "DISHONOR" OF A LETTER OF CREDIT MEANS FAILURE TO TIMELY HONOR OR
2 TO TAKE AN INTERIM ACTION, SUCH AS ACCEPTANCE OF A DRAFT, THAT MAY BE
3 REQUIRED BY THE LETTER OF CREDIT.

4 6. "DOCUMENT" MEANS A DRAFT OR OTHER DEMAND, DOCUMENT OF TITLE,
5 INVESTMENT SECURITY, CERTIFICATE, INVOICE, OR OTHER RECORD, STATEMENT, OR
6 REPRESENTATION OF FACT, LAW, RIGHT OR OPINION:

7 (a) THAT IS PRESENTED IN A WRITTEN OR OTHER MEDIUM PERMITTED BY THE
8 LETTER OF CREDIT OR, UNLESS PROHIBITED BY THE LETTER OF CREDIT, BY THE
9 STANDARD PRACTICE REFERRED TO IN SECTION 47-5108, SUBSECTION E; AND

10 (b) THAT IS CAPABLE OF BEING EXAMINED FOR COMPLIANCE WITH THE TERMS
11 AND CONDITIONS OF THE LETTER OF CREDIT. A DOCUMENT MAY NOT BE ORAL.

12 7. "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR TRANSACTION
13 CONCERNED.

14 8. "HONOR" OF A LETTER OF CREDIT MEANS PERFORMANCE OF THE ISSUER'S
15 UNDERTAKING IN THE LETTER OF CREDIT TO PAY OR DELIVER AN ITEM OF VALUE.
16 UNLESS THE LETTER OF CREDIT OTHERWISE PROVIDES, "HONOR" OCCURS:

17 (a) UPON PAYMENT;

18 (b) IF THE LETTER OF CREDIT PROVIDES FOR ACCEPTANCE, UPON ACCEPTANCE
19 OF A DRAFT AND, AT MATURITY, ITS PAYMENT; OR

20 (c) IF THE LETTER OF CREDIT PROVIDES FOR INCURRING A DEFERRED
21 OBLIGATION, UPON INCURRING THE OBLIGATION AND, AT MATURITY, ITS PERFORMANCE.

22 9. "ISSUER" MEANS A BANK OR ANY OTHER PERSON THAT ISSUES A LETTER OF
23 CREDIT BUT DOES NOT INCLUDE AN INDIVIDUAL WHO MAKES AN ENGAGEMENT FOR
24 PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

25 10. "LETTER OF CREDIT" MEANS A DEFINITE UNDERTAKING THAT SATISFIES THE
26 REQUIREMENTS OF SECTION 47-5104 BY AN ISSUER TO A BENEFICIARY AT THE REQUEST
27 OR FOR THE ACCOUNT OF AN APPLICANT OR, IN THE CASE OF A FINANCIAL
28 INSTITUTION, TO ITSELF OR FOR ITS OWN ACCOUNT, TO HONOR A DOCUMENTARY
29 PRESENTATION BY PAYMENT OR DELIVERY OF AN ITEM OF VALUE.

30 11. "NOMINATED PERSON" MEANS A PERSON WHOM THE ISSUER:

31 (a) DESIGNATES OR AUTHORIZES TO PAY, ACCEPT, NEGOTIATE OR OTHERWISE
32 GIVE VALUE UNDER A LETTER OF CREDIT; AND

33 (b) UNDERTAKES BY AGREEMENT OR CUSTOM AND PRACTICE TO REIMBURSE.

34 12. "PRESENTATION" MEANS DELIVERY OF A DOCUMENT TO AN ISSUER OR
35 NOMINATED PERSON FOR HONOR OR GIVING OF VALUE UNDER A LETTER OF CREDIT.

36 13. "PRESENTER" MEANS A PERSON MAKING A PRESENTATION AS OR ON BEHALF
37 OF A BENEFICIARY OR NOMINATED PERSON.

38 14. "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM,
39 OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN
40 PERCEIVABLE FORM.

41 15. "SUCCESSOR OF A BENEFICIARY" MEANS A PERSON WHO SUCCEEDS TO
42 SUBSTANTIALLY ALL OF THE RIGHTS OF A BENEFICIARY BY OPERATION OF LAW,
43 INCLUDING A CORPORATION WITH OR INTO WHICH THE BENEFICIARY HAS BEEN MERGED

1 OR CONSOLIDATED, AND AN ADMINISTRATOR, EXECUTOR, PERSONAL REPRESENTATIVE,
2 TRUSTEE IN BANKRUPTCY, DEBTOR IN POSSESSION, LIQUIDATOR AND RECEIVER.

3 B. DEFINITIONS IN OTHER CHAPTERS APPLYING TO THIS CHAPTER AND THE
4 SECTIONS IN WHICH THEY APPEAR ARE:

5 1. "ACCEPT" OR "ACCEPTANCE". SECTION 47-3409.

6 2. "VALUE". SECTIONS 47-3303 AND 47-4211.

7 C. IN ADDITION, CHAPTER 1 OF THIS TITLE CONTAINS CERTAIN ADDITIONAL
8 GENERAL DEFINITIONS AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION
9 APPLICABLE THROUGHOUT THIS CHAPTER.

10 47-5103. Scope

11 A. THIS CHAPTER APPLIES TO LETTERS OF CREDIT AND TO CERTAIN RIGHTS AND
12 OBLIGATIONS ARISING OUT OF TRANSACTIONS INVOLVING LETTERS OF CREDIT.

13 B. THE STATEMENT OF A RULE IN THIS CHAPTER DOES NOT BY ITSELF REQUIRE,
14 IMPLY OR NEGATE APPLICATION OF THE SAME OR A DIFFERENT RULE TO A SITUATION
15 NOT PROVIDED FOR, OR TO A PERSON NOT SPECIFIED, IN THIS CHAPTER.

16 C. WITH THE EXCEPTION OF THIS SUBSECTION, SUBSECTIONS A AND D OF THIS
17 SECTION, SECTION 47-5102, SUBSECTION A, PARAGRAPHS 9 AND 10, SECTION 47-5106,
18 SUBSECTION D AND SECTION 47-5114, SUBSECTION D, AND EXCEPT TO THE EXTENT
19 PROHIBITED IN SECTION 47-1102, SUBSECTION C AND SECTION 47-5117, SUBSECTION
20 D, THE EFFECT OF THIS ARTICLE MAY BE VARIED BY AGREEMENT OR BY A PROVISION
21 STATED OR INCORPORATED BY REFERENCE IN AN UNDERTAKING. A TERM IN AN
22 AGREEMENT OR UNDERTAKING GENERALLY EXCUSING LIABILITY OR GENERALLY LIMITING
23 REMEDIES FOR FAILURE TO PERFORM OBLIGATIONS IS NOT SUFFICIENT TO VARY
24 OBLIGATIONS PRESCRIBED BY THIS CHAPTER.

25 D. RIGHTS AND OBLIGATIONS OF AN ISSUER TO A BENEFICIARY OR A NOMINATED
26 PERSON UNDER A LETTER OF CREDIT ARE INDEPENDENT OF THE EXISTENCE, PERFORMANCE
27 OR NONPERFORMANCE OF A CONTRACT OR ARRANGEMENT OUT OF WHICH THE LETTER OF
28 CREDIT ARISES OR WHICH UNDERLIES IT, INCLUDING CONTRACTS OR ARRANGEMENTS
29 BETWEEN THE ISSUER AND THE APPLICANT AND BETWEEN THE APPLICANT AND THE
30 BENEFICIARY.

31 47-5104. Formal requirements

32 A LETTER OF CREDIT, CONFIRMATION, ADVICE, TRANSFER, AMENDMENT OR
33 CANCELLATION MAY BE ISSUED IN ANY FORM THAT IS A RECORD AND IS AUTHENTICATED
34 BY A SIGNATURE OR IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES OR THE
35 STANDARD PRACTICE REFERRED TO IN SECTION 47-5108, SUBSECTION E.

36 47-5105. Consideration

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

39 47-5106. Issuance; amendment; cancellation; duration

40 A. A LETTER OF CREDIT IS ISSUED AND BECOMES ENFORCEABLE ACCORDING TO
41 ITS TERMS AGAINST THE ISSUER WHEN THE ISSUER SENDS OR OTHERWISE TRANSMITS IT
42 TO THE PERSON REQUESTED TO ADVISE OR TO THE BENEFICIARY. A LETTER OF CREDIT
43 IS REVOCABLE ONLY IF IT SO PROVIDES.

1 B. AFTER A LETTER OF CREDIT IS ISSUED, RIGHTS AND OBLIGATIONS OF A
2 BENEFICIARY, APPLICANT, CONFIRMER AND ISSUER ARE NOT AFFECTED BY AN AMENDMENT
3 OR CANCELLATION TO WHICH THAT PERSON HAS NOT CONSENTED EXCEPT TO THE EXTENT
4 THE LETTER OF CREDIT PROVIDES THAT IS REVOCABLE OR THAT THE ISSUER MAY AMEND
5 OR CANCEL THE LETTER OF CREDIT WITHOUT THAT CONSENT.

6 C. IF THERE IS NO STATED EXPIRATION DATE OR OTHER PROVISION THAT
7 DETERMINES ITS DURATION, A LETTER OF CREDIT EXPIRES ONE YEAR AFTER ITS STATED
8 DATE OF ISSUANCE OR, IF NONE IS STATED, AFTER THE DATE ON WHICH IT IS ISSUED.

9 D. A LETTER OF CREDIT THAT STATES THAT IT IS PERPETUAL EXPIRES FIVE
10 YEARS AFTER ITS STATED DATE OF ISSUANCE, OR IF NONE IS STATED, AFTER THE DATE
11 ON WHICH IT IS ISSUED.

12 47-5107. Confirmer: nominated person

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

18 B. A NOMINATED PERSON WHO IS NOT A CONFIRMER IS NOT OBLIGATED TO HONOR
19 OR OTHERWISE GIVE VALUE FOR A PRESENTATION.

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

28 D. A PERSON WHO NOTIFIES A TRANSFEREE BENEFICIARY OF THE TERMS OF A
29 LETTER OF CREDIT, CONFIRMATION, AMENDMENT OR ADVICE HAS THE RIGHTS AND
30 OBLIGATIONS OF AN ADVISER UNDER SUBSECTION C. THE TERMS IN THE NOTICE TO THE
31 TRANSFEREE BENEFICIARY MAY DIFFER FROM THE TERMS IN ANY NOTICE TO THE
32 TRANSFEROR BENEFICIARY TO THE EXTENT PERMITTED BY THE LETTER OF CREDIT,
33 CONFIRMATION, AMENDMENT OR ADVICE RECEIVED BY THE PERSON WHO SO NOTIFIES.

34 47-5108. Issuer's rights and obligations

35 A. EXCEPT AS OTHERWISE PROVIDED IN SECTION 47-5109, AN ISSUER SHALL
36 HONOR A PRESENTATION THAT, AS DETERMINED BY THE STANDARD PRACTICE REFERRED
37 TO IN SUBSECTION E OF THIS SECTION, APPEARS ON ITS FACE STRICTLY TO COMPLY
38 WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT. EXCEPT AS OTHERWISE
39 PROVIDED IN SECTION 47-5113 AND UNLESS OTHERWISE AGREED WITH THE APPLICANT,
40 AN ISSUER SHALL DISHONOR A PRESENTATION THAT DOES NOT APPEAR TO COMPLY.

41 B. AN ISSUER HAS A REASONABLE TIME AFTER PRESENTATION, BUT NOT BEYOND
42 THE END OF THE SEVENTH BUSINESS DAY OF THE ISSUER AFTER THE DAY OF ITS
43 RECEIPT OF DOCUMENTS:

- 44 1. TO HONOR;

1 2. IF THE LETTER OF CREDIT PROVIDES FOR HONOR TO BE COMPLETED MORE
2 THAN SEVEN BUSINESS DAYS AFTER PRESENTATION, TO ACCEPT A DRAFT OR INCUR A
3 DEFERRED OBLIGATION; OR

4 3. TO GIVE NOTICE TO THE PRESENTER OF DISCREPANCIES IN THE
5 PRESENTATION.

6 C. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION D OF THIS SECTION, AN
7 ISSUER IS PRECLUDED FROM ASSERTING AS A BASIS FOR DISHONOR ANY DISCREPANCY
8 IF TIMELY NOTICE IS NOT GIVEN, OR ANY DISCREPANCY NOT STATED IN THE NOTICE
9 IF TIMELY NOTICE IS GIVEN.

10 D. FAILURE TO GIVE THE NOTICE SPECIFIED IN SUBSECTION B OF THIS
11 SECTION OR TO MENTION FRAUD, FORGERY OR EXPIRATION IN THE NOTICE DOES NOT
12 PRECLUDE THE ISSUER FROM ASSERTING AS A BASIS FOR DISHONOR FRAUD OR FORGERY
13 AS DESCRIBED IN SECTION 47-5109, SUBSECTION A OR EXPIRATION OF THE LETTER OF
14 CREDIT BEFORE PRESENTATION.

15 E. AN ISSUER SHALL OBSERVE STANDARD PRACTICE OF FINANCIAL INSTITUTIONS
16 THAT REGULARLY ISSUE LETTERS OF CREDIT. DETERMINATION OF THE ISSUER'S
17 OBSERVANCE OF THE STANDARD PRACTICE IS A MATTER OF INTERPRETATION FOR THE
18 COURT. THE COURT SHALL OFFER THE PARTIES A REASONABLE OPPORTUNITY TO PRESENT
19 EVIDENCE OF THE STANDARD PRACTICE.

20 F. AN ISSUER IS NOT RESPONSIBLE FOR:

21 1. THE PERFORMANCE OR NONPERFORMANCE OF THE UNDERLYING CONTRACT,
22 ARRANGEMENT OR TRANSACTION;

23 2. AN ACT OR OMISSION OF OTHERS; OR

24 3. OBSERVANCE OR KNOWLEDGE OF THE USAGE OF A PARTICULAR TRADE OTHER
25 THAN THE STANDARD PRACTICE REFERRED TO IN SUBSECTION E OF THIS SECTION.

26 G. IF AN UNDERTAKING CONSTITUTING A LETTER OF CREDIT CONTAINS
27 NONDOCUMENTARY CONDITIONS, AN ISSUER SHALL DISREGARD THE NONDOCUMENTARY
28 CONDITIONS AND TREAT THEM AS IF THEY WERE NOT STATED.

29 H. AN ISSUER THAT HAS DISHONORED A PRESENTATION SHALL RETURN THE
30 DOCUMENTS OR HOLD THEM AT THE DISPOSAL OF, AND SEND ADVICE TO THAT EFFECT TO,
31 THE PRESENTER.

32 I. AN ISSUER THAT HAS HONORED A PRESENTATION AS PERMITTED OR REQUIRED
33 BY THIS CHAPTER:

34 1. IS ENTITLED TO BE REIMBURSED BY THE APPLICANT IN IMMEDIATELY
35 AVAILABLE FUNDS NOT LATER THAN THE DATE OF ITS PAYMENT OF FUNDS;

36 2. TAKES THE DOCUMENTS FREE OF CLAIMS OF THE BENEFICIARY OR PRESENTER;

37 3. IS PRECLUDED FROM ASSERTING A RIGHT OF RECOURSE ON A DRAFT UNDER
38 SECTIONS 47-3414 AND 47-3415;

39 4. EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 47-5110 AND 47-5117, IS
40 PRECLUDED FROM RESTITUTION OF MONEY PAID OR OTHER VALUE GIVEN BY MISTAKE TO
41 THE EXTENT THE MISTAKE CONCERNS DISCREPANCIES IN THE DOCUMENTS OR TENDER THAT
42 ARE APPARENT ON THE FACE OF THE PRESENTATION; AND

1 5. IS DISCHARGED TO THE EXTENT OF ITS PERFORMANCE UNDER THE LETTER OF
2 CREDIT UNLESS THE ISSUER HONORED A PRESENTATION IN WHICH A REQUIRED SIGNATURE
3 OF A BENEFICIARY WAS FORGED.

4 47-5109. Fraud and forgery

5 A. IF A PRESENTATION IS MADE THAT APPEARS ON ITS FACE STRICTLY TO
6 COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT, BUT A REQUIRED
7 DOCUMENT IS FORGED OR MATERIALLY FRAUDULENT, OR HONOR OF THE PRESENTATION
8 WOULD FACILITATE A MATERIAL FRAUD BY THE BENEFICIARY ON THE ISSUER OR
9 APPLICANT:

10 1. THE ISSUER SHALL HONOR THE PRESENTATION, IF HONOR IS DEMANDED BY
11 A NOMINATED PERSON WHO HAS GIVEN VALUE IN GOOD FAITH AND WITHOUT NOTICE OF
12 FORGERY OR MATERIAL FRAUD, A CONFIRMER WHO HAS HONORED ITS CONFIRMATION IN
13 GOOD FAITH, A HOLDER IN DUE COURSE OF A DRAFT DRAWN UNDER THE LETTER OF
14 CREDIT THAT WAS TAKEN AFTER ACCEPTANCE BY THE ISSUER OR NOMINATED PERSON, OR
15 AN ASSIGNEE OF THE ISSUER'S OR NOMINATED PERSON'S DEFERRED OBLIGATION THAT
16 WAS TAKEN FOR VALUE AND WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD AFTER THE
17 OBLIGATION WAS INCURRED BY THE ISSUER OR NOMINATED PERSON; AND

18 2. THE ISSUER, ACTING IN GOOD FAITH, MAY HONOR OR DISHONOR THE
19 PRESENTATION IN ANY OTHER CASE.

20 B. IF AN APPLICANT CLAIMS THAT A REQUIRED DOCUMENT IS FORGED OR
21 MATERIALLY FRAUDULENT OR THAT HONOR OF THE PRESENTATION WOULD FACILITATE A
22 MATERIAL FRAUD BY THE BENEFICIARY ON THE ISSUER OR APPLICANT, A COURT OF
23 COMPETENT JURISDICTION MAY TEMPORARILY OR PERMANENTLY ENJOIN THE ISSUER FROM
24 HONORING A PRESENTATION OR GRANT SIMILAR RELIEF AGAINST THE ISSUER OR OTHER
25 PERSONS ONLY IF THE COURT FINDS THAT:

26 1. THE RELIEF IS NOT PROHIBITED UNDER THE LAW APPLICABLE TO AN
27 ACCEPTED DRAFT OR DEFERRED OBLIGATION INCURRED BY THE ISSUER;

28 2. A BENEFICIARY, ISSUER OR NOMINATED PERSON WHO MAY BE ADVERSELY
29 AFFECTED IS ADEQUATELY PROTECTED AGAINST LOSS THAT IT MAY SUFFER BECAUSE THE
30 RELIEF IS GRANTED;

31 3. ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE RELIEF UNDER THE
32 LAW OF THIS STATE HAVE BEEN MET; AND

33 4. ON THE BASIS OF THE INFORMATION SUBMITTED TO THE COURT, THE
34 APPLICANT IS MORE LIKELY THAN NOT TO SUCCEED UNDER ITS CLAIM OF FORGERY OR
35 MATERIAL FRAUD AND THE PERSON DEMANDING HONOR DOES NOT QUALIFY FOR PROTECTION
36 UNDER SUBSECTION A, PARAGRAPH 1.

37 47-5110. Warranties

38 A. IF ITS PRESENTATION IS HONORED, THE BENEFICIARY WARRANTS:

39 1. TO THE ISSUER, ANY OTHER PERSON TO WHOM PRESENTATION IS MADE AND
40 THE APPLICANT THAT THERE IS NO FRAUD OR FORGERY OF THE KIND DESCRIBED IN
41 SECTION 47-5109, SUBSECTION A; AND

42 2. TO THE APPLICANT THAT THE DRAWING DOES NOT VIOLATE ANY AGREEMENT
43 BETWEEN THE APPLICANT AND BENEFICIARY OR ANY OTHER AGREEMENT INTENDED BY THEM
44 TO BE AUGMENTED BY THE LETTER OF CREDIT.

1 B. THE WARRANTIES IN SUBSECTION A OF THIS SECTION ARE IN ADDITION TO
2 WARRANTIES ARISING UNDER CHAPTERS 3, 4, 7 AND 8 OF THIS TITLE BECAUSE OF THE
3 PRESENTATION OR TRANSFER OF DOCUMENTS COVERED BY ANY OF THOSE CHAPTERS.

4 47-5111. Remedies

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

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

24 C. IF AN ADVISER OR NOMINATED PERSON OTHER THAN A CONFIRMER BREACHES
25 AN OBLIGATION UNDER THIS CHAPTER OR AN ISSUER BREACHES AN OBLIGATION NOT
26 COVERED IN SUBSECTION A OR B, A PERSON TO WHOM THE OBLIGATION IS OWED MAY
27 RECOVER DAMAGES RESULTING FROM THE BREACH, INCLUDING INCIDENTAL BUT NOT
28 CONSEQUENTIAL DAMAGES, MINUS ANY AMOUNT SAVED AS A RESULT OF THE BREACH. TO
29 THE EXTENT OF THE CONFIRMATION, A CONFIRMER HAS THE LIABILITY OF AN ISSUER
30 SPECIFIED IN THIS SUBSECTION AND SUBSECTIONS A AND B.

31 D. AN ISSUER, NOMINATED PERSON OR ADVISER WHO IS FOUND LIABLE UNDER
32 SUBSECTION A, B OR C SHALL PAY INTEREST ON THE AMOUNT OWED THEREUNDER FROM
33 THE DATE OF WRONGFUL DISHONOR OR OTHER APPROPRIATE DATE.

34 E. REASONABLE ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION MUST BE
35 AWARDED TO THE PREVAILING PARTY IN AN ACTION IN WHICH A REMEDY IS SOUGHT
36 UNDER THIS CHAPTER.

37 F. DAMAGES THAT WOULD OTHERWISE BE PAYABLE BY A PARTY FOR BREACH OF
38 AN OBLIGATION UNDER THIS CHAPTER MAY BE LIQUIDATED BY AGREEMENT OR
39 UNDERTAKING, BUT ONLY IN AN AMOUNT OR BY A FORMULA THAT IS REASONABLE IN
40 LIGHT OF THE HARM ANTICIPATED.

41 47-5112. Transfer of letter of credit

42 A. EXCEPT AS OTHERWISE PROVIDED IN SECTION 47-5113, UNLESS A LETTER
43 OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE RIGHT OF A BENEFICIARY TO

1 DRAW OR OTHERWISE DEMAND PERFORMANCE UNDER A LETTER OF CREDIT MAY NOT BE
2 TRANSFERRED.

3 B. EVEN IF A LETTER OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE
4 ISSUER MAY REFUSE TO RECOGNIZE OR CARRY OUT A TRANSFER IF:

5 1. THE TRANSFER WOULD VIOLATE APPLICABLE LAW; OR

6 2. THE TRANSFEROR OR TRANSFEREE HAS FAILED TO COMPLY WITH ANY
7 REQUIREMENT STATED IN THE LETTER OF CREDIT OR ANY OTHER REQUIREMENT RELATING
8 TO TRANSFER IMPOSED BY THE ISSUER THAT IS WITHIN THE STANDARD PRACTICE
9 REFERRED TO IN SECTION 47-5108, SUBSECTION E OR THAT IS OTHERWISE REASONABLE
10 UNDER THE CIRCUMSTANCES.

11 47-5113. Transfer by operation of law

12 A. A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS, SIGN AND
13 PRESENT DOCUMENTS AND RECEIVE PAYMENT OR OTHER ITEMS OF VALUE IN THE NAME OF
14 THE BENEFICIARY WITHOUT DISCLOSING ITS STATUS AS A SUCCESSOR.

15 B. A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS, SIGN AND
16 PRESENT DOCUMENTS AND RECEIVE PAYMENT OR OTHER ITEMS OF VALUE IN ITS OWN NAME
17 AS THE DISCLOSED SUCCESSOR OF THE BENEFICIARY. EXCEPT AS OTHERWISE PROVIDED
18 IN SUBSECTION E OF THIS SECTION, AN ISSUER SHALL RECOGNIZE A DISCLOSED
19 SUCCESSOR OF A BENEFICIARY AS BENEFICIARY IN FULL SUBSTITUTION FOR ITS
20 PREDECESSOR UPON COMPLIANCE WITH THE REQUIREMENTS FOR RECOGNITION BY THE
21 ISSUER OF A TRANSFER OF DRAWING RIGHTS BY OPERATION OF LAW UNDER THE STANDARD
22 PRACTICE REFERRED TO IN SECTION 47-5108, SUBSECTION E OR, IN THE ABSENCE OF
23 SUCH A PRACTICE, COMPLIANCE WITH OTHER REASONABLE PROCEDURES SUFFICIENT TO
24 PROTECT THE ISSUER.

25 C. AN ISSUER IS NOT OBLIGED TO DETERMINE WHETHER A PURPORTED SUCCESSOR
26 IS A SUCCESSOR OF A BENEFICIARY OR WHETHER THE SIGNATURE OF A PURPORTED
27 SUCCESSOR IS GENUINE OR AUTHORIZED.

28 D. HONOR OF A PURPORTED SUCCESSOR'S APPARENTLY COMPLYING PRESENTATION
29 UNDER SUBSECTION A OR B OF THIS SECTION HAS THE CONSEQUENCES SPECIFIED IN
30 SECTION 47-5108, SUBSECTION I EVEN IF THE PURPORTED SUCCESSOR IS NOT THE
31 SUCCESSOR OF A BENEFICIARY. DOCUMENTS SIGNED IN THE NAME OF THE BENEFICIARY
32 OR OF A DISCLOSED SUCCESSOR BY A PERSON WHO IS NEITHER THE BENEFICIARY NOR
33 THE SUCCESSOR OF THE BENEFICIARY ARE FORGED DOCUMENTS FOR THE PURPOSES OF
34 SECTION 47-5109.

35 E. AN ISSUER WHOSE RIGHTS OF REIMBURSEMENT ARE NOT COVERED BY
36 SUBSECTION D OF THIS SECTION OR SUBSTANTIALLY SIMILAR LAW AND ANY CONFIRMER
37 OR NOMINATED PERSON MAY DECLINE TO RECOGNIZE A PRESENTATION UNDER SUBSECTION
38 B OF THIS SECTION.

39 F. A BENEFICIARY WHOSE NAME IS CHANGED AFTER THE ISSUANCE OF A LETTER
40 OF CREDIT HAS THE SAME RIGHTS AND OBLIGATIONS AS A SUCCESSOR OF A BENEFICIARY
41 UNDER THIS SECTION.

42 47-5114. Assignment of proceeds

43 A. IN THIS SECTION, "PROCEEDS OF A LETTER OF CREDIT" MEANS THE CASH,
44 CHECK, ACCEPTED DRAFT OR OTHER ITEM OF VALUE PAID OR DELIVERED UPON HONOR OR

1 GIVING OF VALUE BY THE ISSUER OR ANY NOMINATED PERSON UNDER THE LETTER OF
2 CREDIT. THE TERM DOES NOT INCLUDE A BENEFICIARY'S DRAWING RIGHTS OR
3 DOCUMENTS PRESENTED BY THE BENEFICIARY.

4 B. A BENEFICIARY MAY ASSIGN ITS RIGHT TO PART OR ALL OF THE PROCEEDS
5 OF A LETTER OF CREDIT. THE BENEFICIARY MAY DO SO BEFORE PRESENTATION AS A
6 PRESENT ASSIGNMENT OF ITS RIGHT TO RECEIVE PROCEEDS CONTINGENT UPON ITS
7 COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT.

8 C. AN ISSUER OR NOMINATED PERSON NEED NOT RECOGNIZE AN ASSIGNMENT OF
9 PROCEEDS OF A LETTER OF CREDIT UNTIL IT CONSENTS TO THE ASSIGNMENT.

10 D. AN ISSUER OR NOMINATED PERSON HAS NO OBLIGATION TO GIVE OR WITHHOLD
11 ITS CONSENT TO AN ASSIGNMENT OF PROCEEDS OF A LETTER OF CREDIT, BUT CONSENT
12 MAY NOT BE UNREASONABLY WITHHELD IF THE ASSIGNEE POSSESSES AND EXHIBITS THE
13 LETTER OF CREDIT AND PRESENTATION OF THE LETTER OF CREDIT IS A CONDITION TO
14 HONOR.

15 E. RIGHTS OF A TRANSFEREE BENEFICIARY OR NOMINATED PERSON ARE
16 INDEPENDENT OF THE BENEFICIARY'S ASSIGNMENT OF THE PROCEEDS OF A LETTER OF
17 CREDIT AND ARE SUPERIOR TO THE ASSIGNEE'S RIGHT TO THE PROCEEDS.

18 F. NEITHER THE RIGHTS RECOGNIZED BY THIS SECTION BETWEEN AN ASSIGNEE
19 AND AN ISSUER, TRANSFEREE BENEFICIARY OR NOMINATED PERSON NOR THE ISSUER'S
20 OR NOMINATED PERSON'S PAYMENT OF PROCEEDS TO AN ASSIGNEE OR A THIRD PERSON
21 AFFECTS THE RIGHTS BETWEEN THE ASSIGNEE AND ANY PERSON OTHER THAN THE ISSUER,
22 TRANSFEREE BENEFICIARY OR NOMINATED PERSON. THE MODE OF CREATING AND
23 PERFECTING A SECURITY INTEREST IN OR GRANTING AN ASSIGNMENT OF A
24 BENEFICIARY'S RIGHTS TO PROCEEDS IS GOVERNED BY CHAPTER 9 OF THIS TITLE OR
25 OTHER LAW. AGAINST PERSONS OTHER THAN THE ISSUER, TRANSFEREE BENEFICIARY OR
26 NOMINATED PERSON, THE RIGHTS AND OBLIGATIONS ARISING UPON THE CREATION OF A
27 SECURITY INTEREST OR OTHER ASSIGNMENT OF A BENEFICIARY'S RIGHT TO PROCEEDS
28 AND ITS PERFECTION ARE GOVERNED BY CHAPTER 9 OF THIS TITLE OR OTHER LAW.

29 47-5115. Statute of limitations

30 AN ACTION TO ENFORCE A RIGHT OR OBLIGATION ARISING UNDER THIS ARTICLE
31 MUST BE COMMENCED WITHIN ONE YEAR AFTER THE EXPIRATION DATE OF THE RELEVANT
32 LETTER OF CREDIT OR ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, WHICHEVER
33 OCCURS LATER. A CAUSE OF ACTION ACCRUES WHEN THE BREACH OCCURS, REGARDLESS
34 OF THE AGGRIEVED PARTY'S LACK OF KNOWLEDGE OF THE BREACH.

35 47-5116. Choice of law and forum

36 A. THE LIABILITY OF AN ISSUER, NOMINATED PERSON OR ADVISER FOR ACTION
37 OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION CHOSEN BY AN AGREEMENT
38 IN THE FORM OF A RECORD SIGNED OR OTHERWISE AUTHENTICATED BY THE AFFECTED
39 PARTIES IN THE MANNER PROVIDED IN SECTION 47-5104 OR BY A PROVISION IN THE
40 PERSON'S LETTER OF CREDIT, CONFIRMATION OR OTHER UNDERTAKING. THE
41 JURISDICTION WHOSE LAW IS CHOSEN NEED NOT BEAR ANY RELATION TO THE
42 TRANSACTION.

43 B. UNLESS SUBSECTION A OF THIS SECTION APPLIES, THE LIABILITY OF AN
44 ISSUER, NOMINATED PERSON OR ADVISER FOR ACTION OR OMISSION IS GOVERNED BY THE

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

10 C. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE LIABILITY OF
11 AN ISSUER, NOMINATED PERSON OR ADVISER IS GOVERNED BY ANY RULES OF CUSTOM OR
12 PRACTICE, SUCH AS THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS,
13 TO WHICH THE LETTER OF CREDIT, CONFIRMATION OR OTHER UNDERTAKING IS EXPRESSLY
14 MADE SUBJECT. IF THIS CHAPTER WOULD GOVERN THE LIABILITY OF AN ISSUER,
15 NOMINATED PERSON OR ADVISER UNDER SUBSECTION A OR B OF THIS SECTION, THE
16 RELEVANT UNDERTAKING INCORPORATES RULES OF CUSTOM OR PRACTICE, AND THERE IS
17 CONFLICT BETWEEN THIS ARTICLE AND THOSE RULES AS APPLIED TO THAT UNDERTAKING,
18 THOSE RULES GOVERN EXCEPT TO THE EXTENT OF ANY CONFLICT WITH THE NONVARIABLE
19 PROVISIONS SPECIFIED IN SECTION 47-6103, SUBSECTION C.

20 D. IF THERE IS CONFLICT BETWEEN THIS CHAPTER AND CHAPTER 3, 4, 4A OR
21 9 OF THIS TITLE, THIS CHAPTER GOVERNS.

22 E. THE FORUM FOR SETTLING DISPUTES ARISING OUT OF AN UNDERTAKING
23 WITHIN THIS ARTICLE MAY BE CHOSEN IN THE MANNER AND WITH THE BINDING EFFECT
24 THAT GOVERNING LAW MAY BE CHOSEN IN ACCORDANCE WITH SUBSECTION A OF THIS
25 SECTION.

26 47-5117. Subrogation of issuer, applicant and nominated person

27 A. AN ISSUER THAT HONORS A BENEFICIARY'S PRESENTATION IS SUBROGATED
28 TO THE RIGHTS OF THE BENEFICIARY TO THE SAME EXTENT AS IF THE ISSUER WERE A
29 SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED TO THE BENEFICIARY AND
30 OF THE APPLICANT TO THE SAME EXTENT AS IF THE ISSUER WERE THE SECONDARY
31 OBLIGOR OF THE UNDERLYING OBLIGATION OWED TO THE APPLICANT.

32 B. AN APPLICANT THAT REIMBURSES AN ISSUER IS SUBROGATED TO THE RIGHTS
33 OF THE ISSUER AGAINST ANY BENEFICIARY, PRESENTER OR NOMINATED PERSON TO THE
34 SAME EXTENT AS IF THE APPLICANT WERE THE SECONDARY OBLIGOR OF THE OBLIGATIONS
35 OWED TO THE ISSUER AND HAS THE RIGHTS OF SUBROGATION OF THE ISSUER TO THE
36 RIGHTS OF THE BENEFICIARY STATED IN SUBSECTION A.

37 C. A NOMINATED PERSON WHO PAYS OR GIVES VALUE AGAINST A DRAFT OR
38 DEMAND PRESENTED UNDER A LETTER OF CREDIT IS SUBROGATED TO THE RIGHTS OF:

39 1. THE ISSUER AGAINST THE APPLICANT TO THE SAME EXTENT AS IF THE
40 NOMINATED PERSON WERE A SECONDARY OBLIGOR OF THE OBLIGATION OWED TO THE
41 ISSUER BY THE APPLICANT;

42 2. THE BENEFICIARY TO THE SAME EXTENT AS IF THE NOMINATED PERSON WERE
43 A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED TO THE BENEFICIARY; AND

1 (b) If the action is taken before the expiration of the period
2 specified in subdivision (a), the security interest continues perfected
3 thereafter; and

4 (c) For the purpose of priority over a buyer of consumer goods
5 (subsection B of section 47-9307), the period of the effectiveness of a
6 filing in the jurisdiction from which the collateral is removed is governed
7 by the rules with respect to perfection in subdivisions (a) and (b).

8 B. Certificate of title:

9 1. This subsection applies to goods covered by a certificate of title
10 issued under a statute of this state or of another jurisdiction under the law
11 of which indication of a security interest on the certificate is required as
12 a condition of perfection.

13 2. Except as otherwise provided in this subsection, perfection and the
14 effect of perfection or nonperfection of the security interest are governed
15 by the law (including the conflict of laws rules) of the jurisdiction issuing
16 the certificate until four months after the goods are removed from that
17 jurisdiction and thereafter until the goods are registered in another
18 jurisdiction, but in any event not beyond surrender of the certificate.
19 After the expiration of that period, the goods are not covered by the
20 certificate of title within the meaning of this section.

21 3. Except with respect to the rights of a buyer described in paragraph
22 4 of this subsection, a security interest, perfected in another jurisdiction
23 otherwise than by notation on a certificate of title, in goods brought into
24 this state and thereafter covered by a certificate of title issued by this
25 state is subject to the rules stated in paragraph 4 of subsection A of this
26 section.

27 4. If goods are brought into this state while a security interest
28 therein is perfected in any manner under the law of the jurisdiction from
29 which the goods are removed and a certificate of title is issued by this
30 state and the certificate does not show that the goods are subject to the
31 security interest or that they may be subject to security interests not shown
32 on the certificate, the security interest is subordinate to the rights of a
33 buyer of the goods who is not in the business of selling goods of that kind
34 to the extent that he gives value and receives delivery of the goods after
35 issuance of the certificate and without knowledge of the security interest.

36 C. Accounts, general intangibles and mobile goods:

37 1. This subsection applies to accounts (other than an account
38 described in subsection E of this section on minerals) and general
39 intangibles (other than uncertificated securities) and to goods which are
40 mobile and which are of a type normally used in more than one jurisdiction,
41 such as motor vehicles, trailers, rolling stock, airplanes, shipping
42 containers, road building and construction machinery and commercial
43 harvesting machinery and the like, if the goods are equipment or are

1 inventory leased or held for lease by the debtor to others, and are not
2 covered by a certificate of title described in subsection B of this section.

3 2. The law (including the conflict of laws rules) of the jurisdiction
4 in which the debtor is located governs the perfection and the effect of
5 perfection or nonperfection of the security interest.

6 3. If, however, the debtor is located in a jurisdiction which is not
7 a part of the United States, and which does not provide for perfection of the
8 security interest by filing or recording in that jurisdiction, the law of the
9 jurisdiction in the United States in which the debtor has its major executive
10 office in the United States governs the perfection and the effect of
11 perfection or nonperfection of the security interest through filing. In the
12 alternative, if the debtor is located in a jurisdiction which is not a part
13 of the United States or Canada and the collateral is accounts or general
14 intangibles for money due or to become due, the security interest may be
15 perfected by notification to the account debtor. As used in this paragraph,
16 "United States" includes its territories and possessions and the commonwealth
17 of Puerto Rico.

18 4. A debtor shall be deemed located at his place of business if he has
19 one, at his chief executive office if he has more than one place of business
20 and otherwise at his residence. If, however, the debtor is a foreign air
21 carrier under the federal aviation act of 1958, as amended, it shall be
22 deemed located at the designated office of the agent upon whom service of
23 process may be made on behalf of the foreign air carrier.

24 5. A security interest perfected under the law of the jurisdiction of
25 the location of the debtor is perfected until the expiration of four months
26 after a change of the debtor's location to another jurisdiction, or until
27 perfection would have ceased by the law of the first jurisdiction, whichever
28 period first expires. Unless perfected in the new jurisdiction before the
29 end of that period, it becomes unperfected thereafter and is deemed to have
30 been unperfected as against a person who became a purchaser after the change.

31 D. Chattel paper: The rules stated for goods in subsection A of this
32 section apply to a possessory security interest in chattel paper. The rules
33 stated for accounts in subsection C of this section apply to a nonpossessory
34 security interest in chattel paper, but the security interest may not be
35 perfected by notification to the account debtor.

36 E. Minerals: Perfection and the effect of perfection or nonperfection
37 of a security interest which is created by a debtor who has an interest in
38 minerals or the like (including oil and gas) before extraction and which
39 attaches thereto as extracted or which attaches to an account resulting from
40 the sale thereof at the wellhead or minehead are governed by the law
41 (including the conflict of laws rules) of the jurisdiction wherein the
42 wellhead or minehead is located.

43 F. Investment property:

44 1. This subsection applies to investment property.

1 2. Except as otherwise provided in paragraph 6 of this subsection,
2 during the time that a security certificate is located in a jurisdiction,
3 perfection of a security interest, the effect of perfection or nonperfection
4 and the priority of a security interest in the certificated security
5 represented thereby are governed by the local law of that jurisdiction.

6 3. Except as otherwise provided in paragraph 6 of this subsection,
7 perfection of a security interest, the effect of perfection or nonperfection
8 and the priority of a security interest in an uncertificated security are
9 governed by the local law of the issuer's jurisdiction as specified in
10 section 47-8110, subsection D.

11 4. Except as otherwise provided in paragraph 6 of this subsection,
12 perfection of a security interest, the effect of perfection or nonperfection
13 and the priority of a security interest in a security entitlement or
14 securities account are governed by the local law of the securities
15 intermediary's jurisdiction as specified in section 47-8110, subsection E.

16 5. Except as otherwise provided in paragraph 6 of this subsection,
17 perfection of a security interest, the effect of perfection or nonperfection
18 and the priority of a security interest in a commodity contract or commodity
19 account are governed by the local law of the commodity intermediary's
20 jurisdiction. The following rules determine a "commodity intermediary's
21 jurisdiction" for purposes of this paragraph:

22 (a) If an agreement between the commodity intermediary and commodity
23 customer specifies that it is governed by the law of a particular
24 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

25 (b) If an agreement between the commodity intermediary and commodity
26 customer does not specify the governing law as provided in subdivision (a)
27 of this paragraph, but expressly specifies that the commodity account is
28 maintained at an office in a particular jurisdiction, that jurisdiction is
29 the commodity intermediary's jurisdiction.

30 (c) If an agreement between the commodity intermediary and commodity
31 customer does not specify a jurisdiction as provided in subdivision (a) or
32 (b) of this paragraph, the commodity intermediary's jurisdiction is the
33 jurisdiction in which is located the office identified in an account
34 statement as the office serving the commodity customer's account.

35 (d) If an agreement between the commodity intermediary and commodity
36 customer does not specify a jurisdiction as provided in subdivision (a) or
37 (b) of this paragraph and an account statement does not identify an office
38 serving the commodity customer's account as provided in subdivision (c) of
39 this paragraph, the commodity intermediary's jurisdiction is the jurisdiction
40 in which is located the chief executive office of the commodity intermediary.

41 6. Perfection of a security interest by filing, automatic perfection
42 of a security interest in investment property granted by a broker or
43 securities intermediary, and automatic perfection of a security interest in
44 a commodity contract or commodity account granted by a commodity intermediary

1 are governed by the local law of the jurisdiction in which the debtor is
2 located.

3 Sec. 6. Section 47-9104, Arizona Revised Statutes, is amended to read:
4 47-9104. Transactions excluded from chapter

5 This chapter does not apply:

6 1. To a security interest subject to any statute of the United States
7 such as the ship mortgage act, 1920, to the extent that such statute governs
8 the rights of parties to and third parties affected by transactions in
9 particular types of property; or

10 2. To a landlord's lien; or

11 3. To a lien given by statute or other rule of law for services or
12 materials except as provided in section 47-9310 on priority of such liens;
13 or

14 4. To a transfer of a claim for wages, salary or other compensation
15 of an employee; or

16 5. To a transfer by a government or governmental subdivision or
17 agency; or

18 6. To a sale of accounts or chattel paper as part of a sale of the
19 business out of which they arose, or an assignment of accounts or chattel
20 paper which is for the purpose of collection only, or a transfer of a right
21 to payment under a contract to an assignee who is also to do the performance
22 under the contract or a transfer of a single account to an assignee in whole
23 or partial satisfaction of a preexisting indebtedness; or

24 7. To a transfer of an interest or claim in or under any policy of
25 insurance, except as provided with respect to proceeds (section 47-9306) and
26 priorities in proceeds (section 47-9312); or

27 8. To a right represented by a judgment (other than a judgment taken
28 on a right to payment which was collateral); or

29 9. To any right of set-off; or

30 10. Except to the extent that provision is made for fixtures in section
31 47-9313, to the creation or transfer of an interest in or lien on real
32 estate, including a lease or rents thereunder; or

33 11. To a transfer in whole or in part of any claim arising out of tort;
34 or

35 12. To a transfer of an interest in any deposit account (subsection A
36 of section 47-9105), except as provided with respect to proceeds (section
37 47-9306) and priorities in proceeds (section 47-9312); OR

38 13. TO A TRANSFER OF AN INTEREST IN A LETTER OF CREDIT OTHER THAN THE
39 RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT.

40 Sec. 7. Section 47-9105, Arizona Revised Statutes, is amended to read:
41 47-9105. Definitions and index of definitions

42 A. In this chapter, unless the context otherwise requires:

43 1. "Account debtor" means the person who is obligated on an account,
44 chattel paper or general intangible.

1 2. "Advance made pursuant to a commitment" means an advance which the
2 secured party has bound himself to make, whether or not his obligation to
3 make such advance is or may be conditioned on an event not within his
4 control, and whether or not an event not within his control has relieved or
5 may relieve him from his obligation.

6 3. "Chattel paper" means a writing or writings which evidence both a
7 monetary obligation and a security interest in or a lease of specific goods.
8 When a transaction is evidenced both by such a security agreement or a lease
9 and by an instrument or a series of instruments, the group of writings taken
10 together constitutes chattel paper.

11 4. "Collateral" means the property subject to a security interest, and
12 includes accounts and chattel paper which have been sold.

13 5. "Debtor" means the person who owes payment or other performance of
14 the obligation secured, whether or not he owns or has rights in the
15 collateral, and includes the seller of accounts or chattel paper. Where the
16 debtor and the owner of the collateral are not the same person, the term
17 "debtor" means the owner of the collateral in any provision of the article
18 dealing with the collateral, the obligor in any provision dealing with the
19 obligation, and may include both where the context so requires.

20 6. "Deposit account" means a demand, time, savings, passbook or like
21 account maintained with a bank, savings and loan association, credit union
22 or like organization, other than an account evidenced by a certificate of
23 deposit.

24 7. "Document" means document of title as defined in the general
25 definitions of chapter 1 of this title (section 47-1201), and a receipt of
26 the kind described in subsection B of section 47-7201.

27 8. "Encumbrance" includes real estate mortgages and other liens on
28 real estate and all other rights in real estate that are not ownership
29 interests.

30 9. "Filing" means recording when the proper office under section
31 47-9401 is that of a county recorder.

32 10. "Goods" includes all things which are movable at the time the
33 security interest attaches or which are fixtures (section 47-9313), but does
34 not include money, documents, instruments, investment property, accounts,
35 chattel paper, general intangibles, or minerals or the like (including oil
36 and gas) before extraction. "Goods" also includes the unborn young of
37 animals, growing crops and standing timber which is to be cut and removed
38 under a conveyance or contract for sale.

39 11. "Instrument" means a negotiable instrument (defined in section
40 47-3104) or any other writing which evidences a right to the payment of money
41 and is not itself a security agreement or lease and is of a type which is in
42 ordinary course of business transferred by delivery with any necessary
43 indorsement or assignment. The term does not include investment property.

1 12. "Legal description", for purposes of section 47-9403, subsection
2 E, is limited to one which describes the real estate:

3 (a) By reference to a lot, block, tract or parcel as set forth within
4 a recorded subdivision plat,

5 (b) By the use of a metes and bounds or course and distance survey,

6 (c) By any use of the governmental survey system, with specific
7 identification of the location within any section or sections of a township
8 and range, or

9 (d) By reference to the book and page of a properly recorded
10 instrument describing real estate in the manner set forth in subdivision (a),
11 (b) or (c).

12 13. "Mortgage" means a consensual interest created by a real estate
13 mortgage, a trust deed on real estate, or the like.

14 14. "Security agreement" means an agreement which creates or provides
15 for a security interest.

16 15. "Secured party" means a lender, a seller or other person in whose
17 favor there is a security interest, including a person to whom accounts or
18 chattel paper have been sold. When the holders of obligations issued under
19 an indenture of trust, equipment trust agreement or the like are represented
20 by a trustee or other person, the representative is the secured party.

21 B. Other definitions applying to this chapter and the sections in
22 which they appear are:

23 1. "Account". Section 47-9106.

24 2. "Attach". Section 47-9203.

25 3. "Commodity contracts". Section 47-9115.

26 4. "Commodity Customer". Section 47-9115.

27 5. "Commodity intermediary". Section 47-9115.

28 6. "Construction mortgage". Section 47-9313, subsection A.

29 7. "Consumer goods". Paragraph 1 of section 47-9109.

30 8. "Control". Section 47-9115.

31 9. "Equipment". Paragraph 2 of section 47-9109.

32 10. "Farm products". Paragraph 3 of section 47-9109.

33 11. "Fixture". Section 47-9313.

34 12. "Fixture filing". Section 47-9313.

35 13. "General intangibles". Section 47-9106.

36 14. "Inventory". Paragraph 4 of section 47-9109.

37 15. "Investment property". Section 47-9115.

38 16. "Lien creditor". Subsection C of section 47-9301.

39 17. "Proceeds". Subsection A of section 47-9306.

40 18. "Purchase money security interest". Section 47-9107.

41 19. "United States". Section 47-9103.

42 C. The following definitions in other chapters apply to this chapter:

43 1. "Broker". Section 47-8102.

44 2. "Certificated security". Section 47-8102.

- 1 3. "Check". Section 47-3104.
- 2 4. "Clearing corporation". Section 47-8102.
- 3 5. "Contract for sale". Section 47-2106.
- 4 6. "Control". Section 47-8106.
- 5 7. "Delivery". Section 47-8301.
- 6 8. "Entitlement holder". Section 47-8102.
- 7 9. "Financial asset". Section 47-8102
- 8 10. "Holder in due course". Section 47-3302.
- 9 11. "LETTER OF CREDIT". SECTION 47-5102.
- 10 ~~12.~~ "Note". Section 47-3104.
- 11 13. "PROCEEDS OF A LETTER OF CREDIT". SECTION 47-5114, SUBSECTION A.
- 12 ~~14.~~ "Sale". Section 47-2106.
- 13 ~~15.~~ "Securities intermediary". Section 47-8102.
- 14 ~~16.~~ "Security". Section 47-8102.
- 15 ~~17.~~ "Security certificate". Section 47-8102.
- 16 ~~18.~~ "Security entitlement". Section 47-8102.
- 17 ~~19.~~ "Uncertificated security". Section 47-8102.

18 D. In addition chapter 1 of this title contains general definitions
19 and principles of construction and interpretation applicable throughout this
20 chapter.

21 Sec. 8. Section 47-9106, Arizona Revised Statutes, is amended to read:
22 47-9106. Definitions: "account"; "general intangibles"

23 "Account" means any right to payment for goods sold or leased or for
24 services rendered which is not evidenced by an instrument or chattel paper
25 whether or not it has been earned by performance. "General intangibles"
26 means any personal property (including things in action) other than goods,
27 accounts, chattel paper, documents, instruments, investment property, RIGHTS
28 TO PROCEEDS OF WRITTEN LETTERS OF CREDIT and money.

29 Sec. 9. Section 47-9304, Arizona Revised Statutes, is amended to read:
30 47-9304. Perfection of security interest in instruments,

31 documents, proceeds of a written letter of credit
32 and goods covered by documents; perfection by
33 permissive filing; temporary perfection without
34 filing or transfer of possession

35 A. A security interest in chattel paper or negotiable documents may
36 be perfected by filing. A SECURITY INTEREST IN THE RIGHTS TO PROCEEDS OF A
37 WRITTEN LETTER OF CREDIT CAN BE PERFECTED ONLY BY THE SECURED PARTY TAKING
38 POSSESSION OF THE LETTER OF CREDIT. A security interest in money or
39 instruments (other than CERTIFIED SECURITIES OR instruments which constitute
40 part of chattel paper) can be perfected only by the secured party's taking
41 possession, except as provided in subsections D and E of this section and
42 subsections B and C of section 47-9306 on proceeds.

43 B. During the period that goods are in the possession of the issuer
44 of a negotiable document therefor, a security interest in the goods is

1 perfected by perfecting a security interest in the document, and any security
2 interest in the goods otherwise perfected during such period is subject
3 thereto.

4 C. A security interest in goods in the possession of a bailee other
5 than one who has issued a negotiable document therefor is perfected by
6 issuance of a document in the name of the secured party or by the bailee's
7 receipt of notification of the secured party's interest or by filing as to
8 the goods.

9 D. A security interest in instruments, certificated securities or
10 negotiable documents is perfected without filing or the taking of possession
11 for a period of twenty-one days from the time it attaches to the extent that
12 it arises for new value given under a written security agreement.

13 E. A security interest remains perfected for a period of twenty-one
14 days without filing where a secured party having a perfected security
15 interest in an instrument, a certificated security, a negotiable document or
16 goods in possession of a bailee other than one who has issued a negotiable
17 document therefor:

18 1. Makes available to the debtor the goods or documents representing
19 the goods for the purpose of ultimate sale or exchange or for the purpose of
20 loading, unloading, storing, shipping, transshipping, manufacturing,
21 processing or otherwise dealing with them in a manner preliminary to their
22 sale or exchange, but priority between conflicting security interests in the
23 goods is subject to subsection B of section 47-9312; or

24 2. Delivers the instrument or certificated security to the debtor for
25 the purpose of ultimate sale or exchange or of presentation, collection,
26 renewal or registration of transfer.

27 F. After the twenty-one day period in subsections D and E of this
28 section perfection depends upon compliance with applicable provisions of this
29 chapter.

30 Sec. 10. Section 47-9305, Arizona Revised Statutes, is amended to
31 read:

32 47-9305. When possession by secured party perfects security
33 interest without filing

34 A security interest in ~~letters of credit and advices of credit~~
35 ~~(paragraph 1, subsection B of section 47-5116)~~, goods, instruments (OTHER
36 THAN CERTIFIED SECURITIES), money, negotiable documents or chattel paper may
37 be perfected by the secured party's taking possession of the collateral. A
38 SECURITY INTEREST IN THE RIGHT TO PROCEEDS OF A WRITTEN LETTER OF CREDIT MAY
39 BE PERFECTED BY THE SECURED PARTY TAKING POSSESSION OF THE LETTER OF CREDIT.
40 If such collateral other than goods covered by a negotiable document is held
41 by a bailee, the secured party is deemed to have possession from the time the
42 bailee receives notification of the secured party's interest. A security
43 interest is perfected by possession from the time possession is taken without
44 relation back and continues only so long as possession is retained, unless

1 otherwise specified in this chapter. The security interest may be otherwise
2 perfected as provided in this chapter before or after the period of
3 possession by the secured party.

4 Sec. 11. Savings clause

5 A. This act applies to a letter of credit that is issued on or after
6 the effective date of this act. This act does not apply to a transaction,
7 event, obligation or duty arising out of or assessed with a letter of credit
8 that was issued before the effective date of this act.

9 B. A transaction arising out of or associated with a letter of credit
10 that was issued before the effective date of this act and the rights,
11 obligations and interests flowing from that transaction are governed by any
12 statute or other law amended or repealed by this act as if the repeal or
13 amendment had not occurred and may be terminated, completed, consummated or
14 enforced under that statute or other law.

APPROVED BY THE GOVERNOR MARCH 8, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 11, 1996.