

BILL ANALYSIS

Senate Research Center

S.B. 1593
By: Carona
Business & Commerce
5/27/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Chapter 7 of the Texas Business and Commerce Code (Article 7 of the Uniform Commercial Code or UCC) governs warehouse receipts, bills of lading, and other documents of title. The National Conference of Commissioners on Uniform State Laws promulgated changes to Article 7 of UCC and conforming amendments to some other articles of UCC.

S.B. 1593 enacts those provisions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 7, Business & Commerce Code, as follows:

CHAPTER 7. DOCUMENTS OF TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.101. SHORT TITLE. Authorizes this chapter to be cited as Uniform Commercial Code--Documents of Title.

Sec. 7.102. DEFINITIONS AND INDEX OF DEFINITIONS. Defines "bailee," "carrier," "consignee," "consignor," "delivery order," "goods," "issuer," "person entitled under the document," "shipper," "sign," "warehouse," "contract for sale," "lessee in ordinary course of business," and "receipt of goods." Provides that, in addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Sec. 7.103. RELATION OF ARTICLE TO TREATY OR STATUTE. (a) Provides that this chapter is subject to any treaty or statute of the United States or a regulatory statute of this state to the extent that the treaty, statute, or regulatory statute is applicable.

(b) Provides that this chapter does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this chapter; however, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

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

(d) Provides that, to the extent that there is a conflict between Chapter 43 and this chapter, this chapter governs.

Sec. 7.104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE. Provides that a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person and that any other document of title is nonnegotiable. Provides that a bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another name person. Provides that a document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Sec. 7.105. REISSUANCE IN ALTERNATIVE MEDIUM. (a) Authorizes the issuer of an electronic document, upon request of a person entitled under an electronic document of title, to issue a tangible document of title as a substitute for the electronic document if certain requirements are met.

(b) Provides that, upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with Subsection (a), certain provisions take effect.

(c) Authorizes the issuer of the tangible document, upon request of a person entitled under a tangible document of title, to issue an electronic document of title as a substitute for the tangible document in certain situations.

(d) Provides that, upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with Subsection (c), certain provisions take effect.

Sec. 7.106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE. (a) Provides that a person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to whom the electronic document was issued or transferred.

(b) Provides that a system satisfies Subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in a specific manner.

SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec. 7.201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER BOND. Authorizes a warehouse receipt to be issued by any warehouse. Provides that, if goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

Sec. 7.202. FORM OF WAREHOUSE RECEIPT. Provides that a warehouse receipt need not be in any particular form and that, unless a warehouse receipt provides for specific information, the warehouse is liable for damages caused to a person injured by that information's omission. Authorizes a warehouse to insert in its receipt any terms that are not contrary to this title and do not impair its obligation of delivery under Section 7.403 or its duty of care under Section 7.204 and provides that any contrary provisions are ineffective.

Sec. 7.203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION. Authorizes a party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document, to recover from the issuer damages caused by the nonreceipt or misdescription of the goods, with certain exceptions.

Sec. 7.204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY. (a) Provides that a warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances; however, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

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

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

Sec. 7.205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES. Provides that a buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Sec. 7.206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION. (a) Authorizes a warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, to require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. Authorizes the warehouse, if the goods are not removed before the date specified in the notice, to sell them pursuant to Section 7.210.

(b) Authorizes a warehouse, if a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in Subsection (a) and Section 7.210, to specify in the notice given under Subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, to sell them at public sale held not less than one week after a single advertisement or posting.

(c) Authorizes the warehouse, if, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, to sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. Authorizes the warehouse, if, after a reasonable effort, it is unable to sell the goods, to dispose of them in any lawful manner and provides that the warehouse does not incur liability by reason of that disposition.

(d) Requires a warehouse to deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.

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

Sec. 7.207. **GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.** Requires a warehouse, unless the warehouse receipt provides otherwise, to keep separate the goods covered by each receipt. Authorizes different lots of fungible goods to be commingled. Provides that, if different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share and, if because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against, the persons entitled include all holders to which overissued receipts have been duly negotiated.

Sec. 7.208. **ALTERED WAREHOUSE RECEIPTS.** Authorizes a good faith purchaser for value and without notice of the lack of authority, if a blank in a negotiable tangible warehouse receipt has been filled in without authority, to treat the insertion as authorized. Provides that any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Sec. 7.209. **LIEN OF WAREHOUSE.** (a) Provides that a warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. Provides that, if the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the goods have been delivered by the warehouse; however, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt, or, if no charges are specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) Authorizes the warehouse to reserve a security interest under Chapter 9, Business and Commerce Code, against the bailor for the maximum amount specified on the receipt for charges other than those specified in Subsection (a), such as for money advanced and interest. Provides that a security interest is governed by Chapter 9, Business and Commerce Code.

(c) Provides that a warehouse's lien for charges and expenses under Subsection (a) or a security interest under Subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid; however, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not take specific actions.

(d) Provides that a warehouse's lien on household goods for charges and expenses in relation to the goods under Subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. Defines "household goods."

(e) Provides that a warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Sec. 7.210. **ENFORCEMENT OF WAREHOUSE'S LIEN.** (a) Authorizes a warehouse's lien, except as otherwise provided in Subsection (b), to be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. Sets forth requirements for information to be included in the notification. Provides that the fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of

itself sufficient to establish that the sale was not made in a commercially reasonable manner. Sets forth guidelines for establishing that a sale has been made in a commercially reasonable manner and provides that a sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, with certain exceptions.

(b) Authorizes a warehouse's lien on goods, other than goods stored by a merchant in the course of its business, to be enforced only if certain requirements are satisfied.

(c) Authorizes any person claiming a right to the goods, before any sale pursuant to this section, to pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. Provides that, in that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(d) Authorizes a warehouse to buy at any public sale held pursuant to this section.

(e) Provides that a purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) Authorizes a warehouse to satisfy its lien from the proceeds of any sale pursuant to this section but requires a warehouse to hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) Provides that the rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) Authorizes a lien, if it is on goods stored by a merchant in the course of its business, to be enforced in accordance with Subsection (a) or (b).

(i) Provides that a warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS

Sec. 7.301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING. (a) Authorizes a consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, to recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents or condition of content of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.

(b) Requires the issuer of the bill of lading, if goods are loaded by the issuer, to count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(c) Requires the issuer of the bill of lading, if bulk goods are loaded by a shipper that makes available to the issuer adequate facilities for weighing those goods, to ascertain the kind and quantity within a reasonable time after receiving the

shipper's request in a record to do so. Provides that, in that case, "shipper's weight" or words of similar import are ineffective.

(d) Authorizes the issuer, by including in the bill of lading the words "shipper's weight, load and count," or words of similar import, to indicate that the goods were loaded by the shipper, and, if that statement is true, provides that the issuer is not liable for damages caused by the improper loading; however, omission of such words does not imply liability for damages caused by improper loading.

(e) Provides that a shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and requires the shipper to indemnify the issuer against the damage caused by inaccuracies in those particulars. Provides that this right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

Sec. 7.302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE. (a) Provides that the issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document; however, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) Provides that, if goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer and that the person's obligation is discharged by delivery of the goods to another person pursuant to the document and does not include liability for breach by any other person or by the issuer.

(c) Provides that the issuer of a through bill of lading or other document of title described in Subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred, a specific amount.

Sec. 7.303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS. Authorizes a carrier, unless the bill of lading otherwise provides, to deliver the goods to a person or destination other than that stated in the bill or to otherwise dispose of the goods, without liability for misdelivery, on instructions from certain persons. Authorizes a person to which the bill is duly negotiated, unless instructions described in Subsection (a) are included in a negotiable bill of lading, to hold the bailee according to the original terms.

Sec. 7.304. TANGIBLE BILLS OF LADING IN SET. (a) Prohibits a tangible bill of lading, except as customary in international transportation, from being issued in a set of parts. Provides that the issuer is liable for damages caused by a violation of this subsection.

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

(c) Provides that, if a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from

the carrier in good faith and discharged the carrier's obligation by surrendering its part.

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

(e) Provides that the bailee is obliged to deliver in accordance with Subchapter D against the first presented part of a tangible bill of lading lawfully issued in a set and that delivery in this manner discharges the bailee's obligation on the whole bill.

Sec. 7.305. DESTINATION BILLS. Authorizes a carrier, instead of issuing a bill of lading to the consignor at the place of shipment and at the request of the consignor, to procure the bill to be issued at destination or at any other place designated in the request. Authorizes the issuer, upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods and subject to Section 7.105, to procure a substitute bill to be issued at any place designated in the request.

Sec. 7.306. ALTERED BILLS OF LADING. Provides that an unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Sec. 7.307. LIEN OF CARRIER. (a) Provides that a carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law; however, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

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

(c) Provides that a carrier loses its lien on any goods that it voluntarily or unjustifiably refuses to deliver.

Sec. 7.308. ENFORCEMENT OF CARRIER'S LIEN. (a) Authorizes a carrier's lien on goods to be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. Sets forth requirements for information to be included in the notification. Provides that the fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. Sets forth guidelines for establishing that a sale has been made in a commercially reasonable manner and provides that a sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, with certain exceptions.

(b) Authorizes any person claiming a right in the goods, before any sale pursuant to this section, to pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. Prohibits the goods from being sold in that event and requires the goods to be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(c) Authorizes a carrier to buy at any public sale pursuant to this section.

(d) Provides that a purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) Authorizes a carrier to satisfy its lien from the proceeds of any sale pursuant to this section but requires the carrier to hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) Provides that the rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) Authorizes a carrier's lien to be enforced pursuant to either Subsection (a) or the procedure set forth in Section 7.210(b).

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

Sec. 7.309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY. (a) Requires a carrier that issues a bill of lading, whether negotiable or nonnegotiable, to exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. Provides that this subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Authorizes damages to be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and is advised of the opportunity; however, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Authorizes reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment to be included in a bill of lading or a transportation agreement.

SUBCHAPTER D. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Sec. 7.401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER. Provides that the obligations imposed by this chapter apply to a document of title even if certain irregularities are present in the issue of the receipt or the bill of lading or the conduct of the issuer.

Sec. 7.402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE. Provides that a duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in specific cases. Provides that the issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

Sec. 7.403. OBLIGATION OF WAREHOUSE OR CARRIER TO DELIVER; EXCUSE. (a) Requires a bailee to deliver the goods to a person entitled under a document of title if the person complies with Subsections (b) and (c), unless and to the extent that the bailee establishes any of a list of specific findings.

(b) Requires a person claiming goods covered by a document of title to satisfy the bailee's lien if the bailee so requests or the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Requires that, unless the person claiming the goods is one against which the document of title does not confer a right under Section 7.503(a), the person claiming a document surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries and the bailee cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

Sec. 7.404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO DOCUMENT OF TITLE. Provides that a bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title pursuant to this chapter is not liable for the goods even if the person from which the bailee received the goods did not have authority to procure the document or dispose of the goods or the person to which the bailee delivered the goods did not have authority to receive the goods.

SUBCHAPTER E. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

Sec. 7.501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION. (a) Sets forth the rules which apply to a negotiable tangible document of title.

(b) Sets forth the rules which apply to a negotiable electronic document of title.

(c) Provides that endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) Provides that the naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

Sec. 7.502. RIGHTS ACQUIRED BY DUE NEGOTIATION. Sets forth the specific rights, subject to Sections 7.205 and 7.503, acquired by a holder to which a negotiable document of title has been duly negotiated. Provides that, subject to Section 7.503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if certain circumstances occur.

Sec. 7.503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. (a) Provides that a document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not take certain actions.

(b) Provides that title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading has been duly negotiated. Authorizes that title to be defeated under Section 7.504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Provides that title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated; however, delivery by the carrier in accordance with Subchapter D pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Sec. 7.504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; STOPPAGE OF DELIVERY. (a) Provides that a transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) Authorizes the rights of the transferee, in the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, to be defeated by certain persons.

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

(d) Authorizes delivery of the goods pursuant to a nonnegotiable document of title to be stopped by a seller under Section 2.705 or a lessor under Section 2A.526, subject to the requirements of due notification in those sections. Provides that a bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Sec. 7.505. INDORSER NOT GUARANTOR FOR OTHER PARTIES. Provides that the indorsement of a tangible document issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

Sec. 7.506. DELIVERY WITHOUT INDORSEMENT; RIGHT TO COMPEL INDORSEMENT. Provides that the transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Sec. 7.507. WARRANTIES ON NEGOTIATIONS OR DELIVERY OF DOCUMENT OF TITLE. Provides that if a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 7.508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that the document is genuine, the transferor does not have knowledge of any fact that would impair the document's validity or worth, and the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Sec. 7.508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE. Provides that a collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Sec. 7.509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT. Provides that whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Chapter 2, 2A, or 5, Business and Commerce Code.

SUBCHAPTER F. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

Sec. 7.601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE. (a) Authorizes a court, if a document of title is lost, stolen, or destroyed, to order delivery of the goods or issuance of a substitute document and authorizes the bailee, without liability to any person, to comply with the order. Prohibits the court, if the document was

negotiable, from ordering delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. Authorizes the court, if the document was nonnegotiable, to require security and to order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) Provides that a bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby and, if the delivery is not in good faith, the bailee is liable for conversion. Provides that delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery.

Sec. 7.602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE DOCUMENT OF TITLE. Provides that, unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. Prohibits the bailee from being compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. Provides that a purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Sec. 7.603. CONFLICTING CLAIMS; INTERPLEADER. Provides that, if more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. Authorizes the bailee to assert an interpleader either in defending an action for nondelivery of the goods or by original action.

Deletes existing text of current Chapter 7 (Warehouse Receipts; Bills of Lading and Other Documents of Title), Business & Commerce Code.

SECTION 2. Amends Sections 1.201(b)(5), (6), (15), (16), (21) and (42), Business & Commerce Code, to redefine "bearer," "bill of lading," "delivery," "document of title," "holder," and "warehouse receipt."

SECTION 3. Amends Section 2.103(c), Business & Commerce Code, to add the definition of "control" in Section 7.106, Business & Commerce Code, as a definition that applies to this chapter.

SECTION 4. Amends Section 2.104(b), Business & Commerce Code, to redefine "financing agency."

SECTION 5. Amends Section 2.310, Business & Commerce Code, to provide that, unless otherwise agreed, if delivery is authorized and made by way of documents of title otherwise than by Subdivision (2) then payment is due, regardless of where the goods are to be received, at the time and place at which the buyer is to receive delivery of the tangible documents or at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence, rather than regardless of where the goods are to be received.

SECTION 6. Amends Section 2.401(c), Business & Commerce Code, to provide that, unless otherwise explicitly agreed where delivery is to be made without moving the goods, if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document.

SECTION 7. Amends Section 2.503(e), Business & Commerce Code, to provide that, where the contract resides with the seller to deliver the documents, tender through customary banking

channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

SECTION 8. Amends Section 2.505, Business & Commerce Code, to provide that, where the seller has identified goods to the contract by or before shipment, a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (Subsection b of Section 2.507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

SECTION 9. Amends Section 2.506(b), Business & Commerce Code, to provide that the right to reimbursement of a financing agency, which has in good faith honored or purchased the draft under commitment to or authority from the buyer, is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular, rather than apparently regular on its face.

SECTION 10. Amends Section 2.509(b), Business & Commerce Code, to provide that, where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer on the buyer's receipt of possession or control of a negotiable document of title covering the goods. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 2.605(b), Business & Commerce Code, to make a conforming change.

SECTION 12. Amends Sections 2.705(b) and (c), Business & Commerce Code, to authorize the seller, as against such buyer, to stop delivery until a specific acknowledgement to the buyer by a carrier by reshipment or as a warehouse, rather than warehouseman. Makes a conforming change.

SECTION 13. Amends Sections 2A.103(a)(1) and (15), Business & Commerce Code, to redefine "buyer in the ordinary course of business" and "lessee in ordinary course of business."

SECTION 14. Amends Section 2A.514(b), Business & Commerce Code, to make a conforming change.

SECTION 15. Amends Section 2A.526(b), Business & Commerce Code, to make a conforming change.

SECTION 16. Amends Section 4.104(c), Business & Commerce Code, to make a conforming change.

SECTION 17. Amends Section 4.210(c), Business & Commerce Code, to make a conforming change.

SECTION 18. Amends Section 8.103, Business & Commerce Code, by adding Subsection (g), to provide that a document of title, as defined in Section 1.201(b)(16), Business & Commerce Code, is not a financial asset unless Section 8.102(a)(9)(C), Business & Commerce Code, applies.

SECTION 19. Amends Section 9.102(b), Business & Commerce Code, make a conforming change.

SECTION 20. Amends Section 9.203(b), Business & Commerce Code, to provide that, except as otherwise provided in Subsections (c)-(j), a security interest is enforceable against the debtor and third parties with respect to the collateral the collateral is electronic documents, and the secured party has control under Section 7.106, Business & Commerce Code, pursuant to the debtor's security agreement.

SECTION 21. Amends Section 9.207(c), Business & Commerce Code, to make a conforming change.

SECTION 22. Amends Section 9.208(b), Business & Commerce Code, to require that, within 10 days after receiving an authenticated demand by the debtor, a secured party having control of an electronic document give control of the electronic document to the debtor or its designated custodian, if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor, and take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 23. Amends Section 9.301, Business & Commerce Code, to make a conforming change.

SECTION 24. Amends Section 9.310(b), Business & Commerce Code, to make conforming changes.

SECTION 25. Amends Section 9.312(e), Business & Commerce Code, to make a conforming change.

SECTION 26. Amends Section 9.313(a), Business & Commerce Code, to make a conforming change.

SECTION 27. Amends Sections 9.314(a) and (b), Business & Commerce Code, to make conforming changes.

SECTION 28. Amends Sections 9.317(b) and (d), Business & Commerce Code, to make conforming changes.

SECTION 29. Amends Section 9.338, Business & Commerce Code, to make conforming changes.

SECTION 30. Amends Section 9.601(b), Business & Commerce Code, to make a conforming change.

SECTION 31. Makes application of this Act, to a document of title that is issued or a bailment, prospective.

SECTION 32. Makes application of this Act, to a document of title that is issued or a bailment that arises, and the rights, obligations, and interests flowing from that document or bailment, prospective.

SECTION 33. Effective date: September 1, 2005.