

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
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CHAPTER 53

SENATE BILL 1250

AN ACT

AMENDING SECTIONS 1-212, 44-6802 AND 44-7003, ARIZONA REVISED STATUTES; REPEALING TITLE 47, CHAPTER 1, ARIZONA REVISED STATUTES; AMENDING TITLE 47, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 1; AMENDING SECTIONS 47-2103, 47-2104 AND 47-2202, ARIZONA REVISED STATUTES; REPEALING SECTION 47-2208, ARIZONA REVISED STATUTES; AMENDING SECTIONS 47-2310, 47-2323, 47-2401, 47-2503, 47-2505, 47-2506, 47-2509, 47-2605, 47-2705 AND 47-2A103, ARIZONA REVISED STATUTES; REPEALING SECTION 47-2A207, ARIZONA REVISED STATUTES; AMENDING SECTIONS 47-2A501, 47-2A514, 47-2A518, 47-2A519, 47-2A526, 47-2A527, 47-2A528, 47-3103, 47-4104, 47-4210, 47-4A105, 47-4A106, 47-4A204 AND 47-5103, ARIZONA REVISED STATUTES; REPEALING TITLE 47, CHAPTER 7, ARIZONA REVISED STATUTES; AMENDING TITLE 47, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 7; AMENDING SECTIONS 47-8103, 47-9102, 47-9203, 47-9207, 47-9208, 47-9301, 47-9310, 47-9312, 47-9313, 47-9314, 47-9317, 47-9338 AND 47-9601, ARIZONA REVISED STATUTES; REPEALING SECTION 47-10102, ARIZONA REVISED STATUTES; RELATING TO THE UNIFORM COMMERCIAL CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 1-212, Arizona Revised Statutes, is amended to
3 read:

4 1-212. Section headings; source notes; reviser's notes; cross
5 references; exception

6 Except as provided in section ~~47-1108~~ 47-1107, headings to sections,
7 source notes, reviser's notes and cross references are supplied for the
8 purpose of convenient reference and do not constitute part of the law.

9 Sec. 2. Section 44-6802, Arizona Revised Statutes, is amended to read:
10 44-6802. Applicability

11 A. This chapter does not apply to the following:

12 1. Rental-purchase agreements primarily for business, commercial or
13 agricultural purposes.

14 2. Rental-purchase agreements with governmental agencies or
15 instrumentalities or with organizations.

16 3. A lease of a safe deposit box.

17 4. A lease or bailment of personal property that is incidental to the
18 lease of real property and that provides that the consumer has no option to
19 purchase the leased property.

20 5. A lease of a motor vehicle, manufactured home, mobile home,
21 factory-built building or recreational vehicle.

22 B. Notwithstanding section 44-6001, paragraphs 9, 10 and 11, chapter
23 17 of this title does not apply to a rental-purchase agreement.

24 C. Notwithstanding section 47-1201, SUBSECTION B, paragraph ~~37~~ 35,
25 that paragraph and title 47, chapter 9 do not apply to a rental-purchase
26 agreement.

27 D. Chapter 10, article 7 of this title applies to a rental-purchase
28 agreement.

29 E. Unless a consumer's offer or agreement to enter into a
30 rental-purchase agreement is made in a telephone communication initiated by
31 the consumer, chapter 15 of this title applies to a rental-purchase
32 agreement.

33 F. This chapter does not apply to:

34 1. The owner or publisher of any newspaper, magazine or other
35 publication of printed matter in which an advertisement appears or to the
36 owner or operator of a radio or television station or computer information
37 service that disseminates the advertisement if the owner, publisher or
38 operator does not have knowledge of the intent, design or purpose of the
39 advertiser.

40 2. Any advertisement that is subject to and complies with the rules
41 and regulations of and the statutes administered by the federal trade
42 commission.

1 MISREPRESENTATION, DURESS, COERCION, MISTAKE, BANKRUPTCY AND OTHER VALIDATING
2 OR INVALIDATING CAUSE SUPPLEMENT ITS PROVISIONS.

3 47-1104. Construction against implied repeal

4 THIS TITLE BEING A GENERAL ACT INTENDED AS A UNIFIED COVERAGE OF ITS
5 SUBJECT MATTER, NO PART OF IT SHALL BE DEEMED TO BE IMPLIEDLY REPEALED BY
6 SUBSEQUENT LEGISLATION IF SUCH CONSTRUCTION CAN REASONABLY BE AVOIDED.

7 47-1105. Severability

8 IF ANY PROVISION OR CLAUSE OF THIS TITLE OR ITS APPLICATION TO ANY
9 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
10 PROVISIONS OR APPLICATIONS OF THIS TITLE THAT CAN BE GIVEN EFFECT WITHOUT THE
11 INVALID PROVISION OR APPLICATION AND TO THIS END THE PROVISIONS OF THIS TITLE
12 ARE SEVERABLE.

13 47-1106. Use of singular and plural; gender

14 IN THIS TITLE, UNLESS THE STATUTORY CONTEXT OTHERWISE REQUIRES:

15 1. WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL AND THOSE IN THE
16 PLURAL INCLUDE THE SINGULAR; AND

17 2. WORDS OF ANY GENDER ALSO REFER TO ANY OTHER GENDER.

18 47-1107. Section captions

19 SECTION CAPTIONS ARE PART OF THIS TITLE.

20 47-1108. Relation to electronic signatures in global and
21 national commerce act

22 THIS CHAPTER MODIFIES, LIMITS AND SUPERSEDES THE FEDERAL ELECTRONIC
23 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (P.L. 106-229; 114 STAT. 464;
24 15 UNITED STATES CODE SECTIONS 7001 THROUGH 7006, SECTION 7021 AND SECTION
25 7031) BUT DOES NOT MODIFY, LIMIT OR SUPERSEDE SECTION 101(c) OF THAT ACT
26 (P.L. 106-229; 114 STAT. 464; 15 UNITED STATES CODE SECTION 7001(c)) OR
27 AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION
28 103(b) OF THAT ACT (P.L. 106-229; 114 STAT. 464; 15 UNITED STATES CODE
29 SECTION 103(b)).

30 ARTICLE 2. GENERAL DEFINITIONS AND
31 PRINCIPLES OF INTERPRETATION

32 47-1201. General definitions

33 A. UNLESS THE CONTEXT OTHERWISE REQUIRES, WORDS OR PHRASES DEFINED IN
34 THIS SECTION, OR IN THE ADDITIONAL DEFINITIONS CONTAINED IN OTHER CHAPTERS OF
35 THIS TITLE THAT APPLY TO PARTICULAR CHAPTERS OR PARTS THEREOF, HAVE THE
36 MEANINGS STATED.

37 B. SUBJECT TO DEFINITIONS CONTAINED IN OTHER CHAPTERS OF THIS TITLE
38 THAT APPLY TO PARTICULAR CHAPTERS OR PARTS THEREOF:

39 1. "ACTION", IN THE SENSE OF A JUDICIAL PROCEEDING, INCLUDES
40 RECOUPMENT, COUNTERCLAIM, SET-OFF, SUIT IN EQUITY AND ANY OTHER PROCEEDING IN
41 WHICH RIGHTS ARE DETERMINED.

42 2. "AGGRIEVED PARTY" MEANS A PARTY ENTITLED TO PURSUE A REMEDY.

43 3. "AGREEMENT", AS DISTINGUISHED FROM "CONTRACT", MEANS THE BARGAIN OF
44 THE PARTIES IN FACT, AS FOUND IN THEIR LANGUAGE OR INFERRED FROM OTHER

1 CIRCUMSTANCES, INCLUDING COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF
2 TRADE AS PROVIDED IN SECTION 47-1303.

3 4. "BANK" MEANS A PERSON ENGAGED IN THE BUSINESS OF BANKING AND
4 INCLUDES A SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION AND TRUST
5 COMPANY.

6 5. "BEARER" MEANS A PERSON IN CONTROL OF A NEGOTIABLE ELECTRONIC
7 DOCUMENT OF TITLE OR A PERSON IN POSSESSION OF A NEGOTIABLE INSTRUMENT,
8 NEGOTIABLE TANGIBLE DOCUMENT OF TITLE OR CERTIFICATED SECURITY THAT IS
9 PAYABLE TO BEARER OR INDORSED IN BLANK.

10 6. "BILL OF LADING" MEANS A DOCUMENT OF TITLE EVIDENCING THE RECEIPT
11 OF GOODS FOR SHIPMENT ISSUED BY A PERSON ENGAGED IN THE BUSINESS OF DIRECTLY
12 OR INDIRECTLY TRANSPORTING OR FORWARDING GOODS. THE TERM DOES NOT INCLUDE A
13 WAREHOUSE RECEIPT.

14 7. "BRANCH" INCLUDES A SEPARATELY INCORPORATED FOREIGN BRANCH OF A
15 BANK.

16 8. "BURDEN OF ESTABLISHING" A FACT MEANS THE BURDEN OF PERSUADING THE
17 TRIER OF FACT THAT THE EXISTENCE OF THE FACT IS MORE PROBABLE THAN ITS
18 NONEXISTENCE.

19 9. "BUYER IN ORDINARY COURSE OF BUSINESS" MEANS A PERSON THAT BUYS
20 GOODS IN GOOD FAITH, WITHOUT KNOWLEDGE THAT THE SALE VIOLATES THE RIGHTS OF
21 ANOTHER PERSON IN THE GOODS, AND IN THE ORDINARY COURSE FROM A PERSON, OTHER
22 THAN A PAWNBROKER, IN THE BUSINESS OF SELLING GOODS OF THAT KIND. A PERSON
23 BUYS GOODS IN THE ORDINARY COURSE IF THE SALE TO THE PERSON COMPORTS WITH THE
24 USUAL OR CUSTOMARY PRACTICES IN THE KIND OF BUSINESS IN WHICH THE SELLER IS
25 ENGAGED OR WITH THE SELLER'S OWN USUAL OR CUSTOMARY PRACTICES. A PERSON THAT
26 SELLS OIL, GAS OR OTHER MINERALS AT THE WELLHEAD OR MINEHEAD IS A PERSON IN
27 THE BUSINESS OF SELLING GOODS OF THAT KIND. A BUYER IN ORDINARY COURSE OF
28 BUSINESS MAY BUY FOR CASH, BY EXCHANGE OF OTHER PROPERTY OR ON SECURED OR
29 UNSECURED CREDIT, AND MAY ACQUIRE GOODS OR DOCUMENTS OF TITLE UNDER A
30 PREEXISTING CONTRACT FOR SALE. ONLY A BUYER THAT TAKES POSSESSION OF THE
31 GOODS OR HAS A RIGHT TO RECOVER THE GOODS FROM THE SELLER UNDER CHAPTER 2 OF
32 THIS TITLE MAY BE A BUYER IN ORDINARY COURSE OF BUSINESS. BUYER IN ORDINARY
33 COURSE OF BUSINESS DOES NOT INCLUDE A PERSON THAT ACQUIRES GOODS IN A
34 TRANSFER IN BULK OR AS SECURITY FOR OR IN TOTAL OR PARTIAL SATISFACTION OF A
35 MONEY DEBT.

36 10. "CONSPICUOUS", WITH REFERENCE TO A TERM, MEANS SO WRITTEN,
37 DISPLAYED OR PRESENTED THAT A REASONABLE PERSON AGAINST WHICH IT IS TO
38 OPERATE OUGHT TO HAVE NOTICED IT. WHETHER A TERM IS CONSPICUOUS OR NOT IS A
39 DECISION FOR THE COURT. CONSPICUOUS TERMS INCLUDE THE FOLLOWING:

40 (a) A HEADING IN CAPITALS EQUAL TO OR GREATER IN SIZE THAN THE
41 SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT OR COLOR TO THE SURROUNDING
42 TEXT OF THE SAME OR LESSER SIZE; AND

43 (b) LANGUAGE IN THE BODY OF A RECORD OR DISPLAY IN LARGER TYPE THAN
44 THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT OR COLOR TO THE

1 SURROUNDING TEXT OF THE SAME SIZE, OR SET OFF FROM SURROUNDING TEXT OF THE
2 SAME SIZE BY SYMBOLS OR OTHER MARKS THAT CALL ATTENTION TO THE LANGUAGE.

3 11. "CONSUMER" MEANS AN INDIVIDUAL WHO ENTERS INTO A TRANSACTION
4 PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

5 12. "CONTRACT", AS DISTINGUISHED FROM "AGREEMENT", MEANS THE TOTAL
6 LEGAL OBLIGATION THAT RESULTS FROM THE PARTIES' AGREEMENT AS DETERMINED BY
7 THIS TITLE AS SUPPLEMENTED BY ANY OTHER APPLICABLE LAWS.

8 13. "CREDITOR" INCLUDES A GENERAL CREDITOR, A SECURED CREDITOR, A LIEN
9 CREDITOR AND ANY REPRESENTATIVE OF CREDITORS, INCLUDING AN ASSIGNEE FOR THE
10 BENEFIT OF CREDITORS, A TRUSTEE IN BANKRUPTCY, A RECEIVER IN EQUITY AND AN
11 EXECUTOR OR ADMINISTRATOR OF AN INSOLVENT DEBTOR'S OR ASSIGNOR'S ESTATE.

12 14. "DEFENDANT" INCLUDES A PERSON IN THE POSITION OF DEFENDANT IN A
13 COUNTERCLAIM, CROSS-CLAIM OR THIRD-PARTY CLAIM.

14 15. "DELIVERY", WITH RESPECT TO AN ELECTRONIC DOCUMENT OF TITLE, MEANS
15 VOLUNTARY TRANSFER OF CONTROL, AND WITH RESPECT TO AN INSTRUMENT, A TANGIBLE
16 DOCUMENT OF TITLE OR CHATTEL PAPER MEANS VOLUNTARY TRANSFER OF POSSESSION.

17 16. "DOCUMENT OF TITLE" MEANS A RECORD:

18 (a) THAT IN THE REGULAR COURSE OF BUSINESS OR FINANCING IS TREATED AS
19 ADEQUATELY EVIDENCING THAT THE PERSON IN POSSESSION OR CONTROL OF THE RECORD
20 IS ENTITLED TO RECEIVE, CONTROL, HOLD AND DISPOSE OF THE RECORD AND THE GOODS
21 THE RECORD COVERS; AND

22 (b) THAT PURPORTS TO BE ISSUED BY OR ADDRESSED TO A BAILEE AND TO
23 COVER GOODS IN THE BAILEE'S POSSESSION THAT ARE EITHER IDENTIFIED OR ARE
24 FUNGIBLE PORTIONS OF AN IDENTIFIED MASS. THE TERM INCLUDES A BILL OF LADING,
25 TRANSPORT DOCUMENT, DOCK WARRANT, DOCK RECEIPT, WAREHOUSE RECEIPT AND ORDER
26 FOR DELIVERY OF GOODS. AN ELECTRONIC DOCUMENT OF TITLE MEANS A DOCUMENT OF
27 TITLE EVIDENCED BY A RECORD CONSISTING OF INFORMATION STORED IN AN ELECTRONIC
28 MEDIUM. A TANGIBLE DOCUMENT OF TITLE MEANS A DOCUMENT OF TITLE EVIDENCED BY
29 A RECORD CONSISTING OF INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM.

30 17. "FAULT" MEANS A DEFAULT, BREACH OR WRONGFUL ACT OR OMISSION.

31 18. "FUNGIBLE GOODS" MEANS:

32 (a) GOODS OF WHICH ANY UNIT, BY NATURE OR USAGE OF TRADE, IS THE
33 EQUIVALENT OF ANY OTHER LIKE UNIT; OR

34 (b) GOODS THAT BY AGREEMENT ARE TREATED AS EQUIVALENT.

35 19. "GENUINE" MEANS FREE OF FORGERY OR COUNTERFEITING.

36 20. "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR TRANSACTION
37 CONCERNED.

38 21. "HOLDER" MEANS:

39 (a) THE PERSON IN POSSESSION OF A NEGOTIABLE INSTRUMENT THAT IS
40 PAYABLE EITHER TO BEARER OR TO AN IDENTIFIED PERSON THAT IS THE PERSON IN
41 POSSESSION;

42 (b) THE PERSON IN POSSESSION OF A NEGOTIABLE TANGIBLE DOCUMENT OF
43 TITLE IF THE GOODS ARE DELIVERABLE EITHER TO BEARER OR TO THE ORDER OF THE
44 PERSON IN POSSESSION; OR

1 (c) THE PERSON IN CONTROL OF A NEGOTIABLE ELECTRONIC DOCUMENT OF
2 TITLE.

3 22. "INSOLVENCY PROCEEDING" INCLUDES AN ASSIGNMENT FOR THE BENEFIT OF
4 CREDITORS OR OTHER PROCEEDING INTENDED TO LIQUIDATE OR REHABILITATE THE
5 ESTATE OF THE PERSON INVOLVED.

6 23. "INSOLVENT" MEANS:

7 (a) HAVING GENERALLY CEASED TO PAY DEBTS IN THE ORDINARY COURSE OF
8 BUSINESS OTHER THAN AS A RESULT OF BONA FIDE DISPUTE;

9 (b) BEING UNABLE TO PAY DEBTS AS THEY BECOME DUE; OR

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

11 24. "MONEY" MEANS A MEDIUM OF EXCHANGE CURRENTLY AUTHORIZED OR ADOPTED
12 BY A DOMESTIC OR FOREIGN GOVERNMENT. THE TERM INCLUDES A MONETARY UNIT OF
13 ACCOUNT ESTABLISHED BY AN INTERGOVERNMENTAL ORGANIZATION OR BY AGREEMENT
14 BETWEEN TWO OR MORE COUNTRIES.

15 25. "ORGANIZATION" MEANS A PERSON OTHER THAN AN INDIVIDUAL.

16 26. "PARTY", AS DISTINGUISHED FROM "THIRD PARTY", MEANS A PERSON THAT
17 HAS ENGAGED IN A TRANSACTION OR MADE AN AGREEMENT SUBJECT TO THIS TITLE.

18 27. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
19 TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE,
20 GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, PUBLIC
21 CORPORATION OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

22 28. "PRESENT VALUE" MEANS THE AMOUNT AS OF A DATE CERTAIN OF ONE OR
23 MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE CERTAIN BY USE OF
24 EITHER AN INTEREST RATE SPECIFIED BY THE PARTIES IF THAT RATE IS NOT
25 MANIFESTLY UNREASONABLE AT THE TIME THE TRANSACTION IS ENTERED INTO OR, IF AN
26 INTEREST RATE IS NOT SO SPECIFIED, A COMMERCIALY REASONABLE RATE THAT TAKES
27 INTO ACCOUNT THE FACTS AND CIRCUMSTANCES AT THE TIME THE TRANSACTION IS
28 ENTERED INTO.

29 29. "PURCHASE" MEANS TAKING BY SALE, LEASE, DISCOUNT, NEGOTIATION,
30 MORTGAGE, PLEDGE, LIEN, SECURITY INTEREST, ISSUE OR REISSUE, GIFT OR ANY
31 OTHER VOLUNTARY TRANSACTION CREATING AN INTEREST IN PROPERTY.

32 30. "PURCHASER" MEANS A PERSON THAT TAKES BY PURCHASE.

33 31. "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM
34 OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN
35 PERCEIVABLE FORM.

36 32. "REMEDY" MEANS ANY REMEDIAL RIGHT TO WHICH AN AGGRIEVED PARTY IS
37 ENTITLED WITH OR WITHOUT RESORT TO A TRIBUNAL.

38 33. "REPRESENTATIVE" MEANS A PERSON EMPOWERED TO ACT FOR ANOTHER,
39 INCLUDING AN AGENT, AN OFFICER OF A CORPORATION OR ASSOCIATION AND A TRUSTEE,
40 EXECUTOR OR ADMINISTRATOR OF AN ESTATE.

41 34. "RIGHT" INCLUDES REMEDY.

42 35. "SECURITY INTEREST" MEANS AN INTEREST IN PERSONAL PROPERTY OR
43 FIXTURES THAT SECURES PAYMENT OR PERFORMANCE OF AN OBLIGATION. SECURITY
44 INTEREST INCLUDES ANY INTEREST OF A CONSIGNOR AND A BUYER OF ACCOUNTS,
45 CHATTEL PAPER, A PAYMENT INTANGIBLE OR A PROMISSORY NOTE IN A TRANSACTION

1 THAT IS SUBJECT TO CHAPTER 9 OF THIS TITLE. SECURITY INTEREST DOES NOT
2 INCLUDE THE SPECIAL PROPERTY INTEREST OF A BUYER OF GOODS ON IDENTIFICATION
3 OF THOSE GOODS TO A CONTRACT FOR SALE UNDER SECTION 47-2401, BUT A BUYER MAY
4 ALSO ACQUIRE A SECURITY INTEREST BY COMPLYING WITH CHAPTER 9 OF THIS TITLE.
5 EXCEPT AS OTHERWISE PROVIDED IN SECTION 47-2505, THE RIGHT OF A SELLER OR
6 LESSOR OF GOODS UNDER CHAPTER 2 OR 2A OF THIS TITLE TO RETAIN OR ACQUIRE
7 POSSESSION OF THE GOODS IS NOT A SECURITY INTEREST, BUT A SELLER OR LESSOR
8 MAY ALSO ACQUIRE A SECURITY INTEREST BY COMPLYING WITH CHAPTER 9 OF THIS
9 TITLE. THE RETENTION OR RESERVATION OF TITLE BY A SELLER OF GOODS
10 NOTWITHSTANDING SHIPMENT OR DELIVERY TO THE BUYER UNDER SECTION 47-2401 IS
11 LIMITED IN EFFECT TO A RESERVATION OF A SECURITY INTEREST. WHETHER A
12 TRANSACTION IN THE FORM OF A LEASE CREATES A SECURITY INTEREST IS DETERMINED
13 PURSUANT TO SECTION 47-1203.

14 36. "SEND" IN CONNECTION WITH A WRITING, RECORD OR NOTICE MEANS:
15 (a) TO DEPOSIT IN THE MAIL OR DELIVER FOR TRANSMISSION BY ANY OTHER
16 USUAL MEANS OF COMMUNICATION WITH POSTAGE OR COST OF TRANSMISSION PROVIDED
17 FOR AND PROPERLY ADDRESSED AND, IN THE CASE OF AN INSTRUMENT, TO AN ADDRESS
18 SPECIFIED THEREON OR OTHERWISE AGREED, OR IF THERE IS NONE TO ANY ADDRESS
19 REASONABLE UNDER THE CIRCUMSTANCES; OR
20 (b) IN ANY OTHER WAY TO CAUSE TO BE RECEIVED ANY RECORD OR NOTICE
21 WITHIN THE TIME IT WOULD HAVE ARRIVED IF PROPERLY SENT.

22 37. "SIGNED" INCLUDES USING ANY SYMBOL EXECUTED OR ADOPTED WITH PRESENT
23 INTENTION TO ADOPT OR ACCEPT A WRITING.

24 38. "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
25 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS OR ANY TERRITORY OR
26 INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

27 39. "SURETY" INCLUDES A GUARANTOR OR OTHER SECONDARY OBLIGOR.

28 40. "TERM" MEANS A PORTION OF AN AGREEMENT THAT RELATES TO A PARTICULAR
29 MATTER.

30 41. "UNAUTHORIZED SIGNATURE" MEANS A SIGNATURE MADE WITHOUT ACTUAL,
31 IMPLIED OR APPARENT AUTHORITY. THE TERM INCLUDES A FORGERY.

32 42. "WAREHOUSE RECEIPT" MEANS A DOCUMENT OF TITLE ISSUED BY A PERSON
33 ENGAGED IN THE BUSINESS OF STORING GOODS FOR HIRE.

34 43. "WRITING" INCLUDES PRINTING, TYPEWRITING OR ANY OTHER INTENTIONAL
35 REDUCTION TO TANGIBLE FORM. "WRITTEN" HAS A CORRESPONDING MEANING.

36 47-1202. Notice; knowledge

37 A. SUBJECT TO SUBSECTION F, A PERSON HAS "NOTICE" OF A FACT IF THE
38 PERSON:

- 39 1. HAS ACTUAL KNOWLEDGE OF IT;
40 2. HAS RECEIVED A NOTICE OR NOTIFICATION OF IT; OR
41 3. FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE
42 TIME IN QUESTION, HAS REASON TO KNOW THAT IT EXISTS.

43 B. "KNOWLEDGE" MEANS ACTUAL KNOWLEDGE. "KNOWS" HAS A CORRESPONDING
44 MEANING.

1 C. "DISCOVER", "LEARN" OR WORDS OF SIMILAR IMPORT REFER TO KNOWLEDGE
2 RATHER THAN TO REASON TO KNOW.

3 D. A PERSON "NOTIFIES" OR "GIVES" A NOTICE OR NOTIFICATION TO ANOTHER
4 PERSON BY TAKING SUCH STEPS AS MAY BE REASONABLY REQUIRED TO INFORM THE OTHER
5 PERSON IN ORDINARY COURSE, WHETHER OR NOT THE OTHER PERSON ACTUALLY COMES TO
6 KNOW OF IT.

7 E. SUBJECT TO SUBSECTION F, A PERSON "RECEIVES" A NOTICE OR
8 NOTIFICATION WHEN:

- 9 1. IT COMES TO THAT PERSON'S ATTENTION; OR
10 2. IT IS DULY DELIVERED IN A FORM REASONABLE UNDER THE CIRCUMSTANCES
11 AT THE PLACE OF BUSINESS THROUGH WHICH THE CONTRACT WAS MADE OR AT ANOTHER
12 LOCATION HELD OUT BY THAT PERSON AS THE PLACE FOR RECEIPT OF SUCH
13 COMMUNICATIONS.

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

26 47-1203. Lease distinguished from security interest

27 A. WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A LEASE OR
28 SECURITY INTEREST IS DETERMINED BY THE FACTS OF EACH CASE.

29 B. A TRANSACTION IN THE FORM OF A LEASE CREATES A SECURITY INTEREST IF
30 THE CONSIDERATION THAT THE LESSEE IS TO PAY THE LESSOR FOR THE RIGHT TO
31 POSSESSION AND USE OF THE GOODS IS AN OBLIGATION FOR THE TERM OF THE LEASE
32 AND IS NOT SUBJECT TO TERMINATION BY THE LESSEE, AND:

- 33 1. THE ORIGINAL TERM OF THE LEASE IS EQUAL TO OR GREATER THAN THE
34 REMAINING ECONOMIC LIFE OF THE GOODS;
35 2. THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE REMAINING ECONOMIC
36 LIFE OF THE GOODS OR IS BOUND TO BECOME THE OWNER OF THE GOODS;
37 3. THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE REMAINING
38 ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL CONSIDERATION OR FOR NOMINAL
39 ADDITIONAL CONSIDERATION ON COMPLIANCE WITH THE LEASE AGREEMENT; OR
40 4. THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE GOODS FOR NO
41 ADDITIONAL CONSIDERATION OR FOR NOMINAL ADDITIONAL CONSIDERATION ON
42 COMPLIANCE WITH THE LEASE AGREEMENT.

43 C. A TRANSACTION IN THE FORM OF A LEASE DOES NOT CREATE A SECURITY
44 INTEREST MERELY BECAUSE:

- 1 1. THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS OBLIGATED TO
2 PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE OF THE GOODS IS
3 SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE FAIR MARKET VALUE OF THE GOODS
4 AT THE TIME THE LEASE IS ENTERED INTO;
- 5 2. THE LESSEE ASSUMES RISK OF LOSS OF THE GOODS;
- 6 3. THE LESSEE AGREES TO PAY, WITH RESPECT TO THE GOODS, TAXES,
7 INSURANCE, FILING, RECORDING OR REGISTRATION FEES OR SERVICE OR MAINTENANCE
8 COSTS;
- 9 4. THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO BECOME THE OWNER
10 OF THE GOODS;
- 11 5. THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR A FIXED RENT THAT
12 IS EQUAL TO OR GREATER THAN THE REASONABLY PREDICTABLE FAIR MARKET RENT FOR
13 THE USE OF THE GOODS FOR THE TERM OF THE RENEWAL AT THE TIME THE OPTION IS TO
14 BE PERFORMED; OR
- 15 6. THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE GOODS FOR A
16 FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE REASONABLY PREDICTABLE FAIR
17 MARKET VALUE OF THE GOODS AT THE TIME THE OPTION IS TO BE PERFORMED.
- 18 D. ADDITIONAL CONSIDERATION IS NOMINAL IF IT IS LESS THAN THE LESSEE'S
19 REASONABLY PREDICTABLE COST OF PERFORMING UNDER THE LEASE AGREEMENT IF THE
20 OPTION IS NOT EXERCISED. ADDITIONAL CONSIDERATION IS NOT NOMINAL IF:
21 1. WHEN THE OPTION TO RENEW THE LEASE IS GRANTED TO THE LESSEE, THE
22 RENT IS STATED TO BE THE FAIR MARKET RENT FOR THE USE OF THE GOODS FOR THE
23 TERM OF THE RENEWAL DETERMINED AT THE TIME THE OPTION IS TO BE PERFORMED; OR
24 2. WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS IS GRANTED TO THE
25 LESSEE, THE PRICE IS STATED TO BE THE FAIR MARKET VALUE OF THE GOODS
26 DETERMINED AT THE TIME THE OPTION IS TO BE PERFORMED.
- 27 E. THE "REMAINING ECONOMIC LIFE OF THE GOODS" AND "REASONABLY
28 PREDICTABLE" FAIR MARKET RENT, FAIR MARKET VALUE OR COST OF PERFORMING UNDER
29 THE LEASE AGREEMENT MUST BE DETERMINED WITH REFERENCE TO THE FACTS AND
30 CIRCUMSTANCES AT THE TIME THE TRANSACTION IS ENTERED INTO.
- 31 47-1204. Value
- 32 EXCEPT AS OTHERWISE PROVIDED IN CHAPTERS 3, 4 AND 5 OF THIS TITLE, A
33 PERSON GIVES VALUE FOR RIGHTS IF THE PERSON ACQUIRES THEM:
34 1. IN RETURN FOR A BINDING COMMITMENT TO EXTEND CREDIT OR FOR THE
35 EXTENSION OF IMMEDIATELY AVAILABLE CREDIT, WHETHER OR NOT DRAWN UPON AND
36 WHETHER OR NOT A CHARGE-BACK IS PROVIDED FOR IN THE EVENT OF DIFFICULTIES IN
37 COLLECTION;
- 38 2. AS SECURITY FOR, OR IN TOTAL OR PARTIAL SATISFACTION OF, A
39 PREEXISTING CLAIM;
- 40 3. BY ACCEPTING DELIVERY UNDER A PREEXISTING CONTRACT FOR PURCHASE; OR
41 4. IN RETURN FOR ANY CONSIDERATION SUFFICIENT TO SUPPORT A SIMPLE
42 CONTRACT.
- 43 47-1205. Reasonable time; "seasonably"
- 44 A. WHETHER A TIME FOR TAKING AN ACTION REQUIRED BY THIS TITLE IS
45 REASONABLE DEPENDS ON THE NATURE, PURPOSE AND CIRCUMSTANCES OF THE ACTION.

1 B. AN ACTION IS TAKEN SEASONABLY IF IT IS TAKEN AT OR WITHIN THE TIME
2 AGREED OR, IF NO TIME IS AGREED, AT OR WITHIN A REASONABLE TIME.

3 47-1206. Presumptions

4 WHENEVER THIS TITLE CREATES A "PRESUMPTION" WITH RESPECT TO A FACT, OR
5 PROVIDES THAT A FACT IS "PRESUMED", THE TRIER OF FACT MUST FIND THE EXISTENCE
6 OF THE FACT UNLESS AND UNTIL EVIDENCE IS INTRODUCED THAT SUPPORTS A FINDING
7 OF ITS NONEXISTENCE.

8 ARTICLE 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

9 47-1301. Territorial applicability; parties' power to choose
10 applicable law

11 A. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, WHEN A TRANSACTION
12 BEARS A REASONABLE RELATION TO THIS STATE AND ALSO TO ANOTHER STATE OR
13 NATION, THE PARTIES MAY AGREE THAT THE LAW EITHER OF THIS STATE OR OF SUCH
14 OTHER STATE OR NATION SHALL GOVERN THEIR RIGHTS AND DUTIES.

15 B. IN THE ABSENCE OF AN AGREEMENT EFFECTIVE UNDER SUBSECTION A OF THIS
16 SECTION, AND EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, THIS TITLE
17 APPLIES TO TRANSACTIONS BEARING AN APPROPRIATE RELATION TO THIS STATE.

18 C. TO THE EXTENT THAT THIS TITLE GOVERNS A TRANSACTION, IF ONE OF THE
19 FOLLOWING SECTIONS OF THIS TITLE SPECIFIES THE APPLICABLE LAW, THAT SECTION
20 GOVERNS AND A CONTRARY AGREEMENT IS EFFECTIVE ONLY TO THE EXTENT PERMITTED BY
21 THE LAW SO SPECIFIED:

- 22 1. SECTION 47-2402.
- 23 2. SECTIONS 47-2A105 AND 47-2A106.
- 24 3. SECTION 47-4102.
- 25 4. SECTION 47-4A507.
- 26 5. SECTION 47-5116.
- 27 6. SECTION 47-8110.
- 28 7. SECTIONS 47-9301 THROUGH 47-9307.

29 47-1302. Variation by agreement

30 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OR ELSEWHERE IN THIS
31 TITLE, THE EFFECT OF PROVISIONS OF THIS TITLE MAY BE VARIED BY AGREEMENT.

32 B. THE OBLIGATIONS OF GOOD FAITH, DILIGENCE, REASONABLENESS AND CARE
33 PRESCRIBED BY THIS TITLE MAY NOT BE DISCLAIMED BY AGREEMENT. THE PARTIES, BY
34 AGREEMENT, MAY DETERMINE THE STANDARDS BY WHICH THE PERFORMANCE OF THOSE
35 OBLIGATIONS IS TO BE MEASURED IF THOSE STANDARDS ARE NOT MANIFESTLY
36 UNREASONABLE. WHENEVER THIS TITLE REQUIRES AN ACTION TO BE TAKEN WITHIN A
37 REASONABLE TIME, A TIME THAT IS NOT MANIFESTLY UNREASONABLE MAY BE FIXED BY
38 AGREEMENT.

39 C. THE PRESENCE IN CERTAIN PROVISIONS OF THIS TITLE OF THE PHRASE
40 "UNLESS OTHERWISE AGREED", OR WORDS OF SIMILAR IMPORT, DOES NOT IMPLY THAT
41 THE EFFECT OF OTHER PROVISIONS MAY NOT BE VARIED BY AGREEMENT UNDER THIS
42 SECTION.

1 47-1303. Course of performance; course of dealing and usage of
2 trade

3 A. A "COURSE OF PERFORMANCE" IS A SEQUENCE OF CONDUCT BETWEEN THE
4 PARTIES TO A PARTICULAR TRANSACTION THAT EXISTS IF:

5 1. THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE TRANSACTION
6 INVOLVES REPEATED OCCASIONS FOR PERFORMANCE BY A PARTY; AND

7 2. THE OTHER PARTY, WITH KNOWLEDGE OF THE NATURE OF THE PERFORMANCE
8 AND OPPORTUNITY FOR OBJECTION TO IT, ACCEPTS THE PERFORMANCE OR ACQUIESCES IN
9 IT WITHOUT OBJECTION.

10 B. A "COURSE OF DEALING" IS A SEQUENCE OF CONDUCT CONCERNING PREVIOUS
11 TRANSACTIONS BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION THAT IS FAIRLY
12 TO BE REGARDED AS ESTABLISHING A COMMON BASIS OF UNDERSTANDING FOR
13 INTERPRETING THEIR EXPRESSIONS AND OTHER CONDUCT.

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

20 D. A COURSE OF PERFORMANCE OR COURSE OF DEALING BETWEEN THE PARTIES OR
21 USAGE OF TRADE IN THE VOCATION OR TRADE IN WHICH THEY ARE ENGAGED OR OF WHICH
22 THEY ARE OR SHOULD BE AWARE IS RELEVANT IN ASCERTAINING THE MEANING OF THE
23 PARTIES' AGREEMENT, MAY GIVE PARTICULAR MEANING TO SPECIFIC TERMS OF THE
24 AGREEMENT AND MAY SUPPLEMENT OR QUALIFY THE TERMS OF THE AGREEMENT. A USAGE
25 OF TRADE APPLICABLE IN THE PLACE IN WHICH PART OF THE PERFORMANCE UNDER THE
26 AGREEMENT IS TO OCCUR MAY BE SO UTILIZED AS TO THAT PART OF THE PERFORMANCE.

27 E. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION F OF THIS SECTION, THE
28 EXPRESS TERMS OF AN AGREEMENT AND ANY APPLICABLE COURSE OF PERFORMANCE,
29 COURSE OF DEALING OR USAGE OF TRADE MUST BE CONSTRUED WHENEVER REASONABLE AS
30 CONSISTENT WITH EACH OTHER. IF SUCH A CONSTRUCTION IS UNREASONABLE:

31 1. EXPRESS TERMS PREVAIL OVER COURSE OF PERFORMANCE, COURSE OF DEALING
32 AND USAGE OF TRADE;

33 2. COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING AND USAGE OF
34 TRADE; AND

35 3. COURSE OF DEALING PREVAILS OVER USAGE OF TRADE.

36 F. SUBJECT TO SECTION 47-2209, A COURSE OF PERFORMANCE IS RELEVANT TO
37 SHOW A WAIVER OR MODIFICATION OF ANY TERM INCONSISTENT WITH THE COURSE OF
38 PERFORMANCE.

39 G. EVIDENCE OF A RELEVANT USAGE OF TRADE OFFERED BY ONE PARTY IS NOT
40 ADMISSIBLE UNLESS THAT PARTY HAS GIVEN THE OTHER PARTY NOTICE THAT THE COURT
41 FINDS SUFFICIENT TO PREVENT UNFAIR SURPRISE TO THE OTHER PARTY.

42 47-1304. Obligation of good faith

43 EVERY CONTRACT OR DUTY WITHIN THIS TITLE IMPOSES AN OBLIGATION OF GOOD
44 FAITH IN ITS PERFORMANCE AND ENFORCEMENT.

1 47-1305. Remedies to be liberally administered

2 A. THE REMEDIES PROVIDED BY THIS TITLE MUST BE LIBERALLY ADMINISTERED
3 TO THE END THAT THE AGGRIEVED PARTY MAY BE PUT IN AS GOOD A POSITION AS IF
4 THE OTHER PARTY HAD FULLY PERFORMED BUT NEITHER CONSEQUENTIAL OR SPECIAL
5 DAMAGES NOR PENAL DAMAGES MAY BE HAD EXCEPT AS SPECIFICALLY PROVIDED IN THIS
6 TITLE OR BY OTHER RULE OF LAW.

7 B. ANY RIGHT OR OBLIGATION DECLARED BY THIS TITLE IS ENFORCEABLE BY
8 ACTION UNLESS THE PROVISION DECLARING IT SPECIFIES A DIFFERENT AND LIMITED
9 EFFECT.

10 47-1306. Waiver or renunciation of claim or right after breach

11 A CLAIM OR RIGHT ARISING OUT OF AN ALLEGED BREACH MAY BE DISCHARGED IN
12 WHOLE OR IN PART WITHOUT CONSIDERATION BY AGREEMENT OF THE AGGRIEVED PARTY IN
13 AN AUTHENTICATED RECORD.

14 47-1307. Prima facie evidence by third party documents

15 A DOCUMENT IN DUE FORM PURPORTING TO BE A BILL OF LADING, POLICY OR
16 CERTIFICATE OF INSURANCE, OFFICIAL WEIGHER'S OR INSPECTOR'S CERTIFICATE,
17 CONSULAR INVOICE OR ANY OTHER DOCUMENT AUTHORIZED OR REQUIRED BY THE CONTRACT
18 TO BE ISSUED BY A THIRD PARTY IS PRIMA FACIE EVIDENCE OF ITS OWN AUTHENTICITY
19 AND GENUINENESS AND OF THE FACTS STATED IN THE DOCUMENT BY THE THIRD PARTY.

20 47-1308. Performance or acceptance under reservation of rights

21 A. A PARTY THAT WITH EXPLICIT RESERVATION OF RIGHTS PERFORMS OR
22 PROMISES PERFORMANCE OR ASSENTS TO PERFORMANCE IN A MANNER DEMANDED OR
23 OFFERED BY THE OTHER PARTY DOES NOT PREJUDICE THE RIGHTS RESERVED. SUCH
24 WORDS AS "WITHOUT PREJUDICE", "UNDER PROTEST" OR THE LIKE ARE SUFFICIENT.

25 B. SUBSECTION A DOES NOT APPLY TO AN ACCORD AND SATISFACTION.

26 47-1309. Option to accelerate at will

27 A TERM PROVIDING THAT ONE PARTY OR THAT PARTY'S SUCCESSOR IN INTEREST
28 MAY ACCELERATE PAYMENT OR PERFORMANCE OR REQUIRE COLLATERAL OR ADDITIONAL
29 COLLATERAL "AT WILL" OR WHEN THE PARTY "DEEMS ITSELF INSECURE", OR WORDS OF
30 SIMILAR IMPORT, MEANS THAT THE PARTY HAS POWER TO DO SO ONLY IF THAT PARTY IN
31 GOOD FAITH BELIEVES THAT THE PROSPECT OF PAYMENT OR PERFORMANCE IS
32 IMPAIRED. THE BURDEN OF ESTABLISHING LACK OF GOOD FAITH IS ON THE PARTY
33 AGAINST WHICH THE POWER HAS BEEN EXERCISED.

34 47-1310. Subordinated obligation

35 AN OBLIGATION MAY BE ISSUED AS SUBORDINATED TO PERFORMANCE OF ANOTHER
36 OBLIGATION OF THE PERSON OBLIGATED OR A CREDITOR MAY SUBORDINATE ITS RIGHT TO
37 PERFORMANCE OF AN OBLIGATION BY AGREEMENT WITH EITHER THE PERSON OBLIGATED OR
38 ANOTHER CREDITOR OF THE PERSON OBLIGATED. SUBORDINATION DOES NOT CREATE A
39 SECURITY INTEREST AS AGAINST EITHER THE COMMON DEBTOR OR A SUBORDINATED
40 CREDITOR.

41 Sec. 6. Section 47-2103, Arizona Revised Statutes, is amended to read:

42 47-2103. Definitions and index of definitions

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

44 1. "Buyer" means a person who buys or contracts to buy goods.

1 2. "Good faith" in the case of a merchant means honesty in fact and
2 the observance of reasonable commercial standards of fair dealing in the
3 trade.

4 3. "Receipt" of goods means taking physical possession of them.

5 4. "Seller" means a person who sells or contracts to sell goods.

6 B. Other definitions applying to this chapter, and the sections in
7 which they appear, are:

8 1. "Acceptance". Section 47-2606.

9 2. "Banker's credit". Section 47-2325.

10 3. "Between merchants". Section 47-2104.

11 4. "Cancellation". Subsection D of section 47-2106.

12 5. "Commercial unit". Section 47-2105.

13 6. "Confirmed credit". Section 47-2325.

14 7. "Conforming to contract". Section 47-2106.

15 8. "Contract for sale". Section 47-2106.

16 9. "Cover". Section 47-2712.

17 10. "Entrusting". Section 47-2403.

18 11. "Financing agency". Section 47-2104.

19 12. "Future goods". Section 47-2105.

20 13. "Goods". Section 47-2105.

21 14. "Identification". Section 47-2501.

22 15. "Installment contract". Section 47-2612.

23 16. "Letter of credit". Section 47-2325.

24 17. "Lot". Section 47-2105.

25 18. "Merchant". Section 47-2104.

26 19. "Overseas". Section 47-2323.

27 20. "Person in position of seller". Section 47-2707.

28 21. "Present sale". Section 47-2106.

29 22. "Sale". Section 47-2106.

30 23. "Sale on approval". Section 47-2326.

31 24. "Sale or return". Section 47-2326.

32 25. "Termination". Section 47-2106.

33 C. "CONTROL" AS PROVIDED IN SECTION 47-7106 AND the following
34 definitions in other chapters apply to this chapter:

35 1. "Check". Section 47-3104.

36 2. "Consignee". Section 47-7102.

37 3. "Consignor". Section 47-7102.

38 4. "Consumer goods". Section 47-9102.

39 5. "Dishonor". Section 47-3502.

40 6. "Draft". Section 47-3104.

41 D. In addition, chapter 1 of this title contains general definitions
42 and principles of construction and interpretation applicable throughout this
43 chapter.

1 Sec. 7. Section 47-2104, Arizona Revised Statutes, is amended to read:
2 47-2104. Definitions: "merchant"; "between merchants";
3 "financing agency"

4 A. "Merchant" means a person who deals in goods of the kind or
5 otherwise by his occupation holds himself out as having knowledge or skill
6 peculiar to the practices or goods involved in the transaction or to whom
7 such knowledge or skill may be attributed by his employment of an agent or
8 broker or other intermediary who by his occupation holds himself out as
9 having such knowledge or skill.

10 B. "Financing agency" means a bank, finance company or other person
11 who in the ordinary course of business makes advances against goods or
12 documents of title or who by arrangement with either the seller or the buyer
13 intervenes in ordinary course to make or collect payment due or claimed under
14 the contract for sale, as by purchasing or paying the seller's draft or
15 making advances against it or by merely taking it for collection whether or
16 not documents of title accompany OR ARE ASSOCIATED WITH the draft.
17 "Financing agency" includes also a bank or other person who similarly
18 intervenes between persons who are in the position of seller and buyer in
19 respect to the goods (section 47-2707).

20 C. "Between merchants" means in any transaction with respect to which
21 both parties are chargeable with the knowledge or skill of merchants.

22 Sec. 8. Section 47-2202, Arizona Revised Statutes, is amended to read:
23 47-2202. Final written expression: parol or extrinsic evidence

24 Terms with respect to which the confirmatory memoranda of the parties
25 agree or which are otherwise set forth in a writing intended by the parties
26 as a final expression of their agreement with respect to such terms as are
27 included therein may not be contradicted by evidence of any prior agreement
28 or of a contemporaneous oral agreement but may be explained or supplemented:

29 1. By COURSE OF PERFORMANCE, course of dealing or usage of trade
30 (section ~~47-1205~~ 47-1303) ~~or by course of performance (section 47-2208)~~; and

31 2. By evidence of consistent additional terms unless the court finds
32 the writing to have been intended also as a complete and exclusive statement
33 of the terms of the agreement.

34 Sec. 9. Repeal

35 Section 47-2208, Arizona Revised Statutes, is repealed.

36 Sec. 10. Section 47-2310, Arizona Revised Statutes, is amended to
37 read:

38 47-2310. Open time for payment or running of credit; authority
39 to ship under reservation

40 Unless otherwise agreed:

41 1. Payment is due at the time and place at which the buyer is to
42 receive the goods even though the place of shipment is the place of delivery;
43 and

44 2. If the seller is authorized to send the goods he may ship them
45 under reservation, and may tender the documents of title, but the buyer may

1 inspect the goods after their arrival before payment is due unless such
2 inspection is inconsistent with the terms of the contract (section 47-2513);
3 and

4 3. If delivery is authorized and made by way of documents of title
5 otherwise than by paragraph 2 ~~of this section~~ then payment is due REGARDLESS
6 OF WHERE THE GOODS ARE TO BE RECEIVED:

7 (a) At the time and place at which the buyer is to receive DELIVERY OF
8 the TANGIBLE documents; OR

9 (b) AT THE TIME THE BUYER IS TO RECEIVE DELIVERY OF THE ELECTRONIC
10 DOCUMENTS AND AT THE SELLER'S PLACE OF BUSINESS OR, IF NONE, THE SELLER'S
11 RESIDENCE ~~regardless of where the goods are to be received~~; and

12 4. Where the seller is required or authorized to ship the goods on
13 credit the credit period runs from the time of shipment but ~~post-dating~~
14 POSTDATING the invoice or delaying its dispatch will correspondingly delay
15 the starting of the credit period.

16 Sec. 11. Section 47-2323, Arizona Revised Statutes, is amended to
17 read:

18 47-2323. Form of bill of lading required in overseas shipment;
19 "overseas"

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

25 B. Where in a case within subsection A of this section a TANGIBLE bill
26 of lading has been issued in a set of parts, unless otherwise agreed if the
27 documents are not to be sent from abroad the buyer may demand tender of the
28 full set; otherwise only one part of the bill of lading need be tendered.
29 Even if the agreement expressly requires a full set:

30 1. Due tender of a single part is acceptable within the provisions of
31 this chapter on cure of improper delivery (subsection A of section 47-2508);
32 and

33 2. Even though the full set is demanded, if the documents are sent
34 from abroad the person tendering an incomplete set may nevertheless require
35 payment upon furnishing an indemnity which the buyer in good faith deems
36 adequate.

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

1 Sec. 12. Section 47-2401, Arizona Revised Statutes, is amended to
2 read:

3 47-2401. Passing of title; reservation for security; limited
4 application of this section

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

11 1. Title to goods cannot pass under a contract for sale prior to their
12 identification to the contract (section 47-2501), and unless otherwise
13 explicitly agreed the buyer acquires by their identification a special
14 property as limited by this title. Any retention or reservation by the
15 seller of the title (property) in goods shipped or delivered to the buyer is
16 limited in effect to a reservation of a security interest. Subject to these
17 provisions and to the provisions of the chapter on secured transactions
18 (chapter 9 of this title), title to goods passes from the seller to the buyer
19 in any manner and on any conditions explicitly agreed on by the parties.

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

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

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

31 3. Unless otherwise explicitly agreed where delivery is to be made
32 without moving the goods:

33 (a) If the seller is to deliver a TANGIBLE document of title, title
34 passes at the time when and the place where he delivers such documents AND IF
35 THE SELLER IS TO DELIVER AN ELECTRONIC DOCUMENT OF TITLE, TITLE PASSES WHEN
36 THE SELLER DELIVERS THE DOCUMENT; or

37 (b) If the goods are at the time of contracting already identified and
38 no documents OF TITLE are to be delivered, title passes at the time and place
39 of contracting.

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

1 Sec. 13. Section 47-2503, Arizona Revised Statutes, is amended to
2 read:

3 47-2503. Manner of seller's tender of delivery

4 A. Tender of delivery requires that the seller put and hold conforming
5 goods at the buyer's disposition and give the buyer any notification
6 reasonably necessary to enable him to take delivery. The manner, time and
7 place for tender are determined by the agreement and this chapter, and in
8 particular:

9 1. Tender must be at a reasonable hour, and if it is of goods they
10 must be kept available for the period reasonably necessary to enable the
11 buyer to take possession; but

12 2. Unless otherwise agreed the buyer must furnish facilities
13 reasonably suited to the receipt of the goods.

14 B. Where the case is within section 47-2504 respecting shipment tender
15 requires that the seller comply with its provisions.

16 C. Where the seller is required to deliver at a particular destination
17 tender requires that he comply with subsection A of this section and also in
18 any appropriate case tender documents as described in subsections D and E of
19 this section.

20 D. Where goods are in the possession of a bailee and are to be
21 delivered without being moved:

22 1. Tender requires that the seller either tender a negotiable document
23 of title covering such goods or procure acknowledgment by the bailee of the
24 buyer's right to possession of the goods; but

25 2. Tender to the buyer of a ~~non-negotiable~~ NONNEGOTIABLE document of
26 title or of a ~~written direction to~~ RECORD DIRECTING the bailee to deliver is
27 sufficient tender, unless the buyer seasonably objects, and, EXCEPT AS
28 OTHERWISE PROVIDED IN CHAPTER 9 OF THIS TITLE, receipt by the bailee of
29 notification of the buyer's rights fixes those rights as against the bailee
30 and all third persons; but risk of loss of the goods and of any failure by
31 the bailee to honor the ~~non-negotiable~~ NONNEGOTIABLE document of title or to
32 obey the direction remains on the seller until the buyer has had a reasonable
33 time to present the document or direction, and a refusal by the bailee to
34 honor the document or to obey the direction defeats the tender.

35 E. Where the contract requires the seller to deliver documents:

36 1. He must tender all such documents in correct form, except as
37 provided in this chapter with respect to bills of lading in a set (subsection
38 B of section 47-2323); and

39 2. Tender through customary banking channels is sufficient and
40 dishonor of a draft accompanying OR ASSOCIATED WITH the documents constitutes
41 ~~non-acceptance~~ NONACCEPTANCE or rejection.

1 Sec. 14. Section 47-2505, Arizona Revised Statutes, is amended to
2 read:

3 47-2505. Seller's shipment under reservation

4 A. Where the seller has identified goods to the contract by or before
5 shipment:

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

11 2. A ~~non-negotiable~~ NONNEGOTIABLE bill of lading to himself or his
12 nominee reserves possession of the goods as security but except in a case of
13 conditional delivery (subsection B of section 47-2507) a ~~non-negotiable~~
14 NONNEGOTIABLE bill of lading naming the buyer as consignee reserves no
15 security interest even though the seller retains possession OR CONTROL of the
16 bill of lading.

17 B. When shipment by the seller with reservation of a security interest
18 is in violation of the contract for sale it constitutes an improper contract
19 for transportation within section 47-2504 but impairs neither the rights
20 given to the buyer by shipment and identification of the goods to the
21 contract nor the seller's powers as a holder of a negotiable document OF
22 TITLE.

23 Sec. 15. Section 47-2506, Arizona Revised Statutes, is amended to
24 read:

25 47-2506. Rights of financing agency

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

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

36 Sec. 16. Section 47-2509, Arizona Revised Statutes, is amended to
37 read:

38 47-2509. Risk of loss in the absence of breach

39 A. Where the contract requires or authorizes the seller to ship the
40 goods by carrier:

41 1. If it does not require him to deliver them at a particular
42 destination, the risk of loss passes to the buyer when the goods are duly
43 delivered to the carrier even though the shipment is under reservation
44 (section 47-2505); but

1 2. Acknowledgment to the buyer by any bailee of the goods except a
2 carrier that the bailee holds the goods for the buyer; or

3 3. Such acknowledgment to the buyer by a carrier by reshipment or as
4 warehouseman A WAREHOUSE; or

5 4. Negotiation to the buyer of any negotiable document of title
6 covering the goods.

7 C. To stop delivery the seller must so notify as to enable the bailee
8 by reasonable diligence to prevent delivery of the goods.

9 D. After such notification the bailee must hold and deliver the goods
10 according to the directions of the seller but the seller is liable to the
11 bailee for any ensuing charges or damages.

12 E. If a negotiable document of title has been issued for goods the
13 bailee is not obliged to obey a notification to stop until surrender OF
14 POSSESSION OR CONTROL of the document.

15 F. A carrier who has issued a ~~non-negotiable~~ NONNEGOTIABLE bill of
16 lading is not obliged to obey a notification to stop received from a person
17 other than the consignor.

18 Sec. 19. Section 47-2A103, Arizona Revised Statutes, is amended to
19 read:

20 47-2A103. Definitions and index of definitions

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

22 1. "Buyer in ordinary course of business" means a person who in good
23 faith and without knowledge that the sale to him is in violation of the
24 ownership rights or security interest or leasehold interest of a third party
25 in the goods buys in ordinary course from a person in the business of selling
26 goods of that kind but does not include a pawnbroker. "Buying" may be for
27 cash or by exchange of other property or on secured or unsecured credit and
28 includes ~~receiving~~ ACQUIRING goods or documents of title under a preexisting
29 contract for sale but does not include a transfer in bulk or as security for
30 or in total or partial satisfaction of a money debt.

31 2. "Cancellation" occurs when either party puts an end to the lease
32 contract for default by the other party.

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

39 4. "Conforming" goods or performance under a lease contract means
40 goods or performance that is in accordance with the obligations under the
41 lease contract.

42 5. "Consumer lease" means a lease that a lessor regularly engaged in
43 the business of leasing or selling makes to a lessee who is an individual and
44 who takes under the lease primarily for a personal, family or household
45 purpose, if the total payments to be made under the lease contract, excluding

1 payments for options to renew or buy, do not exceed twenty-five thousand
2 dollars.

3 6. "Fault" means wrongful act, omission, breach or default.

4 7. "Finance lease" means a lease with respect to which:

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

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

8 (c) One of the following occurs:

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

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

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

22 (iv) If the lease is not a consumer lease, the lessor, before the
23 lessee signs the lease contract, informs the lessee in writing of the
24 identity of the person supplying the goods to the lessor, unless the lessee
25 has selected that person and directed the lessor to acquire the goods or the
26 right to possession and use of the goods from that person, that the lessee is
27 entitled under this chapter to the promises and warranties, including those
28 of any third party, provided to the lessor by the person supplying the goods
29 in connection with or as part of the contract by which the lessor acquired
30 the goods or the right to possession and use of the goods, and that the
31 lessee may communicate with the person supplying the goods to the lessor and
32 receive an accurate and complete statement of those promises and warranties,
33 including any disclaimers and limitations of them or of remedies.

34 8. "Goods" means all things that are movable at the time of
35 identification to the lease contract, or are fixtures (section 47-2A309), but
36 the term does not include money, documents, instruments, accounts, chattel
37 paper, general intangibles or minerals or the like, including oil and gas,
38 before extraction. The term also includes the unborn young of animals.

39 9. "Installment lease contract" means a lease contract that authorizes
40 or requires the delivery of goods in separate lots to be separately accepted,
41 even though the lease contract contains a clause "each delivery is a separate
42 lease" or its equivalent.

43 10. "Lease" means a transfer of the right to possession and use of
44 goods for a term in return for consideration, but a sale, including a sale on
45 approval or a sale or return, or retention or creation of a security interest

1 is not a lease. Unless the context clearly indicates otherwise, the term
2 includes a sublease.

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

8 12. "Lease contract" means the total legal obligation that results from
9 the lease agreement as affected by this chapter and any other applicable
10 rules of law. Unless the context clearly indicates otherwise, the term
11 includes a sublease contract.

12 13. "Leasehold interest" means the interest of the lessor or the lessee
13 under a lease contract.

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

17 15. "Lessee in ordinary course of business" means a person who in good
18 faith and without knowledge that the lease to him is in violation of the
19 ownership rights or security interest or leasehold interest of a third party
20 in the goods leases in ordinary course from a person in the business of
21 selling or leasing goods of that kind but does not include a pawnbroker.
22 "Leasing" may be for cash or by exchange of other property or on secured or
23 unsecured credit and includes ~~receiving~~ ACQUIRING goods or documents of title
24 under a preexisting lease contract but does not include a transfer in bulk or
25 as security for or in total or partial satisfaction of a money debt.

26 16. "Lessor" means a person who transfers the right to possession and
27 use of goods under a lease. Unless the context clearly indicates otherwise,
28 the term includes a sublessor.

29 17. "Lessor's residual interest" means the lessor's interest in the
30 goods after expiration, termination or cancellation of the lease contract.

31 18. "Lien" means a charge against or interest in goods to secure
32 payment of a debt or performance of an obligation, but the term does not
33 include a security interest.

34 19. "Lot" means a parcel or a single article that is the subject matter
35 of a separate lease or delivery, whether or not it is sufficient to perform
36 the lease contract.

37 20. "Merchant lessee" means a lessee that is a merchant with respect to
38 goods of the kind subject to the lease.

39 21. "Present value" means the amount as of a date certain of one or
40 more sums payable in the future, discounted to the date certain. The
41 discount is determined by the interest rate specified by the parties if the
42 rate was not manifestly unreasonable at the time the transaction was entered
43 into. Otherwise, the discount is determined by a commercially reasonable
44 rate that takes into account the facts and circumstances of each case at the
45 time the transaction was entered into.

1 22. "Purchase" includes taking by sale, lease, mortgage, security
2 interest, pledge, gift or any other voluntary transaction creating an
3 interest in goods.

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

6 24. "Supplier" means a person from whom a lessor buys or leases goods
7 to be leased under a finance lease.

8 25. "Supply contract" means a contract under which a lessor buys or
9 leases goods to be leased.

10 26. "Termination" occurs when either party pursuant to a power created
11 by agreement or law puts an end to the lease contract otherwise than for
12 default.

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

- 15 1. "Accessions". Section 47-2A310.
- 16 2. "Construction mortgage". Section 47-2A309.
- 17 3. "Encumbrance". Section 47-2A309.
- 18 4. "Fixture filing". Section 47-2A309.
- 19 5. "Fixtures". Section 47-2A309.
- 20 6. "Purchase money lease". Section 47-2A309.

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

- 22 1. "Account". Section 47-9102.
- 23 2. "Between merchants". Section 47-2104.
- 24 3. "Buyer". Section 47-2103.
- 25 4. "Chattel paper". Section 47-9102.
- 26 5. "Consumer goods". Section 47-9102.
- 27 6. "Document". Section 47-9102.
- 28 7. "Entrusting". Section 47-2403.
- 29 8. "General intangible". Section 47-9102.
- 30 9. "Good faith". Section 47-2103.
- 31 10. "Instrument". Section 47-9102.
- 32 11. "Merchant". Section 47-2104.
- 33 12. "Mortgage". Section 47-9102.
- 34 13. "Pursuant to commitment". Section 47-9102.
- 35 14. "Receipt". Section 47-2103.
- 36 15. "Sale". Section 47-2106.
- 37 16. "Sale on approval". Section 47-2326.
- 38 17. "Sale or return". Section 47-2326.
- 39 18. "Seller". Section 47-2103.

40 D. In addition, chapter 1 of this title contains general definitions
41 and principles of construction and interpretation applicable throughout this
42 chapter.

43 Sec. 20. Repeal

44 Section 47-2A207, Arizona Revised Statutes, is repealed.

1 Sec. 21. Section 47-2A501, Arizona Revised Statutes, is amended to
2 read:

3 47-2A501. Default; procedure

4 A. Whether the lessor or the lessee is in default under a lease
5 contract is determined by the lease agreement and this chapter.

6 B. If the lessor or the lessee is in default under the lease contract,
7 the party seeking enforcement has rights and remedies as provided in this
8 chapter and, except as limited by this chapter, as provided in the lease
9 agreement.

10 C. If the lessor or the lessee is in default under the lease contract,
11 the party seeking enforcement may reduce the party's claim to judgment, or
12 otherwise enforce the lease contract by self-help or any available judicial
13 procedure or nonjudicial procedure, including administrative proceeding,
14 arbitration or the like, in accordance with this article.

15 D. Except as otherwise provided in section ~~47-1106~~ 47-1305, SUBSECTION
16 A or this chapter or the lease agreement, the rights and remedies referred to
17 in subsections B and C of this section are cumulative.

18 E. If the lease agreement covers both real property and goods, the
19 party seeking enforcement may proceed under this article as to the goods, or
20 under other applicable law as to both the real property and the goods in
21 accordance with that party's rights and remedies in respect of the real
22 property, in which case this article does not apply.

23 Sec. 22. Section 47-2A514, Arizona Revised Statutes, is amended to
24 read:

25 47-2A514. Waiver of lessee's objections

26 A. In rejecting goods, a lessee's failure to state a particular defect
27 that is ascertainable by reasonable inspection precludes the lessee from
28 relying on the defect to justify rejection or to establish default:

29 1. If, stated seasonably, the lessor or the supplier could have cured
30 it (section 47-2A513); or

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

34 B. A lessee's failure to reserve rights when paying rent or other
35 consideration against documents precludes recovery of the payment for defects
36 apparent ~~on the face of~~ IN the documents.

37 Sec. 23. Section 47-2A518, Arizona Revised Statutes, is amended to
38 read:

39 47-2A518. Cover; substitute goods

40 A. After a default by a lessor under the lease contract of the type
41 described in section 47-2A508, subsection A, or, if agreed, after other
42 default by the lessor, the lessee may cover by making any purchase or lease
43 of or contract to purchase or lease goods in substitution for those due from
44 the lessor.

1 B. Except as otherwise provided with respect to damages liquidated in
2 the lease agreement (section 47-2A504) or otherwise determined pursuant to
3 agreement of the parties (~~section 47-1102, subsection G~~ SECTIONS 47-1302 and
4 ~~section 47-2A503~~), if a lessee's cover is by a lease agreement substantially
5 similar to the original lease agreement and the new lease agreement is made
6 in good faith and in a commercially reasonable manner, the lessee may recover
7 from the lessor as damages the present value, as of the date of the
8 commencement of the term of the new lease agreement, of the rent under the
9 new lease agreement applicable to that period of the new lease term which is
10 comparable to the then remaining term of the original lease agreement minus
11 the present value as of the same date of the total rent for the then
12 remaining lease term of the original lease agreement, and any incidental or
13 consequential damages, less expenses saved in consequence of the lessor's
14 default.

15 C. If a lessee's cover is by lease agreement that for any reason does
16 not qualify for treatment under subsection B of this section, or is by
17 purchase or otherwise, the lessee may recover from the lessor as if the
18 lessee had elected not to cover and section 47-2A519 governs.

19 Sec. 24. Section 47-2A519, Arizona Revised Statutes, is amended to
20 read:

21 47-2A519. Lessee's damages for nondelivery, repudiation,
22 default and breach of warranty in regard to
23 accepted goods

24 A. Except as otherwise provided with respect to damages liquidated in
25 the lease agreement (section 47-2A504) or otherwise determined pursuant to
26 agreement of the parties (~~section 47-1102, subsection G~~ SECTIONS 47-1302 and
27 ~~section 47-2A503~~), if a lessee elects not to cover or a lessee elects to
28 cover and the cover is by lease agreement that for any reason does not
29 qualify for treatment under section 47-2A518, subsection B, or is by purchase
30 or otherwise, the measure of damages for nondelivery or repudiation by the
31 lessor or for rejection or revocation of acceptance by the lessee is the
32 present value, as of the date of the default, of the then market rent minus
33 the present value as of the same date of the original rent, computed for the
34 remaining lease term of the original lease agreement, together with
35 incidental and consequential damages, less expenses saved in consequence of
36 the lessor's default.

37 B. Market rent is to be determined as of the place for tender or, in
38 cases of rejection after arrival or revocation of acceptance, as of the place
39 of arrival.

40 C. Except as otherwise agreed, if the lessee has accepted goods and
41 given notification (section 47-2A516, subsection C), the measure of damages
42 for nonconforming tender or delivery or other default by a lessor is the loss
43 resulting in the ordinary course of events from the lessor's default as
44 determined in any manner that is reasonable together with incidental and

1 consequential damages, less expenses saved in consequence of the lessor's
2 default.

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

10 Sec. 25. Section 47-2A526, Arizona Revised Statutes, is amended to
11 read:

12 47-2A526. Lessor's stoppage of delivery in transit or otherwise

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

20 B. In pursuing its remedies under subsection A, the lessor may stop
21 delivery until:

- 22 1. Receipt of the goods by the lessee;
23 2. Acknowledgment to the lessee by any bailee of the goods, except a
24 carrier, that the bailee holds the goods for the lessee; or
25 3. Such an acknowledgment to the lessee by a carrier via reshipment or
26 as warehouseman A WAREHOUSE.

27 ~~4.~~ C. To stop delivery, a lessor shall so notify as to enable the
28 bailee by reasonable diligence to prevent delivery of the goods.

29 ~~6.~~ D. After notification, the bailee shall hold and deliver the goods
30 according to the directions of the lessor, but the lessor is liable to the
31 bailee for any ensuing charges or damages.

32 ~~D.~~ E. A carrier who has issued a nonnegotiable bill of lading is not
33 obliged to obey a notification to stop received from a person other than the
34 consignor.

35 Sec. 26. Section 47-2A527, Arizona Revised Statutes, is amended to
36 read:

37 47-2A527. Lessor's rights to dispose of goods

38 A. After a default by a lessee under the lease contract of the type
39 described in section 47-2A523, subsection A or subsection C, paragraph 1 or
40 after the lessor refuses to deliver or takes possession of goods (section
41 47-2A525 or 47-2A526), or, if agreed, after other default by a lessee, the
42 lessor may dispose of the goods concerned or the undelivered balance thereof
43 by lease, sale or otherwise.

44 B. Except as otherwise provided with respect to damages liquidated in
45 the lease agreement (section 47-2A504) or otherwise determined pursuant to

1 agreement of the parties (~~section 47-1102, subsection C~~ SECTIONS 47-1302 and
2 ~~section 47-2A503~~), if the disposition is by lease agreement substantially
3 similar to the original lease agreement and the new lease agreement is made
4 in good faith and in a commercially reasonable manner, the lessor may recover
5 from the lessee as damages accrued and unpaid rent as of the date of the
6 commencement of the term of the new lease agreement, the present value, as of
7 the same date, of the total rent for the then remaining lease term of the
8 original lease agreement minus the present value, as of the same date, of the
9 rent under the new lease agreement applicable to that period of the new lease
10 term which is comparable to the then remaining term of the original lease
11 agreement, and any incidental damages allowed under section 47-2A530, less
12 expenses saved in consequence of the lessee's default.

13 C. If the lessor's disposition is by lease agreement that for any
14 reason does not qualify for treatment under subsection B of this section, or
15 is by sale or otherwise, the lessor may recover from the lessee as if the
16 lessor had elected not to dispose of the goods and section 47-2A528 governs.

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

22 E. The lessor is not accountable to the lessee for any profit made on
23 any disposition. A lessee who has rightfully rejected or justifiably revoked
24 acceptance shall account to the lessor for any excess over the amount of the
25 lessee's security interest (section 47-2A508, subsection E).

26 Sec. 27. Section 47-2A528, Arizona Revised Statutes, is amended to
27 read:

28 47-2A528. Lessor's damages for nonacceptance, failure to pay,
29 repudiation or other default

30 A. Except as otherwise provided with respect to damages liquidated in
31 the lease agreement (section 47-2A504) or otherwise determined pursuant to
32 agreement of the parties (~~section 47-1102, subsection C~~ SECTIONS 47-1302 and
33 ~~section 47-2A503~~), if a lessor elects to retain the goods or a lessor elects
34 to dispose of the goods and the disposition is by lease agreement that for
35 any reason does not qualify for treatment under section 47-2A527, subsection
36 B, or is by sale or otherwise, the lessor may recover from the lessee as
37 damages for a default of the type described in section 47-2A523, subsection A
38 or subsection C, paragraph 1, or, if agreed, for other default of the lessee:

39 1. Accrued and unpaid rent as of the date of default if the lessee has
40 never taken possession of the goods, or, if the lessee has taken possession
41 of the goods, as of the date the lessor repossesses the goods or an earlier
42 date on which the lessee makes a tender of the goods to the lessor;

43 2. The present value as of the date determined under paragraph 1 of
44 the total rent for the then remaining lease term of the original lease

1 agreement minus the present value as of the same date of the market rent at
2 the place where the goods are located computed for the same lease term; and

3 3. Any incidental damages allowed under section 47-2A530, less
4 expenses saved in consequence of the lessee's default.

5 B. If the measure of damages provided in subsection A of this section
6 is inadequate to put a lessor in as good a position as performance would
7 have, the measure of damages is the present value of the profit, including
8 reasonable overhead, the lessor would have made from full performance by the
9 lessee, together with any incidental damages allowed under section 47-2A530,
10 due allowance for costs reasonably incurred and due credit for payments or
11 proceeds of disposition.

12 Sec. 28. Section 47-3103, Arizona Revised Statutes, is amended to
13 read:

14 47-3103. Definitions

15 A. In this chapter:

16 1. "Acceptor" means a drawee who has accepted a draft.

17 2. "Drawee" means a person ordered in a draft to make payment.

18 3. "Drawer" means a person who signs or is identified in a draft as a
19 person ordering payment.

20 4. "Good faith" means honesty in fact and the observance of reasonable
21 commercial standards of fair dealing.

22 5. "Maker" means a person who signs or is identified in a note as a
23 person undertaking to pay.

24 6. "Order" means a written instruction to pay money signed by the
25 person giving the instruction. The instruction may be addressed to any
26 person, including the person giving the instruction, or to one or more
27 persons jointly or in the alternative but not in succession. An
28 authorization to pay is not an order unless the person authorized to pay is
29 also instructed to pay.

30 7. "Ordinary care" in the case of a person engaged in business means
31 observance of reasonable commercial standards, prevailing in the area in
32 which the person is located, with respect to the business in which the person
33 is engaged. In the case of a bank that takes an instrument for processing
34 for collection or payment by automated means, reasonable commercial standards
35 do not require the bank to examine the instrument if the failure to examine
36 does not violate the bank's prescribed procedures and the bank's procedures
37 do not vary unreasonably from general banking usage not disapproved by this
38 chapter or chapter 4 of this title.

39 8. "Party" means a party to an instrument.

40 9. "Promise" means a written undertaking to pay money signed by the
41 person undertaking to pay. An acknowledgment of an obligation by the obligor
42 is not a promise unless the obligor also undertakes to pay the obligation.

43 10. "Prove" with respect to a fact means to meet the burden of
44 establishing the fact (section 47-1201, SUBSECTION B, paragraph 8).

- 1 11. "Remitter" means a person who purchases an instrument from its
2 issuer if the instrument is payable to an identified person other than the
3 purchaser.
- 4 B. Other definitions applying to this chapter and the sections in
5 which they appear are:
- 6 1. "Acceptance". Section 47-3409.
7 2. "Accommodated party". Section 47-3419.
8 3. "Accommodation party". Section 47-3419.
9 4. "Alteration". Section 47-3407.
10 5. "Anomalous indorsement". Section 47-3205.
11 6. "Blank indorsement". Section 47-3205.
12 7. "Cashier's check". Section 47-3104.
13 8. "Certificate of deposit". Section 47-3104.
14 9. "Certified check". Section 47-3409.
15 10. "Check". Section 47-3104.
16 11. "Consideration". Section 47-3303.
17 12. "Draft". Section 47-3104.
18 13. "Holder in due course". Section 47-3302.
19 14. "Incomplete instrument". Section 47-3115.
20 15. "Indorsement". Section 47-3204.
21 16. "Indorser". Section 47-3204.
22 17. "Instrument". Section 47-3104.
23 18. "Issue". Section 47-3105.
24 19. "Issuer". Section 47-3105.
25 20. "Negotiable instrument". Section 47-3104.
26 21. "Negotiation". Section 47-3201.
27 22. "Note". Section 47-3104.
28 23. "Payable at a definite time". Section 47-3108.
29 24. "Payable on demand". Section 47-3108.
30 25. "Payable to bearer". Section 47-3109.
31 26. "Payable to order". Section 47-3109.
32 27. "Payment". Section 47-3602.
33 28. "Person entitled to enforce". Section 47-3301.
34 29. "Presentment". Section 47-3501.
35 30. "Reacquisition". Section 47-3207.
36 31. "Special indorsement". Section 47-3205.
37 32. "Teller's check". Section 47-3104.
38 33. "Transfer of instrument". Section 47-3203.
39 34. "Traveler's check". Section 47-3104.
40 35. "Value". Section 47-3303.
- 41 C. The following definitions in other chapters of this title apply to
42 this chapter:
- 43 1. "Bank". Section 47-4105.
44 2. "Banking day". Section 47-4104.
45 3. "Clearing house". Section 47-4104.

- 1 4. "Collecting bank". Section 47-4105.
- 2 5. "Depository bank". Section 47-4105.
- 3 6. "Documentary draft". Section 47-4104.
- 4 7. "Intermediary bank". Section 47-4105.
- 5 8. "Item". Section 47-4104.
- 6 9. "Payor bank". Section 47-4105.
- 7 10. "Suspends payments". Section 47-4104.

8 D. In addition, chapter 1 of this title contains general definitions
9 and principles of construction and interpretation applicable throughout this
10 chapter.

11 Sec. 29. Section 47-4104, Arizona Revised Statutes, is amended to
12 read:

13 47-4104. Definitions and index of definitions

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

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

18 2. "Afternoon" means the period of a day between noon and midnight.

19 3. "Banking day" means the part of a day on which a bank is open to
20 the public for carrying on substantially all of its banking functions.

21 4. "Clearing house" means an association of banks or other payors
22 regularly clearing items.

23 5. "Customer" means a person having an account with a bank or for whom
24 a bank has agreed to collect items, including a bank that maintains an
25 account at another bank.

26 6. "Documentary draft" means a draft to be presented for acceptance or
27 payment if specified documents, certificated securities (section 47-8102) or
28 instructions for uncertificated securities (section 47-8102) or other
29 certificates, statements or the like are to be received by the drawee or
30 other payor before acceptance or payment of the draft.

31 7. "Draft" means a draft as defined in section 47-3104 or an item,
32 other than an instrument, that is an order.

33 8. "Drawee" means a person ordered in a draft to make payment.

34 9. "Item" means an instrument or a promise or order to pay money
35 handled by a bank for collection or payment. The term does not include a
36 payment order governed by chapter 4A of this title or a credit or debit card
37 slip.

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

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

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

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

- 7 1. "Agreement for electronic presentment". Section 47-4110.
- 8 2. "Bank". Section 47-4105.
- 9 3. "Collecting bank". Section 47-4105.
- 10 4. "Depository bank". Section 47-4105.
- 11 5. "Intermediary bank". Section 47-4105.
- 12 6. "Payor bank". Section 47-4105.
- 13 7. "Presenting bank". Section 47-4105.
- 14 8. "Presentment notice". Section 47-4110.

15 C. "CONTROL" AS PROVIDED IN SECTION 47-7106 AND the following
16 definitions in other chapters apply to this chapter:

- 17 1. "Acceptance". Section 47-3409.
- 18 2. "Alteration". Section 47-3407.
- 19 3. "Cashier's check". Section 47-3104.
- 20 4. "Certificate of deposit". Section 47-3104.
- 21 5. "Certified check". Section 47-3409.
- 22 6. "Check". Section 47-3104.
- 23 7. "Good faith". Section 47-3103.
- 24 8. "Holder in due course". Section 47-3302.
- 25 9. "Instrument". Section 47-3104.
- 26 10. "Notice of dishonor". Section 47-3503.
- 27 11. "Order". Section 47-3103.
- 28 12. "Ordinary care". Section 47-3103.
- 29 13. "Person entitled to enforce". Section 47-3301.
- 30 14. "Presentment". Section 47-3501.
- 31 15. "Promise". Section 47-3103.
- 32 16. "Prove". Section 47-3103.
- 33 17. "Teller's check". Section 47-3104.
- 34 18. "Unauthorized signature". Section 47-3403.

35 D. In addition, chapter 1 of this title contains general definitions
36 and principles of construction and interpretation applicable throughout this
37 chapter.

38 Sec. 30. Section 47-4210, Arizona Revised Statutes, is amended to
39 read:

40 47-4210. Security interest of collecting bank in items,
41 accompanying documents and proceeds

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

- 44 1. In case of an item deposited in an account, to the extent to which
45 credit given for the item has been withdrawn or applied;

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

4 3. If it makes an advance on or against the item.

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

10 C. Receipt by a collecting bank of a final settlement for an item is a
11 realization on its security interest in the item, accompanying documents and
12 proceeds. So long as the bank does not receive final settlement for the item
13 or give up possession of the item or POSSESSION OR CONTROL OF THE
14 accompanying documents for purposes other than collection, the security
15 interest continues to that extent and is subject to chapter 9 of this title,
16 but:

17 1. No security agreement is necessary to make the security interest
18 enforceable (section 47-9203, subsection B, paragraph 3, subdivision (a));

19 2. No filing is required to perfect the security interests; and

20 3. The security interest has priority over conflicting perfected
21 security interests in the item, accompanying documents or proceeds.

22 Sec. 31. Section 47-4A105, Arizona Revised Statutes, is amended to
23 read:

24 47-4A105. Other definitions

25 A. In this chapter:

26 1. "Authorized account" means a deposit account of a customer in a
27 bank designated by the customer as a source of payment of payment orders
28 issued by the customer to the bank. If a customer does not so designate an
29 account, any account of the customer is an authorized account if payment of a
30 payment order from that account is not inconsistent with a restriction on the
31 use of that account.

32 2. "Bank" means a person engaged in the business of banking and
33 includes a savings bank, savings and loan association, credit union and trust
34 company. A branch or separate office of a bank is a separate bank for
35 purposes of this chapter.

36 3. "Customer" means a person, including a bank, having an account with
37 a bank or from whom a bank has agreed to receive payment orders.

38 4. "Funds-transfer business day" of a receiving bank means the part of
39 a day during which the receiving bank is open for the receipt, processing and
40 transmittal of payment orders and cancellations and amendments of payment
41 orders.

42 5. "Funds-transfer system" means a wire transfer network, automated
43 clearing house or other communication system of a clearing house or other
44 association of banks through which a payment order by a bank may be
45 transmitted to the bank to which the order is addressed.

1 6. "Good faith" means honesty in fact and the observance of reasonable
2 commercial standards of fair dealing.

3 7. "Prove" with respect to a fact means to meet the burden of
4 establishing the fact (section 47-1201, SUBSECTION B, paragraph 8).

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

- 7 1. "Acceptance". Section 47-4A209.
- 8 2. "Beneficiary". Section 47-4A103.
- 9 3. "Beneficiary's bank". Section 47-4A103.
- 10 4. "Executed". Section 47-4A301.
- 11 5. "Execution date". Section 47-4A301.
- 12 6. "Funds transfer". Section 47-4A104.
- 13 7. "Funds-transfer system rule". Section 47-4A501.
- 14 8. "Intermediary bank". Section 47-4A104.
- 15 9. "Originator". Section 47-4A104.
- 16 10. "Originator's bank". Section 47-4A104.
- 17 11. "Payment by beneficiary's bank to beneficiary". Section 47-4A405.
- 18 12. "Payment by originator to beneficiary". Section 47-4A406.
- 19 13. "Payment by sender to receiving bank". Section 47-4A403.
- 20 14. "Payment date". Section 47-4A401.
- 21 15. "Payment order". Section 47-4A103.
- 22 16. "Receiving bank". Section 47-4A103.
- 23 17. "Security procedure". Section 47-4A201.
- 24 18. "Sender". Section 47-4A103.

25 C. The following definitions in chapter 4 of this title apply to this
26 chapter:

- 27 1. "Clearing house". Section 47-4104.
- 28 2. "Item". Section 47-4104.
- 29 3. "Suspends payments". Section 47-4104.

30 D. In addition, chapter 1 of this title contains general definitions
31 and principles of construction and interpretation applicable throughout this
32 chapter.

33 Sec. 32. Section 47-4A106, Arizona Revised Statutes, is amended to
34 read:

35 47-4A106. Time payment order is received

36 A. The time of receipt of a payment order or communication cancelling
37 or amending a payment order is determined by the rules applicable to receipt
38 of a notice stated in section ~~47-1201, paragraph 27~~ 47-1202. A receiving
39 bank may fix a cut-off time or times on a funds-transfer business day for the
40 receipt and processing of payment orders and communications cancelling or
41 amending payment orders. Different cut-off times may apply to payment
42 orders, cancellations or amendments, or to different categories of payment
43 orders, cancellations or amendments. A cut-off time may apply to senders
44 generally or different cut-off times may apply to different senders or
45 categories of payment orders. If a payment order or communication cancelling

1 or amending a payment order is received after the close of a funds-transfer
2 business day or after the appropriate cut-off time on a funds-transfer
3 business day, the receiving bank may treat the payment order or communication
4 as received at the opening of the next funds-transfer business day.

5 B. If this chapter refers to an execution date or payment date or
6 states a day on which a receiving bank is required to take action, and the
7 date or day does not fall on a funds-transfer business day, the next day that
8 is a funds-transfer business day is treated as the date or day stated, unless
9 the contrary is stated in this chapter.

10 Sec. 33. Section 47-4A204, Arizona Revised Statutes, is amended to
11 read:

12 47-4A204. Refund of payment and duty of customer to report with
13 respect to unauthorized payment order

14 A. If a receiving bank accepts a payment order issued in the name of
15 its customer as sender which is not authorized and not enforceable, in whole or in
16 part, against the customer under section 47-4A202 or not enforceable, in whole or in
17 part, against the customer under section 47-4A203, the bank shall refund any
18 payment of the payment order received from the customer to the extent the
19 bank is not entitled to enforce payment and shall pay interest on the
20 refundable amount calculated from the date the bank received payment to the
21 date of the refund. However, the customer is not entitled to interest from
22 the bank on the amount to be refunded if the customer fails to exercise
23 ordinary care to determine that the order was not authorized by the customer
24 and to notify the bank of the relevant facts within a reasonable time not
25 exceeding ninety days after the date the customer received notification from
26 the bank that the order was accepted or that the customer's account was
27 debited with respect to the order. The bank is not entitled to any recovery
28 from the customer on account of a failure by the customer to give
29 notification as stated in this section.

30 B. Reasonable time under subsection A of this section may be fixed by
31 agreement as stated in section ~~47-1204, subsection A~~ 47-1302, SUBSECTION B,
32 but the obligation of a receiving bank to refund payment as stated in
33 subsection A of this section may not otherwise be varied by agreement.

34 Sec. 34. Section 47-5103, Arizona Revised Statutes, is amended to
35 read:

36 47-5103. Scope

37 A. This chapter applies to letters of credit and to certain rights and
38 obligations arising out of transactions involving letters of credit.

39 B. The statement of a rule in this chapter does not by itself require,
40 imply or negate application of the same or a different rule to a situation
41 not provided for, or to a person not specified, in this chapter.

42 C. With the exception of this subsection, subsections A and D of this
43 section, section 47-5102, subsection A, paragraphs 9 and 10, section 47-5106,
44 subsection D and section 47-5114, subsection D, and except to the extent
45 prohibited in section ~~47-1102, subsection C~~ 47-1302 and section 47-5117,

1 subsection D, the effect of this article may be varied by agreement or by a
2 provision stated or incorporated by reference in an undertaking. A term in
3 an agreement or undertaking generally excusing liability or generally
4 limiting remedies for failure to perform obligations is not sufficient to
5 vary obligations prescribed by this chapter.

6 D. Rights and obligations of an issuer to a beneficiary or a nominated
7 person under a letter of credit are independent of the existence, performance
8 or nonperformance of a contract or arrangement out of which the letter of
9 credit arises or which underlies it, including contracts or arrangements
10 between the issuer and the applicant and between the applicant and the
11 beneficiary.

12 Sec. 35. Repeal

13 Title 47, chapter 7, Arizona Revised Statutes, is repealed.

14 Sec. 36. Title 47, Arizona Revised Statutes, is amended by adding a
15 new chapter 7, to read:

16 CHAPTER 7

17 DOCUMENTS OF TITLE

18 ARTICLE 1. GENERAL

19 47-7101. Short title

20 THIS CHAPTER MAY BE CITED AS UNIFORM COMMERCIAL CODE-DOCUMENTS OF
21 TITLE.

22 47-7102. Definitions and index of definitions

23 A. IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

24 1. "BAILEE" MEANS A PERSON THAT BY A WAREHOUSE RECEIPT, BILL OF LADING
25 OR OTHER DOCUMENT OF TITLE ACKNOWLEDGES POSSESSION OF GOODS AND CONTRACTS TO
26 DELIVER THEM.

27 2. "CARRIER" MEANS A PERSON THAT ISSUES A BILL OF LADING.

28 3. "CONSIGNEE" MEANS A PERSON NAMED IN A BILL OF LADING TO WHICH OR TO
29 WHOSE ORDER THE BILL PROMISES DELIVERY.

30 4. "CONSIGNOR" MEANS A PERSON NAMED IN A BILL OF LADING AS THE PERSON
31 FROM WHICH THE GOODS HAVE BEEN RECEIVED FOR SHIPMENT.

32 5. "DELIVERY ORDER" MEANS A RECORD THAT CONTAINS AN ORDER TO DELIVER
33 GOODS DIRECTED TO A WAREHOUSE, CARRIER OR OTHER PERSON THAT IN THE ORDINARY
34 COURSE OF BUSINESS ISSUES WAREHOUSE RECEIPTS OR BILLS OF LADING.

35 6. "GOODS" MEANS ALL THINGS THAT ARE TREATED AS MOVABLE FOR THE
36 PURPOSES OF A CONTRACT FOR STORAGE OR TRANSPORTATION.

37 7. "ISSUER" MEANS A BAILEE THAT ISSUES A DOCUMENT OF TITLE OR, IN THE
38 CASE OF AN UNACCEPTED DELIVERY ORDER, THE PERSON THAT ORDERS THE POSSESSOR OF
39 GOODS TO DELIVER. ISSUER INCLUDES A PERSON FOR WHICH AN AGENT OR EMPLOYEE
40 PURPORTS TO ACT IN ISSUING A DOCUMENT IF THE AGENT OR EMPLOYEE HAS REAL OR
41 APPARENT AUTHORITY TO ISSUE DOCUMENTS, EVEN IF THE ISSUER DID NOT RECEIVE ANY
42 GOODS, THE GOODS WERE MISDESCRIBED OR IN ANY OTHER RESPECT THE AGENT OR
43 EMPLOYEE VIOLATED THE ISSUER'S INSTRUCTIONS.

1 8. "PERSON ENTITLED UNDER THE DOCUMENT" MEANS THE HOLDER, IN THE CASE
2 OF A NEGOTIABLE DOCUMENT OF TITLE, OR THE PERSON TO WHICH DELIVERY OF THE
3 GOODS IS TO BE MADE BY THE TERMS OF, OR PURSUANT TO INSTRUCTIONS IN A RECORD
4 UNDER, A NONNEGOTIABLE DOCUMENT OF TITLE.

5 9. "SHIPPER" MEANS A PERSON THAT ENTERS INTO A CONTRACT OF
6 TRANSPORTATION WITH A CARRIER.

7 10. "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A
8 RECORD:

9 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

10 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC
11 SOUND, SYMBOL OR PROCESS.

12 11. "WAREHOUSE" MEANS A PERSON ENGAGED IN THE BUSINESS OF STORING GOODS
13 FOR HIRE.

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

16 1. "CONTRACT FOR SALE". SECTION 47-2106.

17 2. "LESSEE IN ORDINARY COURSE OF BUSINESS". SECTION 47-2A103.

18 3. "RECEIPT OF GOODS". SECTION 47-2103.

19 C. IN ADDITION, CHAPTER 1 OF THIS TITLE CONTAINS GENERAL DEFINITIONS
20 AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGHOUT THIS
21 CHAPTER.

22 47-7103. Relation of chapter to treaty or statute

23 A. THIS CHAPTER IS SUBJECT TO ANY TREATY OR STATUTE OF THE UNITED
24 STATES OR REGULATORY STATUTE OF THIS STATE TO THE EXTENT THE TREATY, STATUTE
25 OR REGULATORY STATUTE IS APPLICABLE.

26 B. THIS CHAPTER DOES NOT MODIFY OR REPEAL ANY LAW PRESCRIBING THE FORM
27 OR CONTENT OF A DOCUMENT OF TITLE OR THE SERVICES OR FACILITIES TO BE
28 AFFORDED BY A BAILEE OR OTHERWISE REGULATING A BAILEE'S BUSINESS IN RESPECTS
29 NOT SPECIFICALLY TREATED IN THIS CHAPTER. HOWEVER, VIOLATION OF SUCH A LAW
30 DOES NOT AFFECT THE STATUS OF A DOCUMENT OF TITLE THAT OTHERWISE IS WITHIN
31 THE DEFINITION OF A DOCUMENT OF TITLE.

32 C. THIS CHAPTER MODIFIES, LIMITS AND SUPERSEDES THE FEDERAL ELECTRONIC
33 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (P.L. 106-229; 114 STAT. 464;
34 15 UNITED STATES CODE SECTIONS 7001 THROUGH 7006, SECTION 7021 AND SECTION
35 7031) BUT DOES NOT MODIFY, LIMIT OR SUPERSEDE SECTION 101(c) OF THAT ACT
36 (P.L. 106-229; 114 STAT. 464; 15 UNITED STATES CODE SECTION 7001(c)) OR
37 AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION
38 103(b) OF THAT ACT (P.L. 106-229; 114 STAT. 464; 15 UNITED STATES CODE
39 SECTION 103(b)).

40 D. TO THE EXTENT THERE IS A CONFLICT BETWEEN TITLE 44, CHAPTER 26 AND
41 THIS CHAPTER, THIS CHAPTER GOVERNS.

1 47-7104. Negotiable and nonnegotiable document of title

2 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, A DOCUMENT OF TITLE
3 IS NEGOTIABLE IF BY ITS TERMS THE GOODS ARE TO BE DELIVERED TO BEARER OR TO
4 THE ORDER OF A NAMED PERSON.

5 B. A DOCUMENT OF TITLE OTHER THAN ONE DESCRIBED IN SUBSECTION A IS
6 NONNEGOTIABLE. A BILL OF LADING THAT STATES THAT THE GOODS ARE CONSIGNED TO
7 A NAMED PERSON IS NOT MADE NEGOTIABLE BY A PROVISION THAT THE GOODS ARE TO BE
8 DELIVERED ONLY AGAINST AN ORDER IN A RECORD SIGNED BY THE SAME OR ANOTHER
9 NAMED PERSON.

10 C. A DOCUMENT OF TITLE IS NONNEGOTIABLE IF, AT THE TIME IT IS ISSUED,
11 THE DOCUMENT HAS A CONSPICUOUS LEGEND, HOWEVER EXPRESSED, THAT IT IS
12 NONNEGOTIABLE.

13 47-7105. Reissuance in alternative medium

14 A. ON REQUEST OF A PERSON ENTITLED UNDER AN ELECTRONIC DOCUMENT OF
15 TITLE, THE ISSUER OF THE ELECTRONIC DOCUMENT MAY ISSUE A TANGIBLE DOCUMENT OF
16 TITLE AS A SUBSTITUTE FOR THE ELECTRONIC DOCUMENT IF:

17 1. THE PERSON ENTITLED UNDER THE ELECTRONIC DOCUMENT SURRENDERS
18 CONTROL OF THE DOCUMENT TO THE ISSUER; AND

19 2. THE TANGIBLE DOCUMENT WHEN ISSUED CONTAINS A STATEMENT THAT IT IS
20 ISSUED IN SUBSTITUTION FOR THE ELECTRONIC DOCUMENT.

21 B. ON ISSUANCE OF A TANGIBLE DOCUMENT OF TITLE IN SUBSTITUTION FOR AN
22 ELECTRONIC DOCUMENT OF TITLE IN ACCORDANCE WITH SUBSECTION A:

23 1. THE ELECTRONIC DOCUMENT CEASES TO HAVE ANY EFFECT OR VALIDITY; AND

24 2. THE PERSON THAT PROCURED ISSUANCE OF THE TANGIBLE DOCUMENT WARRANTS
25 TO ALL SUBSEQUENT PERSONS ENTITLED UNDER THE TANGIBLE DOCUMENT THAT THE
26 WARRANTOR WAS A PERSON ENTITLED UNDER THE ELECTRONIC DOCUMENT WHEN THE
27 WARRANTOR SURRENDERED CONTROL OF THE ELECTRONIC DOCUMENT TO THE ISSUER.

28 C. ON REQUEST OF A PERSON ENTITLED UNDER A TANGIBLE DOCUMENT OF TITLE,
29 THE ISSUER OF THE TANGIBLE DOCUMENT MAY ISSUE AN ELECTRONIC DOCUMENT OF TITLE
30 AS A SUBSTITUTE FOR THE TANGIBLE DOCUMENT IF:

31 1. THE PERSON ENTITLED UNDER THE TANGIBLE DOCUMENT SURRENDERS
32 POSSESSION OF THE DOCUMENT TO THE ISSUER; AND

33 2. THE ELECTRONIC DOCUMENT WHEN ISSUED CONTAINS A STATEMENT THAT IT IS
34 ISSUED IN SUBSTITUTION FOR THE TANGIBLE DOCUMENT.

35 D. ON ISSUANCE OF AN ELECTRONIC DOCUMENT OF TITLE IN SUBSTITUTION FOR
36 A TANGIBLE DOCUMENT OF TITLE IN ACCORDANCE WITH SUBSECTION C:

37 1. THE TANGIBLE DOCUMENT CEASES TO HAVE ANY EFFECT OR VALIDITY; AND

38 2. THE PERSON THAT PROCURED ISSUANCE OF THE ELECTRONIC DOCUMENT
39 WARRANTS TO ALL SUBSEQUENT PERSONS ENTITLED UNDER THE ELECTRONIC DOCUMENT
40 THAT THE WARRANTOR WAS A PERSON ENTITLED UNDER THE TANGIBLE DOCUMENT WHEN THE
41 WARRANTOR SURRENDERED POSSESSION OF THE TANGIBLE DOCUMENT TO THE ISSUER.

42 47-7106. Control of electronic document of title

43 A. A PERSON HAS CONTROL OF AN ELECTRONIC DOCUMENT OF TITLE IF A SYSTEM
44 EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN THE ELECTRONIC DOCUMENT

1 RELIABLY ESTABLISHES THAT PERSON AS THE PERSON TO WHICH THE ELECTRONIC
2 DOCUMENT WAS ISSUED OR TRANSFERRED.

3 B. A SYSTEM SATISFIES SUBSECTION A AND A PERSON IS DEEMED TO HAVE
4 CONTROL OF AN ELECTRONIC DOCUMENT OF TITLE IF THE DOCUMENT IS CREATED, STORED
5 AND ASSIGNED IN SUCH A MANNER THAT:

6 1. A SINGLE AUTHORITATIVE COPY OF THE DOCUMENT EXISTS THAT IS UNIQUE,
7 IDENTIFIABLE AND, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS 4, 5, AND 6,
8 UNALTERABLE;

9 2. THE AUTHORITATIVE COPY IDENTIFIES THE PERSON ASSERTING CONTROL AS:

10 (a) THE PERSON TO WHICH THE DOCUMENT WAS ISSUED; OR

11 (b) IF THE AUTHORITATIVE COPY INDICATES THAT THE DOCUMENT HAS BEEN
12 TRANSFERRED, THE PERSON TO WHICH THE DOCUMENT WAS MOST RECENTLY TRANSFERRED;

13 3. THE AUTHORITATIVE COPY IS COMMUNICATED TO AND MAINTAINED BY THE
14 PERSON ASSERTING CONTROL OR ITS DESIGNATED CUSTODIAN;

15 4. COPIES OR AMENDMENTS THAT ADD OR CHANGE AN IDENTIFIED ASSIGNEE OF
16 THE AUTHORITATIVE COPY CAN BE MADE ONLY WITH THE CONSENT OF THE PERSON
17 ASSERTING CONTROL;

18 5. EACH COPY OF THE AUTHORITATIVE COPY AND ANY COPY OF A COPY IS
19 READILY IDENTIFIABLE AS A COPY THAT IS NOT THE AUTHORITATIVE COPY; AND

20 6. ANY AMENDMENT OF THE AUTHORITATIVE COPY IS READILY IDENTIFIABLE AS
21 AUTHORIZED OR UNAUTHORIZED.

22 ARTICLE 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

23 47-7201. Person that may issue a warehouse receipt; storage
24 under bond

25 A. A WAREHOUSE RECEIPT MAY BE ISSUED BY ANY WAREHOUSE.

26 B. IF GOODS, INCLUDING DISTILLED SPIRITS AND AGRICULTURAL COMMODITIES,
27 ARE STORED UNDER A STATUTE REQUIRING A BOND AGAINST WITHDRAWAL OR A LICENSE
28 FOR THE ISSUANCE OF RECEIPTS IN THE NATURE OF WAREHOUSE RECEIPTS, A RECEIPT
29 ISSUED FOR THE GOODS IS DEEMED TO BE A WAREHOUSE RECEIPT EVEN IF ISSUED BY A
30 PERSON THAT IS THE OWNER OF THE GOODS AND THAT IS NOT A WAREHOUSE.

31 47-7202. Form of warehouse receipt; effect of omission

32 A. A WAREHOUSE RECEIPT NEED NOT BE IN ANY PARTICULAR FORM.

33 B. UNLESS A WAREHOUSE RECEIPT PROVIDES FOR EACH OF THE FOLLOWING, THE
34 WAREHOUSE IS LIABLE FOR DAMAGES CAUSED TO A PERSON INJURED BY ITS OMISSION:

35 1. A STATEMENT OF THE LOCATION OF THE WAREHOUSE FACILITY WHERE THE
36 GOODS ARE STORED;

37 2. THE DATE OF ISSUE OF THE RECEIPT;

38 3. THE UNIQUE IDENTIFICATION CODE OF THE RECEIPT;

39 4. A STATEMENT WHETHER THE GOODS RECEIVED WILL BE DELIVERED TO THE
40 BEARER, TO A NAMED PERSON OR TO A NAMED PERSON OR ITS ORDER;

41 5. THE RATE OF STORAGE AND HANDLING CHARGES, UNLESS GOODS ARE STORED
42 UNDER A FIELD WAREHOUSING ARRANGEMENT, IN WHICH CASE A STATEMENT OF THAT FACT
43 IS SUFFICIENT ON A NONNEGOTIABLE RECEIPT;

44 6. A DESCRIPTION OF THE GOODS OR THE PACKAGES CONTAINING THEM;

45 7. THE SIGNATURE OF THE WAREHOUSE OR ITS AGENT;

1 8. IF THE RECEIPT IS ISSUED FOR GOODS THAT THE WAREHOUSE OWNS, EITHER
2 SOLELY, JOINTLY OR IN COMMON WITH OTHERS, A STATEMENT OF THE FACT OF THAT
3 OWNERSHIP; AND

4 9. A STATEMENT OF THE AMOUNT OF ADVANCES MADE AND OF LIABILITIES
5 INCURRED FOR WHICH THE WAREHOUSE CLAIMS A LIEN OR SECURITY INTEREST, UNLESS
6 THE PRECISE AMOUNT OF ADVANCES MADE OR LIABILITIES INCURRED, AT THE TIME OF
7 THE ISSUE OF THE RECEIPT, IS UNKNOWN TO THE WAREHOUSE OR TO ITS AGENT THAT
8 ISSUED THE RECEIPT, IN WHICH CASE A STATEMENT OF THE FACT THAT ADVANCES HAVE
9 BEEN MADE OR LIABILITIES INCURRED AND THE PURPOSE OF THE ADVANCES OR
10 LIABILITIES IS SUFFICIENT.

11 C. A WAREHOUSE MAY INSERT IN ITS RECEIPT ANY TERMS THAT ARE NOT
12 CONTRARY TO THIS TITLE AND THAT DO NOT IMPAIR ITS OBLIGATION OF DELIVERY
13 UNDER SECTION 47-7403 OR ITS DUTY OF CARE UNDER SECTION 47-7204. ANY
14 CONTRARY PROVISION IS INEFFECTIVE.

15 47-7203. Liability for nonreceipt or misdescription

16 A PARTY TO OR PURCHASER FOR VALUE IN GOOD FAITH OF A DOCUMENT OF TITLE,
17 OTHER THAN A BILL OF LADING, THAT RELIES ON THE DESCRIPTION OF THE GOODS IN
18 THE DOCUMENT MAY RECOVER FROM THE ISSUER DAMAGES CAUSED BY THE NONRECEIPT OR
19 MISDESCRIPTION OF THE GOODS, EXCEPT TO THE EXTENT THAT:

20 1. THE DOCUMENT CONSPICUOUSLY INDICATES THAT THE ISSUER DOES NOT KNOW
21 WHETHER ALL OR PART OF THE GOODS IN FACT WERE RECEIVED OR CONFORM TO THE
22 DESCRIPTION, SUCH AS A CASE IN WHICH THE DESCRIPTION IS IN TERMS OF MARKS OR
23 LABELS OR KIND, QUANTITY OR CONDITION OR THE RECEIPT OR DESCRIPTION IS
24 QUALIFIED BY "CONTENTS, CONDITION AND QUALITY UNKNOWN", "SAID TO CONTAIN" OR
25 WORDS OF SIMILAR IMPORT, IF THE INDICATION IS TRUE; OR

26 2. THE PARTY OR PURCHASER OTHERWISE HAS NOTICE OF THE NONRECEIPT OR
27 MISDESCRIPTION.

28 47-7204. Duty of care; contractual limitation of warehouse's
29 liability

30 A. A WAREHOUSE IS LIABLE FOR DAMAGES FOR LOSS OF OR INJURY TO THE
31 GOODS CAUSED BY ITS FAILURE TO EXERCISE CARE WITH REGARD TO THE GOODS THAT A
32 REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. UNLESS
33 OTHERWISE AGREED, THE WAREHOUSE IS NOT LIABLE FOR DAMAGES THAT COULD NOT HAVE
34 BEEN AVOIDED BY THE EXERCISE OF THAT CARE.

35 B. DAMAGES MAY BE LIMITED BY A TERM IN THE WAREHOUSE RECEIPT OR
36 STORAGE AGREEMENT LIMITING THE AMOUNT OF LIABILITY IN CASE OF LOSS OR DAMAGE
37 BEYOND WHICH THE WAREHOUSE IS NOT LIABLE. SUCH A LIMITATION IS NOT EFFECTIVE
38 WITH RESPECT TO THE WAREHOUSE'S LIABILITY FOR CONVERSION TO ITS OWN USE. ON
39 REQUEST OF THE BAILOR IN A RECORD AT THE TIME OF SIGNING THE STORAGE
40 AGREEMENT OR WITHIN A REASONABLE TIME AFTER RECEIPT OF THE WAREHOUSE RECEIPT,
41 THE WAREHOUSE'S LIABILITY MAY BE INCREASED ON PART OR ALL OF THE GOODS
42 COVERED BY THE STORAGE AGREEMENT OR THE WAREHOUSE RECEIPT. IN THIS EVENT,
43 INCREASED RATES MAY BE CHARGED BASED ON AN INCREASED VALUATION OF THE GOODS.

1 C. REASONABLE PROVISIONS AS TO THE TIME AND MANNER OF PRESENTING
2 CLAIMS AND COMMENCING ACTIONS BASED ON THE BAILMENT MAY BE INCLUDED IN THE
3 WAREHOUSE RECEIPT OR STORAGE AGREEMENT.

4 D. THIS SECTION DOES NOT MODIFY OR REPEAL ANY STATUTE THAT IMPOSES A
5 HIGHER RESPONSIBILITY ON THE WAREHOUSE OR INVALIDATES A CONTRACTUAL
6 LIMITATION THAT WOULD BE PERMISSIBLE UNDER THIS CHAPTER.

7 47-7205. Title under warehouse receipt defeated in certain
8 cases

9 A BUYER IN ORDINARY COURSE OF BUSINESS OF FUNGIBLE GOODS SOLD AND
10 DELIVERED BY A WAREHOUSE THAT IS ALSO IN THE BUSINESS OF BUYING AND SELLING
11 SUCH GOODS TAKES THE GOODS FREE OF ANY CLAIM UNDER A WAREHOUSE RECEIPT EVEN
12 IF THE RECEIPT IS NEGOTIABLE AND HAS BEEN DULY NEGOTIATED.

13 47-7206. Termination of storage at warehouse's option

14 A. A WAREHOUSE, BY GIVING NOTICE TO THE PERSON ON WHOSE ACCOUNT THE
15 GOODS ARE HELD AND ANY OTHER PERSON KNOWN TO CLAIM AN INTEREST IN THE GOODS,
16 MAY REQUIRE PAYMENT OF ANY CHARGES AND REMOVAL OF THE GOODS FROM THE
17 WAREHOUSE AT THE TERMINATION OF THE PERIOD OF STORAGE FIXED BY THE DOCUMENT
18 OF TITLE OR, IF A PERIOD IS NOT FIXED, WITHIN A STATED PERIOD NOT LESS THAN
19 THIRTY DAYS AFTER THE WAREHOUSE GIVES NOTICE. IF THE GOODS ARE NOT REMOVED
20 BEFORE THE DATE SPECIFIED IN THE NOTICE, THE WAREHOUSE MAY SELL THEM PURSUANT
21 TO SECTION 47-7210.

22 B. IF A WAREHOUSE IN GOOD FAITH BELIEVES THAT GOODS ARE ABOUT TO
23 DETERIORATE OR DECLINE IN VALUE TO LESS THAN THE AMOUNT OF ITS LIEN WITHIN
24 THE TIME PROVIDED IN SUBSECTION A OF THIS SECTION AND SECTION 47-7210, THE
25 WAREHOUSE MAY SPECIFY IN THE NOTICE GIVEN UNDER SUBSECTION A OF THIS SECTION
26 ANY REASONABLE SHORTER TIME FOR REMOVAL OF THE GOODS AND, IF THE GOODS ARE
27 NOT REMOVED, MAY SELL THEM AT PUBLIC SALE HELD NOT LESS THAN ONE WEEK AFTER A
28 SINGLE ADVERTISEMENT OR POSTING.

29 C. IF, AS A RESULT OF A QUALITY OR CONDITION OF THE GOODS OF WHICH THE
30 WAREHOUSE DID NOT HAVE NOTICE AT THE TIME OF DEPOSIT, THE GOODS ARE A HAZARD
31 TO OTHER PROPERTY, THE WAREHOUSE FACILITIES OR OTHER PERSONS, THE WAREHOUSE
32 MAY SELL THE GOODS AT PUBLIC OR PRIVATE SALE WITHOUT ADVERTISEMENT OR POSTING
33 ON REASONABLE NOTIFICATION TO ALL PERSONS KNOWN TO CLAIM AN INTEREST IN THE
34 GOODS. IF THE WAREHOUSE, AFTER A REASONABLE EFFORT, IS UNABLE TO SELL THE
35 GOODS, IT MAY DISPOSE OF THEM IN ANY LAWFUL MANNER AND DOES NOT INCUR
36 LIABILITY BY REASON OF THAT DISPOSITION.

37 D. A WAREHOUSE SHALL DELIVER THE GOODS TO ANY PERSON ENTITLED TO THEM
38 UNDER THIS CHAPTER ON DUE DEMAND MADE AT ANY TIME BEFORE SALE OR OTHER
39 DISPOSITION UNDER THIS SECTION.

40 E. A WAREHOUSE MAY SATISFY ITS LIEN FROM THE PROCEEDS OF ANY SALE OR
41 DISPOSITION UNDER THIS SECTION BUT SHALL HOLD THE BALANCE FOR DELIVERY ON THE
42 DEMAND OF ANY PERSON TO WHICH THE WAREHOUSE WOULD HAVE BEEN BOUND TO DELIVER
43 THE GOODS.

1 47-7207. Goods must be kept separate; fungible

2 A. UNLESS THE WAREHOUSE RECEIPT PROVIDES OTHERWISE, A WAREHOUSE SHALL
3 KEEP SEPARATE THE GOODS COVERED BY EACH RECEIPT SO AS TO PERMIT AT ALL TIMES
4 IDENTIFICATION AND DELIVERY OF THOSE GOODS. HOWEVER, DIFFERENT LOTS OF
5 FUNGIBLE GOODS MAY BE COMMINGLED.

6 B. IF DIFFERENT LOTS OF FUNGIBLE GOODS ARE COMMINGLED, THE GOODS ARE
7 OWNED IN COMMON BY THE PERSONS ENTITLED THERETO AND THE WAREHOUSE IS
8 SEVERALLY LIABLE TO EACH OWNER FOR THAT OWNER'S SHARE. IF, BECAUSE OF
9 OVERISSUE, A MASS OF FUNGIBLE GOODS IS INSUFFICIENT TO MEET ALL THE RECEIPTS
10 THE WAREHOUSE HAS ISSUED AGAINST IT, THE PERSONS ENTITLED INCLUDE ALL HOLDERS
11 TO WHICH OVERISSUED RECEIPTS HAVE BEEN DULY NEGOTIATED.

12 47-7208. Altered warehouse receipts

13 IF A BLANK IN A NEGOTIABLE TANGIBLE WAREHOUSE RECEIPT HAS BEEN FILLED
14 IN WITHOUT AUTHORITY, A GOOD FAITH PURCHASER FOR VALUE AND WITHOUT NOTICE OF
15 THE LACK OF AUTHORITY MAY TREAT THE INSERTION AS AUTHORIZED. ANY OTHER
16 UNAUTHORIZED ALTERATION LEAVES ANY TANGIBLE OR ELECTRONIC WAREHOUSE RECEIPT
17 ENFORCEABLE AGAINST THE ISSUER ACCORDING TO ITS ORIGINAL TENOR.

18 47-7209. Lien of warehouse

19 A. A WAREHOUSE HAS A LIEN AGAINST THE BAILOR ON THE GOODS COVERED BY A
20 WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON THE PROCEEDS THEREOF IN ITS
21 POSSESSION FOR CHARGES FOR STORAGE OR TRANSPORTATION, INCLUDING DEMURRAGE AND
22 TERMINAL CHARGES, INSURANCE, LABOR OR OTHER CHARGES, PRESENT OR FUTURE, IN
23 RELATION TO THE GOODS AND FOR EXPENSES NECESSARY FOR PRESERVATION OF THE
24 GOODS OR REASONABLY INCURRED IN THEIR SALE PURSUANT TO LAW. IF THE PERSON ON
25 WHOSE ACCOUNT THE GOODS ARE HELD IS LIABLE FOR SIMILAR CHARGES OR EXPENSES IN
26 RELATION TO OTHER GOODS WHENEVER DEPOSITED AND IT IS STATED IN THE WAREHOUSE
27 RECEIPT OR STORAGE AGREEMENT THAT A LIEN IS CLAIMED FOR CHARGES AND EXPENSES
28 IN RELATION TO OTHER GOODS, THE WAREHOUSE ALSO HAS A LIEN AGAINST THE GOODS
29 COVERED BY THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON THE PROCEEDS
30 THEREOF IN ITS POSSESSION FOR THOSE CHARGES AND EXPENSES WHETHER OR NOT THE
31 OTHER GOODS HAVE BEEN DELIVERED BY THE WAREHOUSE. HOWEVER, AS AGAINST A
32 PERSON TO WHICH A NEGOTIABLE WAREHOUSE RECEIPT IS DULY NEGOTIATED, A
33 WAREHOUSE'S LIEN IS LIMITED TO CHARGES IN AN AMOUNT OR AT A RATE SPECIFIED IN
34 THE WAREHOUSE RECEIPT OR, IF NO CHARGES ARE SO SPECIFIED, TO A REASONABLE
35 CHARGE FOR STORAGE OF THE SPECIFIC GOODS COVERED BY THE RECEIPT SUBSEQUENT TO
36 THE DATE OF THE RECEIPT.

37 B. A WAREHOUSE MAY ALSO RESERVE A SECURITY INTEREST AGAINST THE BAILOR
38 FOR THE MAXIMUM AMOUNT SPECIFIED ON THE RECEIPT FOR CHARGES OTHER THAN THOSE
39 SPECIFIED IN SUBSECTION A OF THIS SECTION, SUCH AS FOR MONEY ADVANCED AND
40 INTEREST. THE SECURITY INTEREST IS GOVERNED BY CHAPTER 9 OF THIS TITLE.

41 C. A WAREHOUSE'S LIEN FOR CHARGES AND EXPENSES UNDER SUBSECTION A OF
42 THIS SECTION OR A SECURITY INTEREST UNDER SUBSECTION B OF THIS SECTION IS
43 ALSO EFFECTIVE AGAINST ANY PERSON THAT SO ENTRUSTED THE BAILOR WITH
44 POSSESSION OF THE GOODS THAT A PLEDGE OF THEM BY THE BAILOR TO A GOOD FAITH
45 PURCHASER FOR VALUE WOULD HAVE BEEN VALID. HOWEVER, THE LIEN OR SECURITY

1 INTEREST IS NOT EFFECTIVE AGAINST A PERSON THAT BEFORE ISSUANCE OF A DOCUMENT
2 OF TITLE HAD A LEGAL INTEREST OR A PERFECTED SECURITY INTEREST IN THE GOODS
3 AND THAT DID NOT:

4 1. DELIVER OR ENTRUST THE GOODS OR ANY DOCUMENT OF TITLE COVERING THE
5 GOODS TO THE BAILOR OR THE BAILOR'S NOMINEE WITH:

6 (a) ACTUAL OR APPARENT AUTHORITY TO SHIP, STORE, OR SELL;

7 (b) POWER TO OBTAIN DELIVERY UNDER SECTION 47-7403; OR

8 (c) POWER OF DISPOSITION UNDER SECTION 47-2403, SECTION 47-2A304,
9 SUBSECTION B, SECTION 47-2A305, SUBSECTION B, SECTION 47-9320 OR SECTION
10 47-9321, SUBSECTION C OR OTHER STATUTE OR RULE OF LAW; OR

11 2. ACQUIESCE IN THE PROCUREMENT BY THE BAILOR OR ITS NOMINEE OF ANY
12 DOCUMENT.

13 D. A WAREHOUSE'S LIEN ON HOUSEHOLD GOODS FOR CHARGES AND EXPENSES IN
14 RELATION TO THE GOODS UNDER SUBSECTION A OF THIS SECTION IS ALSO EFFECTIVE
15 AGAINST ALL PERSONS IF THE DEPOSITOR WAS THE LEGAL POSSESSOR OF THE GOODS AT
16 THE TIME OF DEPOSIT. FOR THE PURPOSES OF THIS SUBSECTION, "HOUSEHOLD GOODS"
17 MEANS FURNITURE, FURNISHINGS OR PERSONAL EFFECTS USED BY THE DEPOSITOR IN A
18 DWELLING.

19 E. A WAREHOUSE LOSES ITS LIEN ON ANY GOODS THAT IT VOLUNTARILY
20 DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER.

21 47-7210. Enforcement of warehouse's liens

22 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, A WAREHOUSE'S LIEN
23 MAY BE ENFORCED BY PUBLIC OR PRIVATE SALE OF THE GOODS, IN BULK OR IN
24 PACKAGES, AT ANY TIME OR PLACE AND ON ANY TERMS THAT ARE COMMERCIALY
25 REASONABLE, AFTER NOTIFYING ALL PERSONS KNOWN TO CLAIM AN INTEREST IN THE
26 GOODS. THE NOTIFICATION MUST INCLUDE A STATEMENT OF THE AMOUNT DUE, THE
27 NATURE OF THE PROPOSED SALE AND THE TIME AND PLACE OF ANY PUBLIC SALE. THE
28 FACT THAT A BETTER PRICE COULD HAVE BEEN OBTAINED BY A SALE AT A DIFFERENT
29 TIME OR IN A METHOD DIFFERENT FROM THAT SELECTED BY THE WAREHOUSE IS NOT OF
30 ITSELF SUFFICIENT TO ESTABLISH THAT THE SALE WAS NOT MADE IN A COMMERCIALY
31 REASONABLE MANNER. THE WAREHOUSE SELLS IN A COMMERCIALY REASONABLE MANNER
32 IF THE WAREHOUSE SELLS THE GOODS IN THE USUAL MANNER IN ANY RECOGNIZED MARKET
33 THEREFORE, SELLS AT THE PRICE CURRENT IN THAT MARKET AT THE TIME OF THE SALE
34 OR OTHERWISE SELLS IN CONFORMITY WITH COMMERCIALY REASONABLE PRACTICES AMONG
35 DEALERS IN THE TYPE OF GOODS SOLD. A SALE OF MORE GOODS THAN APPARENTLY
36 NECESSARY TO BE OFFERED TO ENSURE SATISFACTION OF THE OBLIGATION IS NOT
37 COMMERCIALY REASONABLE, EXCEPT IN CASES COVERED BY THE PRECEDING SENTENCE.

38 B. A WAREHOUSE MAY ENFORCE ITS LIEN ON GOODS, OTHER THAN GOODS STORED
39 BY A MERCHANT IN THE COURSE OF ITS BUSINESS, ONLY IF THE FOLLOWING
40 REQUIREMENTS ARE SATISFIED:

41 1. ALL PERSONS KNOWN TO CLAIM AN INTEREST IN THE GOODS HAVE BEEN
42 NOTIFIED.

43 2. THE NOTIFICATION INCLUDES AN ITEMIZED STATEMENT OF THE CLAIM, A
44 DESCRIPTION OF THE GOODS SUBJECT TO THE LIEN, A DEMAND FOR PAYMENT WITHIN A
45 SPECIFIED TIME NOT LESS THAN TEN DAYS AFTER RECEIPT OF THE NOTIFICATION AND A

1 CONSPICUOUS STATEMENT THAT UNLESS THE CLAIM IS PAID WITHIN THAT TIME THE
2 GOODS WILL BE ADVERTISED FOR SALE AND SOLD BY AUCTION AT A SPECIFIED TIME AND
3 PLACE.

4 3. THE SALE CONFORMS TO THE TERMS OF THE NOTIFICATION.

5 4. THE SALE IS HELD AT THE NEAREST SUITABLE PLACE TO WHERE THE GOODS
6 ARE HELD OR STORED.

7 5. AFTER THE EXPIRATION OF THE TIME GIVEN IN THE NOTIFICATION, AN
8 ADVERTISEMENT OF THE SALE IS PUBLISHED ONCE A WEEK FOR TWO CONSECUTIVE WEEKS
9 IN A NEWSPAPER OF GENERAL CIRCULATION WHERE THE SALE IS TO BE HELD. THE
10 ADVERTISEMENT MUST INCLUDE A DESCRIPTION OF THE GOODS, THE NAME OF THE PERSON
11 ON WHOSE ACCOUNT THE GOODS ARE BEING HELD AND THE TIME AND PLACE OF THE
12 SALE. THE SALE MUST TAKE PLACE AT LEAST FIFTEEN DAYS AFTER THE FIRST
13 PUBLICATION. IF THERE IS NO NEWSPAPER OF GENERAL CIRCULATION WHERE THE SALE
14 IS TO BE HELD, THE ADVERTISEMENT MUST BE POSTED AT LEAST TEN DAYS BEFORE THE
15 SALE IN NOT FEWER THAN SIX CONSPICUOUS PLACES IN THE NEIGHBORHOOD OF THE
16 PROPOSED SALE.

17 C. BEFORE ANY SALE PURSUANT TO THIS SECTION, ANY PERSON CLAIMING A
18 RIGHT IN THE GOODS MAY PAY THE AMOUNT NECESSARY TO SATISFY THE LIEN AND THE
19 REASONABLE EXPENSES INCURRED IN COMPLYING WITH THIS SECTION. IN THAT EVENT,
20 THE GOODS MAY NOT BE SOLD BUT MUST BE RETAINED BY THE WAREHOUSE SUBJECT TO
21 THE TERMS OF THE RECEIPT AND THIS CHAPTER.

22 D. A WAREHOUSE MAY BUY AT ANY PUBLIC SALE HELD PURSUANT TO THIS
23 SECTION.

24 E. A PURCHASER IN GOOD FAITH OF GOODS SOLD TO ENFORCE A WAREHOUSE'S
25 LIEN TAKES THE GOODS FREE OF ANY RIGHTS OF PERSONS AGAINST WHICH THE LIEN WAS
26 VALID DESPITE THE WAREHOUSE'S NONCOMPLIANCE WITH THIS SECTION.

27 F. A WAREHOUSE MAY SATISFY ITS LIEN FROM THE PROCEEDS OF ANY SALE
28 PURSUANT TO THIS SECTION BUT SHALL HOLD THE BALANCE, IF ANY, FOR DELIVERY ON
29 DEMAND TO ANY PERSON TO WHICH THE WAREHOUSE WOULD HAVE BEEN BOUND TO DELIVER
30 THE GOODS.

31 G. THE RIGHTS PROVIDED BY THIS SECTION ARE IN ADDITION TO ALL OTHER
32 RIGHTS ALLOWED BY LAW TO A CREDITOR AGAINST A DEBTOR.

33 H. IF A LIEN IS ON GOODS STORED BY A MERCHANT IN THE COURSE OF ITS
34 BUSINESS, THE LIEN MAY BE ENFORCED IN ACCORDANCE WITH SUBSECTION A OR B.

35 I. A WAREHOUSE IS LIABLE FOR DAMAGES CAUSED BY FAILURE TO COMPLY WITH
36 THE REQUIREMENTS FOR SALE UNDER THIS SECTION AND, IN CASE OF WILFUL
37 VIOLATION, IS LIABLE FOR CONVERSION.

38 ARTICLE 3. BILLS OF LADING: SPECIAL PROVISIONS

39 47-7301. Liability for nonreceipt or misdescription; "said to
40 contain"; "shipper's weight, load and count";
41 improper handling

42 A. A CONSIGNEE OF A NONNEGOTIABLE BILL OF LADING THAT HAS GIVEN VALUE
43 IN GOOD FAITH, OR A HOLDER TO WHICH A NEGOTIABLE BILL HAS BEEN DULY
44 NEGOTIATED, RELYING ON THE DESCRIPTION OF THE GOODS IN THE BILL OR ON THE
45 DATE SHOWN IN THE BILL, MAY RECOVER FROM THE ISSUER DAMAGES CAUSED BY THE

1 MISDATING OF THE BILL OR THE NONRECEIPT OR MISDESCRIPTION OF THE GOODS,
2 EXCEPT TO THE EXTENT THAT THE BILL INDICATES THAT THE ISSUER DOES NOT KNOW
3 WHETHER ANY PART OR ALL OF THE GOODS IN FACT WERE RECEIVED OR CONFORM TO THE
4 DESCRIPTION, SUCH AS IN A CASE IN WHICH THE DESCRIPTION IS IN TERMS OF MARKS
5 OR LABELS OR KIND, QUANTITY OR CONDITION OR THE RECEIPT OR DESCRIPTION IS
6 QUALIFIED BY "CONTENTS OR CONDITION OF CONTENTS OF PACKAGES UNKNOWN", "SAID
7 TO CONTAIN", "SHIPPER'S WEIGHT, LOAD AND COUNT" OR WORDS OF SIMILAR IMPORT,
8 IF THAT INDICATION IS TRUE.

9 B. IF GOODS ARE LOADED BY THE ISSUER OF A BILL OF LADING:

10 1. THE ISSUER SHALL COUNT THE PACKAGES OF GOODS IF SHIPPED IN PACKAGES
11 AND ASCERTAIN THE KIND AND QUANTITY IF SHIPPED IN BULK; AND

12 2. WORDS SUCH AS "SHIPPER'S WEIGHT, LOAD AND COUNT" OR WORDS OF
13 SIMILAR IMPORT INDICATING THAT THE DESCRIPTION WAS MADE BY THE SHIPPER ARE
14 INEFFECTIVE EXCEPT AS TO GOODS CONCEALED IN PACKAGES.

15 C. IF BULK GOODS ARE LOADED BY A SHIPPER THAT MAKES AVAILABLE TO THE
16 ISSUER OF A BILL OF LADING ADEQUATE FACILITIES FOR WEIGHING THOSE GOODS, THE
17 ISSUER SHALL ASCERTAIN THE KIND AND QUANTITY WITHIN A REASONABLE TIME AFTER
18 RECEIVING THE SHIPPER'S REQUEST IN A RECORD TO DO SO. IN THAT CASE,
19 "SHIPPER'S WEIGHT" OR WORDS OF SIMILAR IMPORT ARE INEFFECTIVE.

20 D. THE ISSUER OF A BILL OF LADING, BY INCLUDING IN THE BILL THE WORDS
21 "SHIPPER'S WEIGHT, LOAD AND COUNT" OR WORDS OF SIMILAR IMPORT, MAY INDICATE
22 THAT THE GOODS WERE LOADED BY THE SHIPPER, AND, IF THAT STATEMENT IS TRUE,
23 THE ISSUER IS NOT LIABLE FOR DAMAGES CAUSED BY THE IMPROPER
24 LOADING. HOWEVER, OMISSION OF SUCH WORDS DOES NOT IMPLY LIABILITY FOR
25 DAMAGES CAUSED BY IMPROPER LOADING.

26 E. A SHIPPER GUARANTEES TO AN ISSUER THE ACCURACY AT THE TIME OF
27 SHIPMENT OF THE DESCRIPTION, MARKS, LABELS, NUMBER, KIND, QUANTITY, CONDITION
28 AND WEIGHT, AS FURNISHED BY THE SHIPPER, AND THE SHIPPER SHALL INDEMNIFY THE
29 ISSUER AGAINST DAMAGE CAUSED BY INACCURACIES IN THOSE PARTICULARS. THIS
30 RIGHT OF INDEMNITY DOES NOT LIMIT THE ISSUER'S RESPONSIBILITY OR LIABILITY
31 UNDER THE CONTRACT OF CARRIAGE TO ANY PERSON OTHER THAN THE SHIPPER.

32 47-7302. Through bills of lading and similar documents of title

33 A. THE ISSUER OF A THROUGH BILL OF LADING, OR OTHER DOCUMENT OF TITLE
34 EMBODYING AN UNDERTAKING TO BE PERFORMED IN PART BY A PERSON ACTING AS ITS
35 AGENT OR BY A PERFORMING CARRIER, IS LIABLE TO ANY PERSON ENTITLED TO RECOVER
36 ON THE BILL OR OTHER DOCUMENT FOR ANY BREACH BY THE OTHER PERSON OR THE
37 PERFORMING CARRIER OF ITS OBLIGATION UNDER THE BILL OR OTHER DOCUMENT.
38 HOWEVER, TO THE EXTENT THAT THE BILL OR OTHER DOCUMENT COVERS AN UNDERTAKING
39 TO BE PERFORMED OVERSEAS OR IN TERRITORY NOT CONTIGUOUS TO THE CONTINENTAL
40 UNITED STATES OR AN UNDERTAKING INCLUDING MATTERS OTHER THAN TRANSPORTATION,
41 THIS LIABILITY FOR BREACH BY THE OTHER PERSON OR THE PERFORMING CARRIER MAY
42 BE VARIED BY AGREEMENT OF THE PARTIES.

43 B. IF GOODS COVERED BY A THROUGH BILL OF LADING OR OTHER DOCUMENT OF
44 TITLE EMBODYING AN UNDERTAKING TO BE PERFORMED IN PART BY A PERSON OTHER THAN
45 THE ISSUER ARE RECEIVED BY THAT PERSON, THE PERSON IS SUBJECT, WITH RESPECT

1 TO ITS OWN PERFORMANCE WHILE THE GOODS ARE IN ITS POSSESSION, TO THE
2 OBLIGATION OF THE ISSUER. THE PERSON'S OBLIGATION IS DISCHARGED BY DELIVERY
3 OF THE GOODS TO ANOTHER PERSON PURSUANT TO THE BILL OR OTHER DOCUMENT AND
4 DOES NOT INCLUDE LIABILITY FOR BREACH BY ANY OTHER PERSON OR BY THE ISSUER.

5 C. THE ISSUER OF A THROUGH BILL OF LADING OR OTHER DOCUMENT OF TITLE
6 DESCRIBED IN SUBSECTION A IS ENTITLED TO RECOVER FROM THE PERFORMING CARRIER
7 OR OTHER PERSON IN POSSESSION OF THE GOODS WHEN THE BREACH OF THE OBLIGATION
8 UNDER THE BILL OR OTHER DOCUMENT OCCURRED:

9 1. THE AMOUNT IT MAY BE REQUIRED TO PAY TO ANY PERSON ENTITLED TO
10 RECOVER ON THE BILL OR OTHER DOCUMENT FOR THE BREACH, AS MAY BE EVIDENCED BY
11 ANY RECEIPT, JUDGMENT OR TRANSCRIPT OF JUDGMENT; AND

12 2. THE AMOUNT OF ANY EXPENSE REASONABLY INCURRED BY THE ISSUER IN
13 DEFENDING ANY ACTION COMMENCED BY ANY PERSON ENTITLED TO RECOVER ON THE BILL
14 OR OTHER DOCUMENT FOR THE BREACH.

15 47-7303. Diversion; reconsignment; change of instructions

16 A. UNLESS THE BILL OF LADING OTHERWISE PROVIDES, A CARRIER MAY DELIVER
17 THE GOODS TO A PERSON OR DESTINATION OTHER THAN THAT STATED IN THE BILL OR
18 MAY OTHERWISE DISPOSE OF THE GOODS, WITHOUT LIABILITY FOR MISDELIVERY, ON
19 INSTRUCTIONS FROM:

20 1. THE HOLDER OF A NEGOTIABLE BILL;

21 2. THE CONSIGNOR ON A NONNEGOTIABLE BILL, EVEN IF THE CONSIGNEE HAS
22 GIVEN CONTRARY INSTRUCTIONS;

23 3. THE CONSIGNEE ON A NONNEGOTIABLE BILL IN THE ABSENCE OF CONTRARY
24 INSTRUCTIONS FROM THE CONSIGNOR, IF THE GOODS HAVE ARRIVED AT THE BILLED
25 DESTINATION OR IF THE CONSIGNEE IS IN POSSESSION OF THE TANGIBLE BILL OR IN
26 CONTROL OF THE ELECTRONIC BILL; OR

27 4. THE CONSIGNEE ON A NONNEGOTIABLE BILL, IF THE CONSIGNEE IS ENTITLED
28 AS AGAINST THE CONSIGNOR TO DISPOSE OF THE GOODS.

29 B. UNLESS INSTRUCTIONS DESCRIBED IN SUBSECTION A ARE INCLUDED IN A
30 NEGOTIABLE BILL OF LADING, A PERSON TO WHICH THE BILL IS DULY NEGOTIATED MAY
31 HOLD THE BAILEE ACCORDING TO THE ORIGINAL TERMS.

32 47-7304. Tangible bills of lading in a set

33 A. EXCEPT AS CUSTOMARY IN INTERNATIONAL TRANSPORTATION, A TANGIBLE
34 BILL OF LADING MAY NOT BE ISSUED IN A SET OF PARTS. THE ISSUER IS LIABLE FOR
35 DAMAGES CAUSED BY VIOLATION OF THIS SUBSECTION.

36 B. IF A TANGIBLE BILL OF LADING IS LAWFULLY ISSUED IN A SET OF PARTS,
37 EACH OF WHICH CONTAINS AN IDENTIFICATION CODE AND IS EXPRESSED TO BE VALID
38 ONLY IF THE GOODS HAVE NOT BEEN DELIVERED AGAINST ANY OTHER PART, THE WHOLE
39 OF THE PARTS CONSTITUTES ONE BILL.

40 C. IF A TANGIBLE NEGOTIABLE BILL OF LADING IS LAWFULLY ISSUED IN A SET
41 OF PARTS AND DIFFERENT PARTS ARE NEGOTIATED TO DIFFERENT PERSONS, THE TITLE
42 OF THE HOLDER TO WHICH THE FIRST DUE NEGOTIATION IS MADE PREVAILS AS TO BOTH
43 THE DOCUMENT OF TITLE AND THE GOODS EVEN IF ANY LATER HOLDER MAY HAVE
44 RECEIVED THE GOODS FROM THE CARRIER IN GOOD FAITH AND DISCHARGED THE
45 CARRIER'S OBLIGATION BY SURRENDERING ITS PART.

1 D. A PERSON THAT NEGOTIATES OR TRANSFERS A SINGLE PART OF A TANGIBLE
2 BILL OF LADING ISSUED IN A SET IS LIABLE TO HOLDERS OF THAT PART AS IF IT
3 WERE THE WHOLE SET.

4 E. THE BAILEE SHALL DELIVER IN ACCORDANCE WITH ARTICLE 4 OF THIS
5 CHAPTER AGAINST THE FIRST PRESENTED PART OF A TANGIBLE BILL OF LADING
6 LAWFULLY ISSUED IN A SET. DELIVERY IN THIS MANNER DISCHARGES THE BAILEE'S
7 OBLIGATION ON THE WHOLE BILL.

8 47-7305. Destination bills

9 A. INSTEAD OF ISSUING A BILL OF LADING TO THE CONSIGNOR AT THE PLACE
10 OF SHIPMENT, A CARRIER, AT THE REQUEST OF THE CONSIGNOR, MAY PROCURE THE BILL
11 TO BE ISSUED AT DESTINATION OR AT ANY OTHER PLACE DESIGNATED IN THE REQUEST.

12 B. ON REQUEST OF ANY PERSON ENTITLED AS AGAINST A CARRIER TO CONTROL
13 THE GOODS WHILE IN TRANSIT AND ON SURRENDER OF POSSESSION OR CONTROL OF ANY
14 OUTSTANDING BILL OF LADING OR OTHER RECEIPT COVERING THE GOODS, THE ISSUER,
15 SUBJECT TO SECTION 47-7105, MAY PROCURE A SUBSTITUTE BILL TO BE ISSUED AT ANY
16 PLACE DESIGNATED IN THE REQUEST.

17 47-7306. Altered bills of lading

18 AN UNAUTHORIZED ALTERATION OR FILLING IN OF A BLANK IN A BILL OF LADING
19 LEAVES THE BILL ENFORCEABLE ACCORDING TO ITS ORIGINAL TENOR.

20 47-7307. Lien of carrier

21 A. A CARRIER HAS A LIEN ON THE GOODS COVERED BY A BILL OF LADING OR ON
22 THE PROCEEDS THEREOF IN ITS POSSESSION FOR CHARGES AFTER THE DATE OF THE
23 CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION, INCLUDING
24 DEMURRAGE AND TERMINAL CHARGES, AND FOR EXPENSES NECESSARY FOR PRESERVATION
25 OF THE GOODS INCIDENT TO THEIR TRANSPORTATION OR REASONABLY INCURRED IN THEIR
26 SALE PURSUANT TO LAW. HOWEVER, AGAINST A PURCHASER FOR VALUE OF A NEGOTIABLE
27 BILL OF LADING, A CARRIER'S LIEN IS LIMITED TO CHARGES STATED IN THE BILL OR
28 THE APPLICABLE TARIFFS OR, IF NO CHARGES ARE STATED, A REASONABLE CHARGE.

29 B. A LIEN FOR CHARGES AND EXPENSES UNDER SUBSECTION A ON GOODS THAT
30 THE CARRIER WAS REQUIRED BY LAW TO RECEIVE FOR TRANSPORTATION IS EFFECTIVE
31 AGAINST THE CONSIGNOR OR ANY PERSON ENTITLED TO THE GOODS UNLESS THE CARRIER
32 HAD NOTICE THAT THE CONSIGNOR LACKED AUTHORITY TO SUBJECT THE GOODS TO THOSE
33 CHARGES AND EXPENSES. ANY OTHER LIEN UNDER SUBSECTION A IS EFFECTIVE AGAINST
34 THE CONSIGNOR AND ANY PERSON THAT PERMITTED THE BAILOR TO HAVE CONTROL OR
35 POSSESSION OF THE GOODS UNLESS THE CARRIER HAD NOTICE THAT THE BAILOR LACKED
36 AUTHORITY.

37 C. A CARRIER LOSES ITS LIEN ON ANY GOODS THAT IT VOLUNTARILY DELIVERS
38 OR UNJUSTIFIABLY REFUSES TO DELIVER.

39 47-7308. Enforcement of carrier's lien

40 A. A CARRIER'S LIEN ON GOODS MAY BE ENFORCED BY PUBLIC OR PRIVATE SALE
41 OF THE GOODS, IN BULK OR IN PACKAGES, AT ANY TIME OR PLACE AND ON ANY TERMS
42 THAT ARE COMMERCIALY REASONABLE, AFTER NOTIFYING ALL PERSONS KNOWN TO CLAIM
43 AN INTEREST IN THE GOODS. THE NOTIFICATION MUST INCLUDE A STATEMENT OF THE
44 AMOUNT DUE, THE NATURE OF THE PROPOSED SALE AND THE TIME AND PLACE OF ANY
45 PUBLIC SALE. THE FACT THAT A BETTER PRICE COULD HAVE BEEN OBTAINED BY A SALE

1 AT A DIFFERENT TIME OR IN A METHOD DIFFERENT FROM THAT SELECTED BY THE
2 CARRIER IS NOT OF ITSELF SUFFICIENT TO ESTABLISH THAT THE SALE WAS NOT MADE
3 IN A COMMERCIALY REASONABLE MANNER. THE CARRIER SELLS GOODS IN A
4 COMMERCIALY REASONABLE MANNER IF THE CARRIER SELLS THE GOODS IN THE USUAL
5 MANNER IN ANY RECOGNIZED MARKET THEREFOR, SELLS AT THE PRICE CURRENT IN THAT
6 MARKET AT THE TIME OF THE SALE OR OTHERWISE SELLS IN CONFORMITY WITH
7 COMMERCIALY REASONABLE PRACTICES AMONG DEALERS IN THE TYPE OF GOODS SOLD. A
8 SALE OF MORE GOODS THAN APPARENTLY NECESSARY TO BE OFFERED TO ENSURE
9 SATISFACTION OF THE OBLIGATION IS NOT COMMERCIALY REASONABLE, EXCEPT IN
10 CASES COVERED BY THE PRECEDING SENTENCE.

11 B. BEFORE ANY SALE PURSUANT TO THIS SECTION, ANY PERSON CLAIMING A
12 RIGHT IN THE GOODS MAY PAY THE AMOUNT NECESSARY TO SATISFY THE LIEN AND THE
13 REASONABLE EXPENSES INCURRED IN COMPLYING WITH THIS SECTION. IN THAT EVENT,
14 THE GOODS MAY NOT BE SOLD BUT MUST BE RETAINED BY THE CARRIER, SUBJECT TO THE
15 TERMS OF THE BILL OF LADING AND THIS CHAPTER.

16 C. A CARRIER MAY BUY AT ANY PUBLIC SALE PURSUANT TO THIS SECTION.

17 D. A PURCHASER IN GOOD FAITH OF GOODS SOLD TO ENFORCE A CARRIER'S LIEN
18 TAKES THE GOODS FREE OF ANY RIGHTS OF PERSONS AGAINST WHICH THE LIEN WAS
19 VALID, DESPITE THE CARRIER'S NONCOMPLIANCE WITH THIS SECTION.

20 E. A CARRIER MAY SATISFY ITS LIEN FROM THE PROCEEDS OF ANY SALE
21 PURSUANT TO THIS SECTION BUT SHALL HOLD THE BALANCE, IF ANY, FOR DELIVERY ON
22 DEMAND TO ANY PERSON TO WHICH THE CARRIER WOULD HAVE BEEN BOUND TO DELIVER
23 THE GOODS.

24 F. THE RIGHTS PROVIDED BY THIS SECTION ARE IN ADDITION TO ALL OTHER
25 RIGHTS ALLOWED BY LAW TO A CREDITOR AGAINST A DEBTOR.

26 G. A CARRIER'S LIEN MAY BE ENFORCED PURSUANT TO EITHER SUBSECTION A OF
27 THIS SECTION OR THE PROCEDURE SET FORTH IN SECTION 47-7210, SUBSECTION B.

28 H. A CARRIER IS LIABLE FOR DAMAGES CAUSED BY FAILURE TO COMPLY WITH
29 THE REQUIREMENTS FOR SALE UNDER THIS SECTION AND, IN CASE OF WILFUL
30 VIOLATION, IS LIABLE FOR CONVERSION.

31 47-7309. Duty of care; contractual limitation of carrier's
32 liability

33 A. A CARRIER THAT ISSUES A BILL OF LADING, WHETHER NEGOTIABLE OR
34 NONNEGOTIABLE, SHALL EXERCISE THE DEGREE OF CARE IN RELATION TO THE GOODS
35 THAT A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES.
36 THIS SUBSECTION DOES NOT AFFECT ANY STATUTE, REGULATION OR RULE OF LAW THAT
37 IMPOSES LIABILITY ON A COMMON CARRIER FOR DAMAGES NOT CAUSED BY ITS
38 NEGLIGENCE.

39 B. DAMAGES MAY BE LIMITED BY A TERM IN THE BILL OF LADING OR IN A
40 TRANSPORTATION AGREEMENT THAT THE CARRIER'S LIABILITY MAY NOT EXCEED A VALUE
41 STATED IN THE BILL OR TRANSPORTATION AGREEMENT IF THE CARRIER'S RATES ARE
42 DEPENDENT ON VALUE AND THE CONSIGNOR IS AFFORDED AN OPPORTUNITY TO DECLARE A
43 HIGHER VALUE AND THE CONSIGNOR IS ADVISED OF THE OPPORTUNITY. HOWEVER, SUCH
44 A LIMITATION IS NOT EFFECTIVE WITH RESPECT TO THE CARRIER'S LIABILITY FOR
45 CONVERSION TO ITS OWN USE.

1 C. REASONABLE PROVISIONS AS TO THE TIME AND MANNER OF PRESENTING
2 CLAIMS AND COMMENCING ACTIONS BASED ON THE SHIPMENT MAY BE INCLUDED IN A BILL
3 OF LADING OR A TRANSPORTATION AGREEMENT.

4 ARTICLE 4. WAREHOUSE RECEIPTS AND BILLS OF LADING:
5 GENERAL OBLIGATIONS

6 47-7401. Irregularities in issue of receipt or bill or conduct
7 of issuer

8 THE OBLIGATIONS IMPOSED BY THIS CHAPTER ON AN ISSUER APPLY TO A
9 DOCUMENT OF TITLE EVEN IF:

10 1. THE DOCUMENT DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER
11 OR OF ANY OTHER STATUTE, RULE OR REGULATION REGARDING ITS ISSUANCE, FORM OR
12 CONTENT;

13 2. THE ISSUER VIOLATED LAWS REGULATING THE CONDUCT OF ITS BUSINESS;

14 3. THE GOODS COVERED BY THE DOCUMENT WERE OWNED BY THE BAILEE WHEN THE
15 DOCUMENT WAS ISSUED; OR

16 4. THE PERSON ISSUING THE DOCUMENT IS NOT A WAREHOUSE BUT THE DOCUMENT
17 PURPORTS TO BE A WAREHOUSE RECEIPT.

18 47-7402. Duplicate document of title; overissue

19 A DUPLICATE OR ANY OTHER DOCUMENT OF TITLE PURPORTING TO COVER GOODS
20 ALREADY REPRESENTED BY AN OUTSTANDING DOCUMENT OF THE SAME ISSUER DOES NOT
21 CONFER ANY RIGHT IN THE GOODS, EXCEPT AS PROVIDED IN THE CASE OF TANGIBLE
22 BILLS OF LADING IN A SET OF PARTS, OVERISSUE OF DOCUMENTS FOR FUNGIBLE GOODS,
23 SUBSTITUTES FOR LOST, STOLEN OR DESTROYED DOCUMENTS OR SUBSTITUTE DOCUMENTS
24 ISSUED PURSUANT TO SECTION 47-7105. THE ISSUER IS LIABLE FOR DAMAGES CAUSED
25 BY ITS OVERISSUE OR FAILURE TO IDENTIFY A DUPLICATE DOCUMENT BY A CONSPICUOUS
26 NOTATION.

27 47-7403. Obligation of bailee to deliver; excuse

28 A. A BAILEE SHALL DELIVER THE GOODS TO A PERSON ENTITLED UNDER A
29 DOCUMENT OF TITLE IF THE PERSON COMPLIES WITH SUBSECTIONS B AND C OF THIS
30 SECTION, UNLESS AND TO THE EXTENT THAT THE BAILEE ESTABLISHES ANY OF THE
31 FOLLOWING:

32 1. DELIVERY OF THE GOODS TO A PERSON WHOSE RECEIPT WAS RIGHTFUL AS
33 AGAINST THE CLAIMANT;

34 2. DAMAGE TO OR DELAY, LOSS OR DESTRUCTION OF THE GOODS FOR WHICH THE
35 BAILEE IS NOT LIABLE;

36 3. PREVIOUS SALE OR OTHER DISPOSITION OF THE GOODS IN LAWFUL
37 ENFORCEMENT OF A LIEN OR ON A WAREHOUSE'S LAWFUL TERMINATION OF STORAGE;

38 4. THE EXERCISE BY A SELLER OF ITS RIGHT TO STOP DELIVERY PURSUANT TO
39 SECTION 47-2705 OR BY A LESSOR OF ITS RIGHT TO STOP DELIVERY PURSUANT TO
40 SECTION 47-2A526;

41 5. A DIVERSION, RECONSIGNMENT OR OTHER DISPOSITION PURSUANT TO SECTION
42 47-7303;

43 6. RELEASE, SATISFACTION OR ANY OTHER PERSONAL DEFENSE AGAINST THE
44 CLAIMANT; OR

45 7. ANY OTHER LAWFUL EXCUSE.

1 B. A PERSON CLAIMING GOODS COVERED BY A DOCUMENT OF TITLE SHALL
2 SATISFY THE BAILEE'S LIEN IF THE BAILEE SO REQUESTS OR IF THE BAILEE IS
3 PROHIBITED BY LAW FROM DELIVERING THE GOODS UNTIL THE CHARGES ARE PAID.

4 C. UNLESS A PERSON CLAIMING THE GOODS IS A PERSON AGAINST WHICH THE
5 DOCUMENT OF TITLE DOES NOT CONFER A RIGHT UNDER SECTION 47-7503,
6 SUBSECTION A:

7 1. THE PERSON CLAIMING UNDER A DOCUMENT SHALL SURRENDER POSSESSION OR
8 CONTROL OF ANY OUTSTANDING NEGOTIABLE DOCUMENT COVERING THE GOODS FOR
9 CANCELLATION OR INDICATION OF PARTIAL DELIVERIES; AND

10 2. THE BAILEE SHALL CANCEL THE DOCUMENT OR CONSPICUOUSLY INDICATE IN
11 THE DOCUMENT THE PARTIAL DELIVERY OR THE BAILEE IS LIABLE TO ANY PERSON TO
12 WHICH THE DOCUMENT IS DULY NEGOTIATED.

13 47-7404. No liability for good faith delivery pursuant to
14 document of title

15 A BAILEE THAT IN GOOD FAITH HAS RECEIVED GOODS AND DELIVERED OR
16 OTHERWISE DISPOSED OF THE GOODS ACCORDING TO THE TERMS OF A DOCUMENT OF TITLE
17 OR PURSUANT TO THIS CHAPTER IS NOT LIABLE FOR THE GOODS EVEN IF:

18 1. THE PERSON FROM WHICH THE BAILEE RECEIVED THE GOODS DID NOT HAVE
19 AUTHORITY TO PROCURE THE DOCUMENT OR TO DISPOSE OF THE GOODS; OR

20 2. THE PERSON TO WHICH THE BAILEE DELIVERED THE GOODS DID NOT HAVE
21 AUTHORITY TO RECEIVE THE GOODS.

22 ARTICLE 5. WAREHOUSE RECEIPTS AND BILLS OF LADING:
23 NEGOTIATION AND TRANSFER

24 47-7501. Form of negotiation and requirements of due
25 negotiation

26 A. THE FOLLOWING RULES APPLY TO A NEGOTIABLE TANGIBLE DOCUMENT OF
27 TITLE:

28 1. IF THE DOCUMENT'S ORIGINAL TERMS RUN TO THE ORDER OF A NAMED
29 PERSON, THE DOCUMENT IS NEGOTIATED BY THE NAMED PERSON'S INDORSEMENT AND
30 DELIVERY. AFTER THE NAMED PERSON'S INDORSEMENT IN BLANK OR TO BEARER, ANY
31 PERSON MAY NEGOTIATE THE DOCUMENT BY DELIVERY ALONE.

32 2. IF THE DOCUMENT'S ORIGINAL TERMS RUN TO BEARER, IT IS NEGOTIATED BY
33 DELIVERY ALONE.

34 3. IF THE DOCUMENT'S ORIGINAL TERMS RUN TO THE ORDER OF A NAMED PERSON
35 AND IT IS DELIVERED TO THE NAMED PERSON, THE EFFECT IS THE SAME AS IF THE
36 DOCUMENT HAD BEEN NEGOTIATED.

37 4. NEGOTIATION OF THE DOCUMENT AFTER IT HAS BEEN INDORSED TO A NAMED
38 PERSON REQUIRES INDORSEMENT BY THE NAMED PERSON AND DELIVERY.

39 5. A DOCUMENT IS DULY NEGOTIATED IF IT IS NEGOTIATED IN THE MANNER
40 STATED IN THIS SUBSECTION TO A HOLDER THAT PURCHASES IT IN GOOD FAITH,
41 WITHOUT NOTICE OF ANY DEFENSE AGAINST OR CLAIM TO IT ON THE PART OF ANY
42 PERSON AND FOR VALUE, UNLESS IT IS ESTABLISHED THAT THE NEGOTIATION IS NOT IN
43 THE REGULAR COURSE OF BUSINESS OR FINANCING OR INVOLVES RECEIVING THE
44 DOCUMENT IN SETTLEMENT OR PAYMENT OF A MONETARY OBLIGATION.

1 B. THE FOLLOWING RULES APPLY TO A NEGOTIABLE ELECTRONIC DOCUMENT OF
2 TITLE:

3 1. IF THE DOCUMENT'S ORIGINAL TERMS RUN TO THE ORDER OF A NAMED PERSON
4 OR TO BEARER, THE DOCUMENT IS NEGOTIATED BY DELIVERY OF THE DOCUMENT TO
5 ANOTHER PERSON. INDORSEMENT BY THE NAMED PERSON IS NOT REQUIRED TO NEGOTIATE
6 THE DOCUMENT.

7 2. IF THE DOCUMENT'S ORIGINAL TERMS RUN TO THE ORDER OF A NAMED PERSON
8 AND THE NAMED PERSON HAS CONTROL OF THE DOCUMENT, THE EFFECT IS THE SAME AS
9 IF THE DOCUMENT HAD BEEN NEGOTIATED.

10 3. A DOCUMENT IS DULY NEGOTIATED IF IT IS NEGOTIATED IN THE MANNER
11 STATED IN THIS SUBSECTION TO A HOLDER THAT PURCHASES IT IN GOOD FAITH,
12 WITHOUT NOTICE OF ANY DEFENSE AGAINST OR CLAIM TO IT ON THE PART OF ANY
13 PERSON AND FOR VALUE, UNLESS IT IS ESTABLISHED THAT THE NEGOTIATION IS NOT IN
14 THE REGULAR COURSE OF BUSINESS OR FINANCING OR INVOLVES TAKING DELIVERY OF
15 THE DOCUMENT IN SETTLEMENT OR PAYMENT OF A MONETARY OBLIGATION.

16 C. INDORSEMENT OF A NONNEGOTIABLE DOCUMENT OF TITLE NEITHER MAKES IT
17 NEGOTIABLE NOR ADDS TO THE TRANSFEREE'S RIGHTS.

18 D. THE NAMING IN A NEGOTIABLE BILL OF LADING OF A PERSON TO BE
19 NOTIFIED OF THE ARRIVAL OF THE GOODS DOES NOT LIMIT THE NEGOTIABILITY OF THE
20 BILL OR CONSTITUTE NOTICE TO A PURCHASER OF THE BILL OF ANY INTEREST OF THAT
21 PERSON IN THE GOODS.

22 47-7502. Rights acquired by due negotiation

23 A. SUBJECT TO SECTIONS 47-7205 AND 47-7503, A HOLDER TO WHICH A
24 NEGOTIABLE DOCUMENT OF TITLE HAS BEEN DULY NEGOTIATED ACQUIRES THEREBY:

25 1. TITLE TO THE DOCUMENT;

26 2. TITLE TO THE GOODS;

27 3. ALL RIGHTS ACCRUING UNDER THE LAW OF AGENCY OR ESTOPPEL, INCLUDING
28 RIGHTS TO GOODS DELIVERED TO THE BAILEE AFTER THE DOCUMENT WAS ISSUED; AND

29 4. THE DIRECT OBLIGATION OF THE ISSUER TO HOLD OR DELIVER THE GOODS
30 ACCORDING TO THE TERMS OF THE DOCUMENT FREE OF ANY DEFENSE OR CLAIM BY THE
31 ISSUER EXCEPT THOSE ARISING UNDER THE TERMS OF THE DOCUMENT OR UNDER THIS
32 CHAPTER, BUT IN THE CASE OF A DELIVERY ORDER, THE BAILEE'S OBLIGATION ACCRUES
33 ONLY UPON THE BAILEE'S ACCEPTANCE OF THE DELIVERY ORDER AND THE OBLIGATION
34 ACQUIRED BY THE HOLDER IS THAT THE ISSUER AND ANY INDORSER WILL PROCURE THE
35 ACCEPTANCE OF THE BAILEE.

36 B. SUBJECT TO SECTION 47-7503, TITLE AND RIGHTS ACQUIRED BY DUE
37 NEGOTIATION ARE NOT DEFEATED BY ANY STOPPAGE OF THE GOODS REPRESENTED BY THE
38 DOCUMENT OF TITLE OR BY SURRENDER OF THE GOODS BY THE BAILEE AND ARE NOT
39 IMPAIRED EVEN IF:

40 1. THE DUE NEGOTIATION OR ANY PRIOR DUE NEGOTIATION CONSTITUTED A
41 BREACH OF DUTY;

42 2. ANY PERSON HAS BEEN DEPRIVED OF POSSESSION OF A NEGOTIABLE TANGIBLE
43 DOCUMENT OR CONTROL OF A NEGOTIABLE ELECTRONIC DOCUMENT BY MISREPRESENTATION,
44 FRAUD, ACCIDENT, MISTAKE, DURESS, LOSS, THEFT OR CONVERSION; OR

1 3. A PREVIOUS SALE OR OTHER TRANSFER OF THE GOODS OR DOCUMENT HAS BEEN
2 MADE TO A THIRD PERSON.

3 47-7503. Document of title to goods defeated in certain cases

4 A. A DOCUMENT OF TITLE CONFERS NO RIGHT IN GOODS AGAINST A PERSON THAT
5 BEFORE ISSUANCE OF THE DOCUMENT HAD A LEGAL INTEREST OR A PERFECTED SECURITY
6 INTEREST IN THE GOODS AND THAT DID NOT:

7 1. DELIVER OR ENTRUST THE GOODS OR ANY DOCUMENT OF TITLE COVERING THE
8 GOODS TO THE BAILOR OR THE BAILOR'S NOMINEE WITH:

9 (a) ACTUAL OR APPARENT AUTHORITY TO SHIP, STORE OR SELL;

10 (b) POWER TO OBTAIN DELIVERY UNDER SECTION 47-7403; OR

11 (c) POWER OF DISPOSITION UNDER SECTION 47-2403, SECTION 47-2A304,
12 SUBSECTION B, SECTION 47-2A305, SUBSECTION B, SECTION 47-9320 OR SECTION
13 47-9321, SUBSECTION C OR ANOTHER STATUTE OR RULE OF LAW; OR

14 2. ACQUIESCE IN THE PROCUREMENT BY THE BAILOR OR ITS NOMINEE OF ANY
15 DOCUMENT.

16 B. TITLE TO GOODS BASED ON AN UNACCEPTED DELIVERY ORDER IS SUBJECT TO
17 THE RIGHTS OF ANY PERSON TO WHICH A NEGOTIABLE WAREHOUSE RECEIPT OR BILL OF
18 LADING COVERING THE GOODS HAS BEEN DULY NEGOTIATED. THAT TITLE MAY BE
19 DEFEATED UNDER SECTION 47-7504 TO THE SAME EXTENT AS THE RIGHTS OF THE ISSUER
20 OR A TRANSFEREE FROM THE ISSUER.

21 C. TITLE TO GOODS BASED ON A BILL OF LADING ISSUED TO A FREIGHT
22 FORWARDER IS SUBJECT TO THE RIGHTS OF ANY PERSON TO WHICH A BILL ISSUED BY
23 THE FREIGHT FORWARDER IS DULY NEGOTIATED. HOWEVER, DELIVERY BY THE CARRIER
24 IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER PURSUANT TO ITS OWN BILL OF
25 LADING DISCHARGES THE CARRIER'S OBLIGATION TO DELIVER.

26 47-7504. Rights acquired in absence of due negotiation; effect
27 of diversion; stoppage of delivery

28 A. A TRANSFEREE OF A DOCUMENT OF TITLE, WHETHER NEGOTIABLE OR
29 NONNEGOTIABLE, TO WHICH THE DOCUMENT HAS BEEN DELIVERED BUT NOT DULY
30 NEGOTIATED, ACQUIRES THE TITLE AND RIGHTS THAT ITS TRANSFEROR HAD OR HAD
31 ACTUAL AUTHORITY TO CONVEY.

32 B. IN THE CASE OF A TRANSFER OF A NONNEGOTIABLE DOCUMENT OF TITLE,
33 UNTIL BUT NOT AFTER THE BAILEE RECEIVES NOTICE OF THE TRANSFER, THE RIGHTS OF
34 THE TRANSFEREE MAY BE DEFEATED:

35 1. BY THOSE CREDITORS OF THE TRANSFEROR THAT COULD TREAT THE TRANSFER
36 AS VOID UNDER SECTION 47-2402 OR 47-2A308;

37 2. BY A BUYER FROM THE TRANSFEROR IN ORDINARY COURSE OF BUSINESS IF
38 THE BAILEE HAS DELIVERED THE GOODS TO THE BUYER OR RECEIVED NOTIFICATION OF
39 THE BUYER'S RIGHTS;

40 3. BY A LESSEE FROM THE TRANSFEROR IN ORDINARY COURSE OF BUSINESS IF
41 THE BAILEE HAS DELIVERED THE GOODS TO THE LESSEE OR RECEIVED NOTIFICATION OF
42 THE LESSEE'S RIGHTS; OR

43 4. AS AGAINST THE BAILEE, BY GOOD FAITH DEALINGS OF THE BAILEE WITH
44 THE TRANSFEROR.

1 C. A DIVERSION OR OTHER CHANGE OF SHIPPING INSTRUCTIONS BY THE
2 CONSIGNOR IN A NONNEGOTIABLE BILL OF LADING THAT CAUSES THE BAILEE NOT TO
3 DELIVER THE GOODS TO THE CONSIGNEE DEFEATS THE CONSIGNEE'S TITLE TO THE GOODS
4 IF THE GOODS HAVE BEEN DELIVERED TO A BUYER IN ORDINARY COURSE OF BUSINESS OR
5 A LESSEE IN ORDINARY COURSE OF BUSINESS AND, IN ANY EVENT, DEFEATS THE
6 CONSIGNEE'S RIGHTS AGAINST THE BAILEE.

7 D. DELIVERY OF THE GOODS PURSUANT TO A NONNEGOTIABLE DOCUMENT OF TITLE
8 MAY BE STOPPED BY A SELLER UNDER SECTION 47-2705 OR A LESSOR UNDER SECTION
9 47-2A526, SUBJECT TO THE REQUIREMENTS OF DUE NOTIFICATION IN THOSE SECTIONS.
10 A BAILEE THAT HONORS THE SELLER'S OR LESSOR'S INSTRUCTIONS IS ENTITLED TO BE
11 INDEMNIFIED BY THE SELLER OR LESSOR AGAINST ANY RESULTING LOSS OR EXPENSE.

12 47-7505. Indorser not guarantor for other parties

13 THE INDORSEMENT OF A TANGIBLE DOCUMENT OF TITLE ISSUED BY A BAILEE DOES
14 NOT MAKE THE INDORSER LIABLE FOR ANY DEFAULT BY THE BAILEE OR PREVIOUS
15 INDORSERS.

16 47-7506. Delivery without indorsement; right to compel
17 indorsement

18 THE TRANSFEREE OF A NEGOTIABLE TANGIBLE DOCUMENT OF TITLE HAS A
19 SPECIFICALLY ENFORCEABLE RIGHT TO HAVE ITS TRANSFEROR SUPPLY ANY NECESSARY
20 INDORSEMENT, BUT THE TRANSFER BECOMES A NEGOTIATION ONLY AS OF THE TIME THE
21 INDORSEMENT IS SUPPLIED.

22 47-7507. Warranties on negotiation or delivery of document of
23 title

24 IF A PERSON NEGOTIATES OR DELIVERS A DOCUMENT OF TITLE FOR VALUE,
25 OTHERWISE THAN AS A MERE INTERMEDIARY UNDER SECTION 47-7508, UNLESS OTHERWISE
26 AGREED, THE TRANSFEROR, IN ADDITION TO ANY WARRANTY MADE IN SELLING OR
27 LEASING THE GOODS, WARRANTS TO ITS IMMEDIATE PURCHASER ONLY THAT:

28 1. THE DOCUMENT IS GENUINE;

29 2. THE TRANSFEROR DOES NOT HAVE KNOWLEDGE OF ANY FACT THAT WOULD
30 IMPAIR THE DOCUMENT'S VALIDITY OR WORTH; AND

31 3. THE NEGOTIATION OR DELIVERY IS RIGHTFUL AND FULLY EFFECTIVE WITH
32 RESPECT TO THE TITLE TO THE DOCUMENT AND THE GOODS IT REPRESENTS.

33 47-7508. Warranties of collecting bank as to documents of title

34 A COLLECTING BANK OR OTHER INTERMEDIARY KNOWN TO BE ENTRUSTED WITH
35 DOCUMENTS OF TITLE ON BEHALF OF ANOTHER OR WITH COLLECTION OF A DRAFT OR
36 OTHER CLAIM AGAINST DELIVERY OF DOCUMENTS WARRANTS BY THE DELIVERY OF THE
37 DOCUMENTS ONLY ITS OWN GOOD FAITH AND AUTHORITY EVEN IF THE COLLECTING BANK
38 OR OTHER INTERMEDIARY HAS PURCHASED OR MADE ADVANCES AGAINST THE CLAIM OR
39 DRAFT TO BE COLLECTED.

40 47-7509. Adequate compliance with commercial contract

41 WHETHER A DOCUMENT OF TITLE IS ADEQUATE TO FULFILL THE OBLIGATIONS OF A
42 CONTRACT FOR SALE, A CONTRACT FOR LEASE OR THE CONDITIONS OF A LETTER OF
43 CREDIT IS DETERMINED BY CHAPTER 2, 2A OR 5 OF THIS TITLE.

1 ARTICLE 6. WAREHOUSE RECEIPTS AND BILLS OF LADING:

2 MISCELLANEOUS PROVISIONS

3 47-7601. Lost, stolen or destroyed documents of title

4 A. IF A DOCUMENT OF TITLE IS LOST, STOLEN OR DESTROYED, A COURT MAY
5 ORDER DELIVERY OF THE GOODS OR ISSUANCE OF A SUBSTITUTE DOCUMENT AND THE
6 BAILEE MAY WITHOUT LIABILITY TO ANY PERSON COMPLY WITH THE ORDER. IF THE
7 DOCUMENT WAS NEGOTIABLE, A COURT MAY NOT ORDER DELIVERY OF THE GOODS OR
8 ISSUANCE OF A SUBSTITUTE DOCUMENT WITHOUT THE CLAIMANT'S POSTING SECURITY
9 UNLESS IT FINDS THAT ANY PERSON THAT MAY SUFFER LOSS AS A RESULT OF
10 NONSURRENDER OF POSSESSION OR CONTROL OF THE DOCUMENT IS ADEQUATELY PROTECTED
11 AGAINST THE LOSS. IF THE DOCUMENT WAS NONNEGOTIABLE, THE COURT MAY REQUIRE
12 SECURITY. THE COURT MAY ALSO ORDER PAYMENT OF THE BAILEE'S REASONABLE COSTS
13 AND ATTORNEY FEES IN ANY ACTION UNDER THIS SUBSECTION.

14 B. A BAILEE THAT, WITHOUT A COURT ORDER, DELIVERS GOODS TO A PERSON
15 CLAIMING UNDER A MISSING NEGOTIABLE DOCUMENT OF TITLE IS LIABLE TO ANY PERSON
16 INJURED THEREBY. IF THE DELIVERY IS NOT IN GOOD FAITH, THE BAILEE IS LIABLE
17 FOR CONVERSION. DELIVERY IN GOOD FAITH IS NOT CONVERSION IF THE CLAIMANT
18 POSTS SECURITY WITH THE BAILEE IN AN AMOUNT AT LEAST DOUBLE THE VALUE OF THE
19 GOODS AT THE TIME OF POSTING TO INDEMNIFY ANY PERSON INJURED BY THE DELIVERY
20 THAT FILES A NOTICE OF CLAIM WITHIN ONE YEAR AFTER THE DELIVERY.

21 47-7602. Judicial process against goods covered by negotiable
22 document of title

23 UNLESS A DOCUMENT OF TITLE WAS ORIGINALLY ISSUED ON DELIVERY OF THE
24 GOODS BY A PERSON THAT DID NOT HAVE POWER TO DISPOSE OF THEM, A LIEN DOES NOT
25 ATTACH BY VIRTUE OF ANY JUDICIAL PROCESS TO GOODS IN THE POSSESSION OF A
26 BAILEE FOR WHICH A NEGOTIABLE DOCUMENT OF TITLE IS OUTSTANDING UNLESS
27 POSSESSION OR CONTROL OF THE DOCUMENT IS FIRST SURRENDERED TO THE BAILEE OR
28 THE DOCUMENT'S NEGOTIATION IS ENJOINED. THE BAILEE MAY NOT BE COMPELLED TO
29 DELIVER THE GOODS PURSUANT TO PROCESS UNTIL POSSESSION OR CONTROL OF THE
30 DOCUMENT IS SURRENDERED TO THE BAILEE OR TO THE COURT. A PURCHASER OF THE
31 DOCUMENT FOR VALUE WITHOUT NOTICE OF THE PROCESS OR INJUNCTION TAKES FREE OF
32 THE LIEN IMPOSED BY JUDICIAL PROCESS.

33 47-7603. Conflicting claims; interpleader

34 IF MORE THAN ONE PERSON CLAIM TITLE TO OR POSSESSION OF THE GOODS, THE
35 BAILEE IS EXCUSED FROM DELIVERY UNTIL THE BAILEE HAS A REASONABLE TIME TO
36 ASCERTAIN THE VALIDITY OF THE ADVERSE CLAIMS OR TO COMMENCE AN ACTION FOR
37 INTERPLEADER. THE BAILEE MAY ASSERT AN INTERPLEADER EITHER IN DEFENDING AN
38 ACTION FOR NONDELIVERY OF THE GOODS OR BY ORIGINAL ACTION.

39 ARTICLE 7. MISCELLANEOUS PROVISIONS

40 47-7703. Applicability

41 THIS CHAPTER APPLIES TO A DOCUMENT OF TITLE THAT IS ISSUED OR A
42 BAILMENT THAT ARISES ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER. THIS
43 CHAPTER DOES NOT APPLY TO A DOCUMENT OF TITLE THAT IS ISSUED OR A BAILMENT
44 THAT ARISES BEFORE THE EFFECTIVE DATE OF THIS CHAPTER EVEN IF THE DOCUMENT OF
45 TITLE OR BAILMENT WOULD BE SUBJECT TO THIS CHAPTER IF THE DOCUMENT OF TITLE

1 HAD BEEN ISSUED OR BAILMENT HAD ARISEN ON OR AFTER THE EFFECTIVE DATE OF THIS
2 CHAPTER. THIS CHAPTER DOES NOT APPLY TO A RIGHT OF ACTION THAT HAS ACCRUED
3 BEFORE THE EFFECTIVE DATE OF THIS CHAPTER.

4 47-7704. Savings clause

5 A DOCUMENT OF TITLE ISSUED OR A BAILMENT THAT ARISES BEFORE THE
6 EFFECTIVE DATE OF THIS CHAPTER AND THE RIGHTS, OBLIGATIONS AND INTERESTS
7 FLOWING FROM THAT DOCUMENT OR BAILMENT ARE GOVERNED BY ANY STATUTE OR OTHER
8 RULE AMENDED OR REPEALED BY THIS CHAPTER AS IF AMENDMENT OR REPEAL HAD NOT
9 OCCURRED AND MAY BE TERMINATED, COMPLETED, CONSUMMATED OR ENFORCED UNDER THAT
10 STATUTE OR OTHER RULE.

11 Sec. 37. Section 47-8103, Arizona Revised Statutes, is amended to
12 read:

13 47-8103. Rules for determining whether certain obligations and
14 interests as securities or financial assets

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

17 B. An investment company security is a security. "Investment company
18 security" means a share or similar equity interest issued by an entity that
19 is registered as an investment company under the federal investment company
20 laws, an interest in a unit investment trust that is so registered, or a
21 face-amount certificate issued by a face-amount certificate company that is
22 so registered. Investment company security does not include an insurance
23 policy or endowment policy or annuity contract issued by an insurance
24 company.

25 C. An interest in a partnership or limited liability company is not a
26 security unless it is dealt in or traded on securities exchanges or in
27 securities markets, its terms expressly provide that it is a security
28 governed by this chapter, or it is an investment company security. However,
29 an interest in a partnership or limited liability company is a financial
30 asset if it is held in a securities account.

31 D. A writing that is a security certificate is governed by this
32 chapter and not by chapter 3 of this title, even though it also meets the
33 requirements of that chapter. However, a negotiable instrument governed by
34 chapter 3 of this title is a financial asset if it is held in a securities
35 account.

36 E. An option or similar obligation issued by a clearing corporation to
37 its participants is not a security, but is a financial asset.

38 F. A commodity contract, as defined in section 47-9102, is not a
39 security or a financial asset.

40 G. A DOCUMENT OF TITLE IS NOT A FINANCIAL ASSET UNLESS SECTION
41 47-8102, SUBSECTION A, PARAGRAPH 9, SUBDIVISION (c) APPLIES.

42 Sec. 38. Section 47-9102, Arizona Revised Statutes, is amended to
43 read:

44 47-9102. Definitions and index of definitions

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

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

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

20 3. "Account debtor" means a person obligated on an account, chattel
21 paper or general intangible but does not include persons obligated to pay a
22 negotiable instrument, even if the instrument constitutes part of chattel
23 paper.

24 4. "Accounting", except as used in "accounting for", means a record:

25 (a) Authenticated by a secured party;

26 (b) Indicating the aggregate unpaid secured obligations as of a date
27 not more than thirty-five days earlier or thirty-five days later than the
28 date of the record; and

29 (c) Identifying the components of the obligations in reasonable
30 detail.

31 5. "Agricultural lien" means an interest, other than a security
32 interest, in farm products:

33 (a) That secures payment or performance of an obligation for:

34 (i) Goods or services furnished in connection with a debtor's farming
35 operation; or

36 (ii) Rent on real property leased by a debtor in connection with its
37 farming operation;

38 (b) That is created by statute in favor of a person that:

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

41 (ii) Leased real property to a debtor in connection with the debtor's
42 farming operation; and

43 (c) Whose effectiveness does not depend on the person's possession of
44 the personal property.

- 1 6. "As-extracted collateral" means:
2 (a) Oil, gas or other minerals that are subject to a security interest
3 that:
4 (i) Is created by a debtor having an interest in the minerals before
5 extraction; and
6 (ii) Attaches to the minerals as extracted; or
7 (b) Accounts arising out of the sale at the wellhead or minehead of
8 oil, gas or other minerals in which the debtor had an interest before
9 extraction.
- 10 7. "Authenticate" means:
11 (a) To sign; or
12 (b) To execute or otherwise adopt a symbol, or encrypt or similarly
13 process a record in whole or in part, with the present intent of the
14 authenticating person to identify the person and adopt or accept a record.
- 15 8. "Bank" means an organization that is engaged in the business of
16 banking. Bank includes savings banks, savings and loan associations, credit
17 unions and trust companies.
- 18 9. "Cash proceeds" means proceeds that are money, checks, deposit
19 accounts or the like.
- 20 10. "Certificate of title" means a certificate of title with respect to
21 which a statute provides for the security interest in question to be
22 indicated on the certificate as a condition or result of the security
23 interest's obtaining priority over the rights of a lien creditor with respect
24 to the collateral.
- 25 11. "Chattel paper" means a record or records that evidence both a
26 monetary obligation and a security interest in specific goods, a security
27 interest in specific goods and software used in the goods, a security
28 interest in specific goods and license of software used in the goods, a lease
29 of specific goods or a lease of specific goods and license of software used
30 in the goods. In this paragraph, "monetary obligation" means a monetary
31 obligation secured by the goods or owed under a lease of the goods and
32 includes a monetary obligation with respect to software used in the
33 goods. Chattel paper does not include charters or other contracts involving
34 the use or hire of a vessel or records that evidence a right to payment
35 arising out of the use of a credit or charge card or information contained on
36 or for use with the card. If a transaction is evidenced by records that
37 include an instrument or series of instruments, the group of records taken
38 together constitutes chattel paper.
- 39 12. "Collateral" means the property subject to a security interest or
40 agricultural lien. Collateral includes:
41 (a) Proceeds to which a security interest attaches;
42 (b) Accounts, chattel paper, payment intangibles and promissory notes
43 that have been sold; and
44 (c) Goods that are the subject of a consignment.

1 13. "Commercial tort claim" means a claim arising in tort with respect
2 to which:

- 3 (a) The claimant is an organization; or
4 (b) The claimant is an individual and the claim:
5 (i) Arose in the course of the claimant's business or profession; and
6 (ii) Does not include damages arising out of personal injury to or the
7 death of an individual.

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

11 15. "Commodity contract" means a commodity futures contract, an option
12 on a commodity futures contract, a commodity option or another contract if
13 the contract or option is:

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

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

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

22 17. "Commodity intermediary" means a person that:

23 (a) Is registered as a futures commission merchant under federal
24 commodities law; or

25 (b) In the ordinary course of its business provides clearance or
26 settlement services for a board of trade that has been designated as a
27 contract market pursuant to federal commodities law.

28 18. "Communicate" means:

29 (a) To send a written or other tangible record;

30 (b) To transmit a record by any means agreed on by the persons sending
31 and receiving the record; or

32 (c) In the case of transmission of a record to or by a filing office,
33 to transmit a record by any means prescribed by filing office rule.

34 19. "Consignee" means a merchant to which goods are delivered in a
35 consignment.

36 20. "Consignment" means a transaction, regardless of its form, in which
37 a person delivers goods to a merchant for the purpose of sale and:

38 (a) The merchant:

39 (i) Deals in goods of that kind under a name other than the name of
40 the person making delivery;

41 (ii) Is not an auctioneer; and

42 (iii) Is not generally known by its creditors to be substantially
43 engaged in selling the goods of others;

44 (b) With respect to each delivery, the aggregate value of the goods is
45 one thousand dollars or more at the time of delivery;

1 (c) The goods are not consumer goods immediately before delivery; and
2 (d) The transaction does not create a security interest that secures
3 an obligation.

4 21. "Consignor" means a person that delivers goods to a consignee in a
5 consignment.

6 22. "Consumer debtor" means a debtor in a consumer transaction.

7 23. "Consumer goods" means goods that are used or bought for use
8 primarily for personal, family or household purposes.

9 24. "Consumer goods transaction" means a consumer transaction in which:

10 (a) An individual incurs an obligation primarily for personal, family
11 or household purposes; and

12 (b) A security interest in consumer goods secures the obligation.

13 25. "Consumer obligor" means an obligor who is an individual and who
14 incurred the obligation as part of a transaction entered into primarily for
15 personal, family or household purposes.

16 26. "Consumer transaction" means a transaction in which an individual
17 incurs an obligation primarily for personal, family or household purposes, a
18 security interest secures the obligation and the collateral is held or
19 acquired primarily for personal, family or household purposes. Consumer
20 transaction includes consumer goods transactions.

21 27. "Continuation statement" means an amendment of a financing
22 statement that:

23 (a) Identifies, by its file number, the initial financing statement to
24 which it relates; and

25 (b) Indicates that it is a continuation statement for, or that it is
26 filed to continue the effectiveness of, the identified financing statement.

27 28. "Debtor" means:

28 (a) A person having an interest, other than a security interest or
29 other lien, in the collateral, whether or not the person is an obligor;

30 (b) A seller of accounts, chattel paper, payment intangibles or
31 promissory notes; or

32 (c) A consignee.

33 29. "Deposit account" means a demand, time, savings, passbook or
34 similar account maintained with a bank. Deposit account does not include
35 investment property or accounts evidenced by an instrument.

36 30. "Document" means a document of title or a receipt of the type
37 described in section 47-7201, subsection B.

38 31. "Electronic chattel paper" means chattel paper evidenced by a
39 record or records consisting of information stored in an electronic medium.

40 32. "Encumbrance" means a right, other than an ownership interest, in
41 real property. Encumbrance includes mortgages and other liens on real
42 property.

43 33. "Equipment" means goods other than inventory, farm products or
44 consumer goods.

1 34. "Farm products" means goods, other than standing timber, with
2 respect to which the debtor is engaged in a farming operation and that are:

3 (a) Crops grown, growing or to be grown, including:

4 (i) Crops produced on trees, vines and bushes; and

5 (ii) Aquatic goods produced in aquacultural operations;

6 (b) Livestock, born or unborn, including aquatic goods produced in
7 aquacultural operations;

8 (c) Supplies used or produced in a farming operation; or

9 (d) Products of crops or livestock in their unmanufactured states.

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

12 36. "File number" means the number assigned to an initial financing
13 statement pursuant to section 47-9519, subsection A.

14 37. "Filing office" means an office designated in section 47-9501 as
15 the place to file a financing statement.

16 38. "Filing office rule" means a rule adopted pursuant to section
17 47-9526.

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

21 40. "Fixture filing" means the filing of a financing statement covering
22 goods that are or are to become fixtures and satisfying section 47-9502,
23 subsections A and B. Fixture filing includes the filing of a financing
24 statement covering goods of a transmitting utility that are or are to become
25 fixtures.

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

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

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

36 44. "Goods" means all things that are movable when a security interest
37 attaches.

38 (a) Goods includes:

39 (i) Fixtures;

40 (ii) Standing timber that is to be cut and removed under a conveyance
41 or contract for sale;

42 (iii) The unborn young of animals;

43 (iv) Crops grown, growing or to be grown, even if the crops are
44 produced on trees, vines or bushes; and

45 (v) Manufactured homes.

1 (b) Goods also includes a computer program embedded in goods and any
2 supporting information provided in connection with a transaction relating to
3 the program if:

4 (i) The program is associated with the goods in such a manner that it
5 customarily is considered part of the goods; or

6 (ii) By becoming the owner of the goods, a person acquires a right to
7 use the program in connection with the goods.

8 (c) Goods does not include a computer program embedded in goods that
9 consist solely of the medium in which the program is embedded.

10 (d) Goods also does not include accounts, chattel paper, commercial
11 tort claims, deposit accounts, documents, general intangibles, instruments,
12 investment property, letter-of-credit rights, letters of credit, money, or
13 oil, gas or other minerals before extraction.

14 45. "Governmental unit" means a subdivision, agency, department,
15 county, parish, municipality or other unit of the government of the United
16 States, a state or a foreign country. Governmental unit includes an
17 organization having a separate corporate or legal existence if the
18 organization is eligible to issue or incur obligations the interest on which
19 is excluded from gross income for federal income tax purposes.

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

23 47. "Instrument" means a negotiable instrument or any other writing
24 that evidences a right to the payment of a monetary obligation, is not itself
25 a security agreement or lease and is of a type that in the ordinary course of
26 business is transferred by delivery with any necessary indorsement or
27 assignment. Instrument does not include:

28 (a) Investment property;

29 (b) Letters of credit; or

30 (c) Writings that evidence a right to payment arising out of the use
31 of a credit or charge card or information contained on or for use with the
32 card.

33 48. "Inventory" means goods, other than farm products, that:

34 (a) Are leased by a person as lessor;

35 (b) Are held by a person for sale or lease or to be furnished under a
36 contract of service;

37 (c) Are furnished by a person under a contract of service; or

38 (d) Consist of raw materials, work in process or materials used or
39 consumed in a business.

40 49. "Investment property" means a security, whether certificated or
41 uncertificated, security entitlement, securities account, commodity contract
42 or commodity account.

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

1 51. "Letter-of-credit right" means a right to payment or performance
2 under a letter of credit, whether or not the beneficiary has demanded or is
3 at the time entitled to demand payment or performance. Letter-of-credit
4 right does not include the right of a beneficiary to demand payment or
5 performance under a letter of credit.

6 52. "Lien creditor" means:

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

9 (b) An assignee for benefit of creditors from the time of assignment;

10 (c) A trustee in bankruptcy from the date of the filing of the
11 petition; or

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

13 53. "Manufactured home" means a structure that is transportable in one
14 or more sections and that, in the traveling mode, is eight body feet or more
15 in width or forty body feet or more in length, or, when erected on site, is
16 three hundred twenty or more square feet, and that is built on a permanent
17 chassis and designed to be used as a dwelling with or without a permanent
18 foundation when connected to the required utilities, and includes the
19 plumbing, heating, air conditioning and electrical systems contained
20 therein. Manufactured home includes any structure that meets all of the
21 requirements of this paragraph except the size requirements and with respect
22 to which the manufacturer voluntarily files a certification required by the
23 United States secretary of housing and urban development and complies with
24 the standards established under title 42 of the United States Code.

25 54. "Manufactured home transaction" means a secured transaction:

26 (a) That creates a purchase money security interest in a manufactured
27 home, other than a manufactured home held as inventory; or

28 (b) In which a manufactured home, other than a manufactured home held
29 as inventory, is the primary collateral.

30 55. "Mortgage" means a consensual interest in real property, including
31 fixtures, that secures payment or performance of an obligation.

32 56. "New debtor" means a person that becomes bound as debtor under
33 section 47-9203, subsection D by a security agreement previously entered into
34 by another person.

35 57. "New value" means money, money's worth in property, services or new
36 credit or release by a transferee of an interest in property previously
37 transferred to the transferee. New value does not include an obligation
38 substituted for another obligation.

39 58. "Noncash proceeds" means proceeds other than cash proceeds.

40 59. "Obligor" means a person that, with respect to an obligation
41 secured by a security interest in or an agricultural lien on the collateral,
42 owes payment or other performance of the obligation, has provided property
43 other than the collateral to secure payment or other performance of the
44 obligation or is otherwise accountable in whole or in part for payment or

1 other performance of the obligation. Obligor does not include issuers or
2 nominated persons under a letter of credit.

3 60. "Original debtor", except as used in section 47-9310, subsection C,
4 means a person that, as debtor, entered into a security agreement to which a
5 new debtor has become bound under section 47-9203, subsection D.

6 61. "Payment intangible" means a general intangible under which the
7 account debtor's principal obligation is a monetary obligation.

8 62. "Person related to", with respect to an individual, means:

9 (a) The spouse of the individual;

10 (b) A brother, brother-in-law, sister or sister-in-law of the
11 individual;

12 (c) An ancestor or lineal descendant of the individual or the
13 individual's spouse; or

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

16 63. "Person related to", with respect to an organization, means:

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

19 (b) An officer or director of, or a person performing similar
20 functions with respect to, the organization;

21 (c) An officer or director of, or a person performing similar
22 functions with respect to, a person described in subdivision (a) of this
23 paragraph;

24 (d) The spouse of an individual described in subdivision (a), (b) or
25 (c) of this paragraph; or

26 (e) An individual who is related by blood or marriage to an individual
27 described in subdivision (a), (b), (c) or (d) of this paragraph and WHO
28 shares the same home with the individual.

29 64. "Proceeds", except as used in section 47-9609, subsection B, means
30 the following property:

31 (a) Whatever is acquired on the sale, lease, license, exchange or
32 other disposition of collateral;

33 (b) Whatever is collected on, or distributed on account of,
34 collateral;

35 (c) Rights arising out of collateral;

36 (d) To the extent of the value of collateral, claims arising out of
37 the loss, nonconformity or interference with the use of, defects or
38 infringement of rights in, or damage to the collateral; or

39 (e) To the extent of the value of collateral and to the extent payable
40 to the debtor or the secured party, insurance payable by reason of the loss
41 or nonconformity of, defects or infringement of rights in, or damage to the
42 collateral.

43 65. "Promissory note" means an instrument that evidences a promise to
44 pay a monetary obligation, does not evidence an order to pay and does not

1 contain an acknowledgment by a bank that the bank has received for deposit a
2 sum of money or funds.

3 66. "Proposal" means a record authenticated by a secured party that
4 includes the terms on which the secured party is willing to accept collateral
5 in full or partial satisfaction of the obligation it secures pursuant to
6 sections 47-9620, 47-9621 and 47-9622.

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

12 68. "Record", except as used in "for record", "of record", "record or
13 legal title", and "record owner", means information that is inscribed on a
14 tangible medium or that is stored in an electronic or other medium and is
15 retrievable in perceivable form.

16 69. "Registered organization" means an organization organized solely
17 under the law of a single state or the United States and as to which the
18 state or the United States must maintain a public record showing the
19 organization to have been organized.

20 70. "Secondary obligor" means an obligor to the extent that:

21 (a) The obligor's obligation is secondary; or

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

25 71. "Secured party" means:

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

29 (b) A person that holds an agricultural lien;

30 (c) A consignor;

31 (d) A person to which accounts, chattel paper, payment intangibles or
32 promissory notes have been sold;

33 (e) A trustee, indenture trustee, agent, collateral agent or other
34 representative in whose favor a security interest or agricultural lien is
35 created or provided for; or

36 (f) A person that holds a security interest arising under section
37 47-2401, 47-2505, 47-2711, 47-2A508, 47-4210 or 47-5118.

38 72. "Security agreement" means an agreement that creates or provides
39 for a security interest.

40 73. "Send", in connection with a record or notification, means:

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

1 (b) To cause the record or notification to be received within the time
2 that it would have been received if properly sent under subdivision (a) of
3 this paragraph.

4 74. "Software" means a computer program and any supporting information
5 provided in connection with a transaction relating to the program. Software
6 does not include a computer program that is included in the definition of
7 goods.

8 75. "State" means a state of the United States, the District of
9 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
10 insular possession subject to the jurisdiction of the United States.

11 76. "Supporting obligation" means a letter-of-credit right or secondary
12 obligation that supports the payment or performance of an account, chattel
13 paper, a document, a general intangible, an instrument or investment
14 property.

15 77. "Tangible chattel paper" means chattel paper evidenced by a record
16 or records consisting of information that is inscribed on a tangible medium.

17 78. "Termination statement" means an amendment of a financing statement
18 that:

19 (a) Identifies, by its file number, the initial financing statement to
20 which it relates; and

21 (b) Indicates either that it is a termination statement or that the
22 identified financing statement is no longer effective.

23 79. "Transmitting utility" means a person primarily engaged in the
24 business of:

25 (a) Operating a railroad, subway, street railway or trolley bus;

26 (b) Transmitting communications electrically, electromagnetically or
27 by light;

28 (c) Transmitting goods by pipeline or sewer; or

29 (d) Transmitting or producing and transmitting electricity, steam, gas
30 or water.

31 B. "CONTROL" AS PROVIDED IN SECTION 47-7106 AND the following
32 definitions in other sections apply to this chapter:

33	1. "Applicant"	Section 47-5102
34	2. "Beneficiary"	Section 47-5102
35	3. "Broker"	Section 47-8102
36	4. "Certificated security"	Section 47-8102
37	5. "Check"	Section 47-3104
38	6. "Clearing corporation"	Section 47-8102
39	7. "Contract for sale"	Section 47-2106
40	8. "Customer"	Section 47-4104
41	9. "Entitlement holder"	Section 47-8102
42	10. "Financial asset"	Section 47-8102
43	11. "Holder in due course"	Section 47-3302
44	12. "Issuer" (with respect to a letter of	
45	credit or letter-of-credit right)	Section 47-5102

1	13.	"Issuer" (with respect to a security)	Section 47-8201
2	14.	"ISSUER" (WITH RESPECT TO DOCUMENTS	
3		OF TITLE)	SECTION 47-7102
4	14.	15. "Lease"	Section 47-2A103
5	15.	16. "Lease agreement"	Section 47-2A103
6	16.	17. "Lease contract"	Section 47-2A103
7	17.	18. "Leasehold interest"	Section 47-2A103
8	18.	19. "Lessee"	Section 47-2A103
9	19.	20. "Lessee in ordinary course	
10		of business"	Section 47-2A103
11	20.	21. "Lessor"	Section 47-2A103
12	21.	22. "Lessor's residual interest"	Section 47-2A103
13	22.	23. "Letter of credit"	Section 47-5102
14	23.	24. "Merchant"	Section 47-2104
15	24.	25. "Negotiable instrument"	Section 47-3104
16	25.	26. "Nominated person"	Section 47-5102
17	26.	27. "Note"	Section 47-3104
18	27.	28. "Proceeds of a letter of credit"	Section 47-5114
19	28.	29. "Prove"	Section 47-3103
20	29.	30. "Sale"	Section 47-2106
21	30.	31. "Securities account"	Section 47-8501
22	31.	32. "Securities intermediary"	Section 47-8102
23	32.	33. "Security"	Section 47-8102
24	33.	34. "Security certificate"	Section 47-8102
25	34.	35. "Security entitlement"	Section 47-8102
26	35.	36. "Uncertificated security"	Section 47-8102

27 C. In addition, chapter 1 of this title contains general definitions
28 and principles of construction and interpretation applicable throughout this
29 chapter.

30 Sec. 39. Section 47-9203, Arizona Revised Statutes, is amended to
31 read:

32 47-9203. Attachment and enforceability of security interest;
33 proceeds; supporting obligations; formal requisites

34 A. A security interest attaches to collateral when it becomes
35 enforceable against the debtor with respect to the collateral, unless an
36 agreement expressly postpones the time of attachment.

37 B. Except as otherwise provided in subsections C through I of this
38 section, a security interest is enforceable against the debtor and third
39 parties with respect to the collateral only if:

- 40 1. Value has been given;
- 41 2. The debtor has rights in the collateral or the power to transfer
42 rights in the collateral to a secured party; and
- 43 3. One of the following conditions is met:

1 (a) The debtor has authenticated a security agreement that provides a
2 description of the collateral and, if the security interest covers timber to
3 be cut, a description of the land concerned;

4 (b) The collateral is not a certificated security and is in the
5 possession of the secured party under section 47-9313 pursuant to the
6 debtor's security agreement;

7 (c) The collateral is a certificated security in registered form and
8 the security certificate has been delivered to the secured party under
9 section 47-8301 pursuant to the debtor's security agreement; or

10 (d) The collateral is deposit accounts, electronic chattel paper,
11 investment property, ~~or~~ letter-of-credit rights OR ELECTRONIC DOCUMENTS, and
12 the secured party has control under section 47-7106, 47-9104, 47-9105,
13 47-9106 or 47-9107 pursuant to the debtor's security agreement.

14 C. Subsection B of this section is subject to section 47-4210 on the
15 security interest of a collecting bank, section 47-5118 on the security
16 interest of a letter-of-credit issuer or nominated person, section 47-9110 on
17 a security interest arising under chapter 2 or 2A of this title, and section
18 47-9206 on security interests in investment property.

19 D. A person becomes bound as debtor by a security agreement entered
20 into by another person if, by operation of law other than this chapter or by
21 contract:

22 1. The security agreement becomes effective to create a security
23 interest in the person's property; or

24 2. The person becomes generally obligated for the obligations of the
25 other person, including the obligation secured under the security agreement,
26 and acquires or succeeds to all or substantially all of the assets of the
27 other person.

28 E. If a new debtor becomes bound as debtor by a security agreement
29 entered into by another person:

30 1. The agreement satisfies subsection B, paragraph 3 of this section
31 with respect to existing or after-acquired property of the new debtor to the
32 extent the property is described in the agreement; and

33 2. Another agreement is not necessary to make a security interest in
34 the property enforceable.

35 F. The attachment of a security interest in collateral gives the
36 secured party the rights to proceeds provided by section 47-9315 and is also
37 attachment of a security interest in a supporting obligation for the
38 collateral.

39 G. The attachment of a security interest in a right to payment or
40 performance secured by a security interest or other lien on personal or real
41 property is also attachment of a security interest in the security interest,
42 mortgage or other lien.

43 H. The attachment of a security interest in a securities account is
44 also attachment of a security interest in the security entitlements carried
45 in the securities account.

1 I. The attachment of a security interest in a commodity account is
2 also attachment of a security interest in the commodity contracts carried in
3 the commodity account.

4 Sec. 40. Section 47-9207, Arizona Revised Statutes, is amended to
5 read:

6 47-9207. Rights and duties of secured party having possession
7 or control of collateral

8 A. Except as otherwise provided in subsection D of this section, a
9 secured party shall use reasonable care in the custody and preservation of
10 collateral in the secured party's possession. In the case of chattel paper
11 or an instrument, reasonable care includes taking necessary steps to preserve
12 rights against prior parties unless otherwise agreed.

13 B. Except as otherwise provided in subsection D of this section, if a
14 secured party has possession of collateral:

15 1. Reasonable expenses, including the cost of insurance and payment of
16 taxes or other charges, incurred in the custody, preservation, use or
17 operation of the collateral are chargeable to the debtor and are secured by
18 the collateral;

19 2. The risk of accidental loss or damage is on the debtor to the
20 extent of a deficiency in any effective insurance coverage;

21 3. The secured party shall keep the collateral identifiable, but
22 fungible collateral may be commingled; and

23 4. The secured party may use or operate the collateral:

24 (a) For the purpose of preserving the collateral or its value;

25 (b) As permitted by an order of a court having competent jurisdiction;

26 or

27 (c) Except in the case of consumer goods, in the manner and to the
28 extent agreed by the debtor.

29 C. Except as otherwise provided in subsection D of this section, a
30 secured party having possession of collateral or control of collateral under
31 section 47-7106, 47-9104, 47-9105, 47-9106 or 47-9107:

32 1. May hold as additional security any proceeds, except money or
33 funds, received from the collateral;

34 2. Shall apply money or funds received from the collateral to reduce
35 the secured obligation, unless remitted to the debtor; and

36 3. May create a security interest in the collateral.

37 D. If the secured party is a buyer of accounts, chattel paper, payment
38 intangibles or promissory notes or a consignor:

39 1. Subsection A of this section does not apply unless the secured
40 party is entitled under an agreement:

41 (a) To charge back uncollected collateral; or

42 (b) Otherwise to full or limited recourse against the debtor or a
43 secondary obligor based on the nonpayment or other default of an account
44 debtor or other obligor on the collateral; and

45 2. Subsections B and C of this section do not apply.

1 Sec. 41. Section 47-9208, Arizona Revised Statutes, is amended to
2 read:

3 47-9208. Additional duties of secured party having control of
4 collateral

5 A. This section applies to cases in which there is no outstanding
6 secured obligation and the secured party is not committed to make advances,
7 incur obligations or otherwise give value.

8 B. Within ten days after receiving an authenticated demand by the
9 debtor:

10 1. A secured party having control of a deposit account under section
11 47-9104, subsection A, paragraph 2 shall send to the bank with which the
12 deposit account is maintained an authenticated statement that releases the
13 bank from any further obligation to comply with instructions originated by
14 the secured party;

15 2. A secured party having control of a deposit account under section
16 47-9104, subsection A, paragraph 3 shall:

17 (a) Pay the debtor the balance on deposit in the deposit account; or

18 (b) Transfer the balance on deposit into a deposit account in the
19 debtor's name;

20 3. A secured party, other than a buyer, having control of electronic
21 chattel paper under section 47-9105 shall:

22 (a) Communicate the authoritative copy of the electronic chattel paper
23 to the debtor or its designated custodian;

24 (b) If the debtor designates a custodian that is the designated
25 custodian with which the authoritative copy of the electronic chattel paper
26 is maintained for the secured party, communicate to the custodian an
27 authenticated record releasing the designated custodian from any further
28 obligation to comply with instructions originated by the secured party and
29 instructing the custodian to comply with instructions originated by the
30 debtor; and

31 (c) Take appropriate action to enable the debtor or its designated
32 custodian to make copies of or revisions to the authoritative copy that add
33 or change an identified assignee of the authoritative copy without the
34 consent of the secured party;

35 4. A secured party having control of investment property under section
36 47-8106, subsection D, paragraph 2 or SECTION 47-9106, subsection B shall
37 send to the securities intermediary or commodity intermediary with which the
38 security entitlement or commodity contract is maintained an authenticated
39 record that releases the securities intermediary or commodity intermediary
40 from any further obligation to comply with entitlement orders or directions
41 originated by the secured party; and

42 5. A secured party having control of a letter-of-credit right under
43 section 47-9107 shall send to each person having an unfulfilled obligation to
44 pay or deliver proceeds of the letter of credit to the secured party an

1 authenticated release from any further obligation to pay or deliver proceeds
2 of the letter of credit to the secured party— ; AND

3 6. A SECURED PARTY HAVING CONTROL OF AN ELECTRONIC DOCUMENT SHALL:

4 (a) GIVE CONTROL OF THE ELECTRONIC DOCUMENT TO THE DEBTOR OR ITS
5 DESIGNATED CUSTODIAN;

6 (b) IF THE DEBTOR DESIGNATES A CUSTODIAN THAT IS THE DESIGNATED
7 CUSTODIAN WITH WHICH THE AUTHORITATIVE COPY OF THE ELECTRONIC DOCUMENT IS
8 MAINTAINED FOR THE SECURED PARTY, COMMUNICATE TO THE CUSTODIAN AN
9 AUTHENTICATED RECORD RELEASING THE DESIGNATED CUSTODIAN FROM ANY FURTHER
10 OBLIGATION TO COMPLY WITH INSTRUCTIONS ORIGINATED BY THE SECURED PARTY AND
11 INSTRUCTING THE CUSTODIAN TO COMPLY WITH INSTRUCTIONS ORIGINATED BY THE
12 DEBTOR; AND

13 (c) TAKE APPROPRIATE ACTION TO ENABLE THE DEBTOR OR ITS DESIGNATED
14 CUSTODIAN TO MAKE COPIES OF OR REVISIONS TO THE AUTHORITATIVE COPY THAT ADD
15 OR CHANGE AN IDENTIFIED ASSIGNEE OF THE AUTHORITATIVE COPY WITHOUT THE
16 CONSENT OF THE SECURED PARTY.

17 Sec. 42. Section 47-9301, Arizona Revised Statutes, is amended to
18 read:

19 47-9301. Law governing perfection and priority of security
20 interests

21 Except as otherwise provided in sections 47-9303 through 47-9306, the
22 following rules determine the law governing perfection, the effect of
23 perfection or nonperfection and the priority of a security interest in
24 collateral:

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

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

33 3. Except as otherwise provided in paragraph 4 of this section, while
34 TANGIBLE negotiable documents, goods, instruments, money or tangible chattel
35 paper is located in a jurisdiction, the local law of that jurisdiction
36 governs:

37 (a) Perfection of a security interest in the goods by filing a fixture
38 filing;

39 (b) Perfection of a security interest in timber to be cut; and

40 (c) The effect of perfection or nonperfection and the priority of a
41 nonpossessory security interest in the collateral.

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

1 Sec. 43. Section 47-9310, Arizona Revised Statutes, is amended to
2 read:

3 47-9310. When filing required to perfect security interest or
4 agricultural lien; security interests and
5 agricultural liens to which filing provisions do not
6 apply

7 A. Except as otherwise provided in subsection B of this section and
8 section 47-9312, subsection B, a financing statement must be filed to perfect
9 all security interests and agricultural liens.

10 B. The filing of a financing statement is not necessary to perfect a
11 security interest:

12 1. That is perfected under section 47-9308, subsection D, E, F or G;

13 2. That is perfected under section 47-9309 when it attaches;

14 3. In property subject to a statute, regulation or treaty described in
15 section 47-9311, subsection A;

16 4. In goods in possession of a bailee that is perfected under section
17 47-9312, subsection D, paragraph 1 or 2;

18 5. In certificated securities, documents, goods or instruments that is
19 perfected without filing, CONTROL or possession under section 47-9312,
20 subsection E, F or G;

21 6. In collateral in the secured party's possession under section
22 47-9313;

23 7. In a certificated security that is perfected by delivery of the
24 security certificate to the secured party under section 47-9313;

25 8. In deposit accounts, electronic chattel paper, ELECTRONIC
26 DOCUMENTS, investment property or letter-of-credit rights that is perfected
27 by control under section 47-9314;

28 9. In proceeds that is perfected under section 47-9315; or

29 10. That is perfected under section 47-9316.

30 C. If a secured party assigns a perfected security interest or
31 agricultural lien, a filing under this chapter is not required to continue
32 the perfected status of the security interest against creditors of and
33 transferees from the original debtor.

34 Sec. 44. Section 47-9312, Arizona Revised Statutes, is amended to
35 read:

36 47-9312. Perfection of security interests in chattel paper,
37 deposit accounts, documents, goods covered by
38 documents, instruments, investment property,
39 letter-of-credit rights and money; perfection by
40 permissive filing; temporary perfection without
41 filing or transfer of possession

42 A. A security interest in chattel paper, negotiable documents,
43 instruments or investment property may be perfected by filing.

44 B. Except as otherwise provided in section 47-9315, subsections C and
45 D for proceeds:

1 1. A security interest in a deposit account may be perfected only by
2 control under section 47-9314;

3 2. And except as otherwise provided in section 47-9308, subsection D,
4 a security interest in a letter-of-credit right may be perfected only by
5 control under section 47-9314; and

6 3. A security interest in money may be perfected only by the secured
7 party's taking possession under section 47-9313.

8 C. While goods are in the possession of a bailee that has issued a
9 negotiable document covering the goods:

10 1. A security interest in the goods may be perfected by perfecting a
11 security interest in the document; and

12 2. A security interest perfected in the document has priority over any
13 security interest that becomes perfected in the goods by another method
14 during that time.

15 D. While goods are in the possession of a bailee that has issued a
16 nonnegotiable document covering the goods, a security interest in the goods
17 may be perfected by:

18 1. Issuance of a document in the name of the secured party;

19 2. The bailee's receipt of notification of the secured party's
20 interest; or

21 3. Filing as to the goods.

22 E. A security interest in certificated securities, negotiable
23 documents or instruments is perfected without filing or the taking of
24 possession OR CONTROL for a period of twenty days from the time it attaches
25 to the extent that it arises for new value given under an authenticated
26 security agreement.

27 F. A perfected security interest in a negotiable document or goods in
28 possession of a bailee, other than one that has issued a negotiable document
29 for the goods, remains perfected for twenty days without filing if the
30 secured party makes available to the debtor the goods or documents
31 representing the goods for the purpose of:

32 1. Ultimate sale or exchange; or

33 2. Loading, unloading, storing, shipping, transshipping,
34 manufacturing, processing or otherwise dealing with them in a manner
35 preliminary to their sale or exchange.

36 G. A perfected security interest in a certificated security or
37 instrument remains perfected for twenty days without filing if the secured
38 party delivers the security certificate or instrument to the debtor for the
39 purpose of:

40 1. Ultimate sale or exchange; or

41 2. Presentation, collection, enforcement, renewal or registration of
42 transfer.

43 H. After the twenty days specified in subsection E, F or G of this
44 section expires, perfection depends on compliance with this chapter.

1 Sec. 45. Section 47-9313, Arizona Revised Statutes, is amended to
2 read:

3 47-9313. When possession by or delivery to secured party
4 perfects security interest without filing

5 A. Except as otherwise provided in subsection B of this section, a
6 secured party may perfect a security interest in TANGIBLE negotiable
7 documents, goods, instruments, money or tangible chattel paper by taking
8 possession of the collateral. A secured party may perfect a security
9 interest in certificated securities by taking delivery of the certificated
10 securities under section 47-8301.

11 B. With respect to goods covered by a certificate of title issued by
12 this state, a secured party may perfect a security interest in the goods by
13 taking possession of the goods only in the circumstances described in section
14 47-9316, subsection D.

15 C. With respect to collateral other than certificated securities and
16 goods covered by a document, a secured party takes possession of collateral
17 in the possession of a person other than the debtor, the secured party or a
18 lessee of the collateral from the debtor in the ordinary course of the
19 debtor's business, when:

20 1. The person in possession authenticates a record acknowledging that
21 it holds possession of the collateral for the secured party's benefit; or

22 2. The person takes possession of the collateral after having
23 authenticated a record acknowledging that it will hold possession of
24 collateral for the secured party's benefit.

25 D. If perfection of a security interest depends on possession of the
26 collateral by a secured party, perfection occurs no earlier than the time the
27 secured party takes possession and continues only while the secured party
28 retains possession.

29 E. A security interest in a certificated security in registered form
30 is perfected by delivery when delivery of the certificated security occurs
31 under section 47-8301 and remains perfected by delivery until the debtor
32 obtains possession of the security certificate.

33 F. A person in possession of collateral is not required to acknowledge
34 that it holds possession for a secured party's benefit.

35 G. If a person acknowledges that it holds possession for the secured
36 party's benefit:

37 1. The acknowledgment is effective under subsection C of this section
38 or section 47-8301, subsection A, even if the acknowledgment violates the
39 rights of a debtor; and

40 2. Unless the person otherwise agrees or law other than this chapter
41 otherwise provides, the person does not owe any duty to the secured party and
42 is not required to confirm the acknowledgment to another person.

43 H. A secured party having possession of collateral does not relinquish
44 possession by delivering the collateral to a person other than the debtor or
45 a lessee of the collateral from the debtor in the ordinary course of the

1 debtor's business if the person was instructed before the delivery or is
2 instructed contemporaneously with the delivery:

3 1. To hold possession of the collateral for the secured party's
4 benefit; or

5 2. To redeliver the collateral to the secured party.

6 I. A secured party does not relinquish possession, even if a delivery
7 under subsection H of this section violates the rights of a debtor. A person
8 to which collateral is delivered under subsection H of this section does not
9 owe any duty to the secured party and is not required to confirm the delivery
10 to another person unless the person otherwise agrees or law other than this
11 article otherwise provides.

12 Sec. 46. Section 47-9314, Arizona Revised Statutes, is amended to
13 read:

14 47-9314. Perfection by control

15 A. A security interest in investment property, deposit accounts,
16 letter-of-credit rights, ~~or~~ electronic chattel paper OR ELECTRONIC DOCUMENTS
17 may be perfected by control of the collateral under section 47-7106, 47-9104,
18 47-9105, 47-9106 or 47-9107.

19 B. A security interest in deposit accounts, electronic chattel paper,
20 ~~or~~ letter-of-credit rights OR ELECTRONIC DOCUMENTS is perfected by control
21 under section 47-7106, 47-9104, 47-9105 or 47-9107 when the secured party
22 obtains control and remains perfected by control only while the secured party
23 retains control.

24 C. A security interest in investment property is perfected by control
25 under section 47-9106 from the time the secured party obtains control and
26 remains perfected by control until:

27 1. The secured party does not have control; and

28 2. One of the following occurs:

29 (a) If the collateral is a certificated security, the debtor has or
30 acquires possession of the security certificate;

31 (b) If the collateral is an uncertificated security, the issuer has
32 registered or registers the debtor as the registered owner; or

33 (c) If the collateral is a security entitlement, the debtor is or
34 becomes the entitlement holder.

35 Sec. 47. Section 47-9317, Arizona Revised Statutes, is amended to
36 read:

37 47-9317. Interests that take priority over or take free of
38 security interest or agricultural lien

39 A. A security interest or agricultural lien is subordinate to the
40 rights of:

41 1. A person entitled to priority under section 47-9322; and

42 2. Except as otherwise provided in subsection E of this section, a
43 person that becomes a lien creditor before the earlier of the time:

44 (a) The security interest or agricultural lien is perfected; or

1 (b) One of the conditions specified in section 47-9203, subsection B,
2 paragraph 3 is met and a financing statement covering the collateral is
3 filed.

4 B. Except as otherwise provided in subsection E of this section, a
5 buyer, other than a secured party, of tangible chattel paper, TANGIBLE
6 documents, goods, instruments or a security certificate takes free of a
7 security interest or agricultural lien if the buyer gives value and receives
8 delivery of the collateral without knowledge of the security interest or
9 agricultural lien and before it is perfected.

10 C. Except as otherwise provided in subsection E of this section, a
11 lessee of goods takes free of a security interest or agricultural lien if the
12 lessee gives value and receives delivery of the collateral without knowledge
13 of the security interest or agricultural lien and before it is perfected.

14 D. A licensee of a general intangible or a buyer, other than a secured
15 party, of accounts, electronic chattel paper, ELECTRONIC DOCUMENTS, general
16 intangibles or investment property other than a certificated security takes
17 free of a security interest if the licensee or buyer gives value without
18 knowledge of the security interest and before it is perfected.

19 E. Except as otherwise provided in sections 47-9320 and 47-9321, if a
20 person files a financing statement with respect to a purchase money security
21 interest before or within twenty days after the debtor receives delivery of
22 the collateral, the security interest takes priority over the rights of a
23 buyer, lessee or lien creditor that arise between the time the security
24 interest attaches and the time of filing.

25 Sec. 48. Section 47-9338, Arizona Revised Statutes, is amended to
26 read:

27 47-9338. Priority of security interest or agricultural lien
28 perfected by filed financing statement providing
29 certain incorrect information

30 If a security interest or agricultural lien is perfected by a filed
31 financing statement providing information that is described in section
32 47-9516, subsection B, paragraph 5 and that is incorrect at the time the
33 financing statement is filed:

34 1. The security interest or agricultural lien is subordinate to a
35 conflicting perfected security interest in the collateral to the extent that
36 the holder of the conflicting security interest gives value in reasonable
37 reliance on the incorrect information; and

38 2. A purchaser, other than a secured party, of the collateral takes
39 free of the security interest or agricultural lien to the extent that, in
40 reasonable reliance on the incorrect information, the purchaser gives value
41 and, in the case of TANGIBLE chattel paper, TANGIBLE documents, goods,
42 instruments or a security certificate, receives delivery of the collateral.

1 Sec. 49. Section 47-9601, Arizona Revised Statutes, is amended to
2 read:

3 47-9601. Rights after default; judicial enforcement; consignor
4 or buyer of accounts, chattel paper, payment
5 intangibles or promissory notes

6 A. After default, a secured party has the rights provided in this
7 article and, except as otherwise provided in section 47-9602, those provided
8 by agreement of the parties. A secured party:

9 1. May reduce a claim to judgment, foreclose or otherwise enforce the
10 claim, security interest or agricultural lien by any available judicial
11 procedure; and

12 2. If the collateral is documents, may proceed either as to the
13 documents or as to the goods they cover.

14 B. A secured party in possession of collateral or control of
15 collateral under section 47-7106, 47-9104, 47-9105, 47-9106 or 47-9107 has
16 the rights and duties provided in section 47-9207.

17 C. The rights under subsections A and B of this section are cumulative
18 and may be exercised simultaneously.

19 D. Except as otherwise provided in subsection G of this section and
20 section 47-9605, after default, a debtor and an obligor have the rights
21 provided in this article and by agreement of the parties.

22 E. If a secured party has reduced its claim to judgment, the lien of
23 any levy that may be made on the collateral by virtue of an execution based
24 on the judgment relates back to the earliest of:

25 1. The date of perfection of the security interest or agricultural
26 lien in the collateral;

27 2. The date of filing a financing statement covering the collateral;
28 or

29 3. Any date specified in a statute under which the agricultural lien
30 was created.

31 F. A sale pursuant to an execution is a foreclosure of the security
32 interest or agricultural lien by judicial procedure within the meaning of
33 this section. A secured party may purchase at the sale and thereafter hold
34 the collateral free of any other requirements of this chapter.

35 G. Except as otherwise provided in section 47-9607, subsection C, this
36 article imposes no duties on a secured party that is a consignor or is a
37 buyer of accounts, chattel paper, payment intangibles or promissory notes.

38 Sec. 50. Repeal

39 Section 47-10102, Arizona Revised Statutes, is repealed.

APPROVED BY THE GOVERNOR APRIL 6, 2006

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2006.