

By: Bailey

H.B. No. 2452

A BILL TO BE ENTITLED

AN ACT

relating to uniform law on documents of title.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 7, Business & Commerce Code, is amended to read as follows:

CHAPTER 7. DOCUMENTS OF TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Documents of Title.

Sec. 7.102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

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

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse

1 receipts or bills of lading.

2 (6) [Reserved.]

3 (7) "Goods" means all things that are treated as
4 movable for the purposes of a contract for storage or
5 transportation.

6 (8) "Issuer" means a bailee that issues a document of
7 title or, in the case of an unaccepted delivery order, the person
8 that orders the possessor of goods to deliver. The term includes a
9 person for which an agent or employee purports to act in issuing a
10 document if the agent or employee has real or apparent authority to
11 issue documents, even if the issuer did not receive any goods, the
12 goods were misdescribed, or in any other respect the agent or
13 employee violated the issuer's instructions.

14 (9) "Person entitled under the document" means the
15 holder, in the case of a negotiable document of title, or the person
16 to which delivery of the goods is to be made by the terms of, or
17 pursuant to instructions in a record under, a nonnegotiable
18 document of title.

19 (10) [Reserved.]

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

22 (12) "Sign" means, with present intent to authenticate
23 or adopt a record:

24 (A) to execute or adopt a tangible symbol; or

25 (B) to attach to or logically associate with the
26 record an electronic sound, symbol, or process.

27 (13) "Warehouse" means a person engaged in the

1 business of storing goods for hire.

2 (b) Definitions in other chapters applying to this chapter
3 and the sections in which they appear are:

4 (1) "Contract for sale," Section 2.106.

5 (2) "Lessee in ordinary course of business," Section
6 2A.103.

7 (3) "'Receipt' of goods," Section 2.103.

8 (c) In addition, Chapter 1 contains general definitions and
9 principles of construction and interpretation applicable
10 throughout this chapter.

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

15 (b) This chapter does not repeal or modify any law
16 prescribing the form or contents of a document of title or the
17 services or facilities to be afforded by a bailee, or otherwise
18 regulating a bailee's businesses in respects not specifically
19 treated in this chapter. However, violation of these laws does not
20 affect the status of a document of title that otherwise complies
21 with the definition of a document of title.

22 (c) This chapter modifies, limits, and supersedes the
23 federal Electronic Signatures in Global and National Commerce Act
24 (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or
25 supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or
26 authorize electronic delivery of any of the notices described in
27 Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

1 (d) To the extent there is a conflict between Chapter 43 and
2 this chapter, this chapter governs.

3 Sec. 7.104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.

4 (a) A document of title is negotiable if by its terms the goods are
5 to be delivered to bearer or to the order of a named person.

6 (b) A document of title other than one described in
7 Subsection (a) is nonnegotiable. A bill of lading that states that
8 the goods are consigned to a named person is not made negotiable by
9 a provision that the goods are to be delivered only against an order
10 in a record signed by the same or another named person.

11 (c) A document of title is nonnegotiable if, at the time it
12 is issued, the document has a conspicuous legend, however
13 expressed, that it is nonnegotiable.

14 Sec. 7.105. REISSUANCE IN ALTERNATIVE MEDIUM. (a) Upon
15 request of a person entitled under an electronic document of title,
16 the issuer of the electronic document may issue a tangible document
17 of title as a substitute for the electronic document if:

18 (1) the person entitled under the electronic document
19 surrenders control of the document to the issuer; and

20 (2) the tangible document when issued contains a
21 statement that it is issued in substitution for the electronic
22 document.

23 (b) Upon issuance of a tangible document of title in
24 substitution for an electronic document of title in accordance with
25 Subsection (a):

26 (1) the electronic document ceases to have any effect
27 or validity; and

1 (2) the person that procured issuance of the tangible
2 document warrants to all subsequent persons entitled under the
3 tangible document that the warrantor was a person entitled under
4 the electronic document when the warrantor surrendered control of
5 the electronic document to the issuer.

6 (c) Upon request of a person entitled under a tangible
7 document of title, the issuer of the tangible document may issue an
8 electronic document of title as a substitute for the tangible
9 document if:

10 (1) the person entitled under the tangible document
11 surrenders possession of the document to the issuer; and

12 (2) the electronic document when issued contains a
13 statement that it is issued in substitution for the tangible
14 document.

15 (d) Upon issuance of the electronic document of title in
16 substitution for a tangible document of title in accordance with
17 Subsection (c):

18 (1) the tangible document ceases to have any effect or
19 validity; and

20 (2) the person that procured issuance of the
21 electronic document warrants to all subsequent persons entitled
22 under the electronic document that the warrantor was a person
23 entitled under the tangible document when the warrantor surrendered
24 possession of the tangible document to the issuer.

25 Sec. 7.106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE. (a) A
26 person has control of an electronic document of title if a system
27 employed for evidencing the transfer of interests in the electronic

1 document reliably establishes that person as the person to which
2 the electronic document was issued or transferred.

3 (b) A system satisfies Subsection (a), and a person is
4 deemed to have control of an electronic document of title, if the
5 document is created, stored, and assigned in such a manner that:

6 (1) a single authoritative copy of the document exists
7 which is unique, identifiable, and, except as otherwise provided in
8 Subdivisions (4), (5), and (6), unalterable;

9 (2) the authoritative copy identifies the person
10 asserting control as:

11 (A) the person to which the document was issued;
12 or

13 (B) if the authoritative copy indicates that the
14 document has been transferred, the person to which the document was
15 most recently transferred;

16 (3) the authoritative copy is communicated to and
17 maintained by the person asserting control or its designated
18 custodian;

19 (4) copies or amendments that add or change an
20 identified assignee of the authoritative copy can be made only with
21 the consent of the person asserting control;

22 (5) each copy of the authoritative copy and any copy of
23 a copy is readily identifiable as a copy that is not the
24 authoritative copy; and

25 (6) any amendment of the authoritative copy is readily
26 identifiable as authorized or unauthorized.

1 SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

2 Sec. 7.201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT;
3 STORAGE UNDER BOND. (a) A warehouse receipt may be issued by any
4 warehouse.

5 (b) If goods, including distilled spirits and agricultural
6 commodities, are stored under a statute requiring a bond against
7 withdrawal or a license for the issuance of receipts in the nature
8 of warehouse receipts, a receipt issued for the goods is deemed to
9 be a warehouse receipt even if issued by a person that is the owner
10 of the goods and is not a warehouse.

11 Sec. 7.202. FORM OF WAREHOUSE RECEIPT. (a) A warehouse
12 receipt need not be in any particular form.

13 (b) Unless a warehouse receipt provides for each of the
14 following, the warehouse is liable for damages caused to a person
15 injured by its omission:

16 (1) the location of the warehouse facility where the
17 goods are stored;

18 (2) the date of issue of the receipt;

19 (3) the unique identification code of the receipt;

20 (4) a statement whether the goods received will be
21 delivered to the bearer, to a named person, or to a named person or
22 its order;

23 (5) the rate of storage and handling charges, but if
24 goods are stored under a field warehousing arrangement, a statement
25 of that fact is sufficient on a nonnegotiable receipt;

26 (6) a description of the goods or the packages
27 containing them;

1 (7) the signature of the warehouse or its agent;

2 (8) if the receipt is issued for goods that the
3 warehouse owns, either solely, jointly, or in common with others,
4 the fact of that ownership; and

5 (9) a statement of the amount of advances made and of
6 liabilities incurred for which the warehouse claims a lien or
7 security interest, but if the precise amount of advances made or of
8 liabilities incurred is, at the time of the issue of the receipt,
9 unknown to the warehouse or to its agent that issued the receipt, a
10 statement of the fact that advances have been made or liabilities
11 incurred and the purpose of the advances or liabilities is
12 sufficient.

13 (c) A warehouse may insert in its receipt any terms that are
14 not contrary to this title and do not impair its obligation of
15 delivery under Section 7.403 or its duty of care under Section
16 7.204. Any contrary provisions are ineffective.

17 Sec. 7.203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION. A
18 party to or purchaser for value in good faith of a document of
19 title, other than a bill of lading, that relies upon the description
20 of the goods in the document may recover from the issuer damages
21 caused by the nonreceipt or misdescription of the goods, except to
22 the extent that:

23 (1) the document conspicuously indicates that the
24 issuer does not know whether all or part of the goods in fact were
25 received or conform to the description, such as a case in which the
26 description is in terms of marks or labels or kind, quantity, or
27 condition, or the receipt or description is qualified by "contents,

1 condition, and quality unknown," "said to contain," or words of
2 similar import, if the indication is true; or

3 (2) the party or purchaser otherwise has notice of the
4 nonreceipt or misdescription.

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

12 (b) Damages may be limited by a term in the warehouse
13 receipt or storage agreement limiting the amount of liability in
14 case of loss or damage beyond which the warehouse is not liable.
15 Such a limitation is not effective with respect to the warehouse's
16 liability for conversion to its own use. The warehouse's
17 liability, on request of the bailor in a record at the time of
18 signing such storage agreement or within a reasonable time after
19 receipt of the warehouse receipt, may be increased on part or all of
20 the goods covered by the storage agreement or the warehouse
21 receipt. In this event, increased rates may be charged based on an
22 increased valuation of the goods.

23 (c) Reasonable provisions as to the time and manner of
24 presenting claims and commencing actions based on the bailment may
25 be included in the warehouse receipt or storage agreement.

26 Sec. 7.205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN
27 CERTAIN CASES. A buyer in ordinary course of business of fungible

1 goods sold and delivered by a warehouse that is also in the business
2 of buying and selling such goods takes the goods free of any claim
3 under a warehouse receipt even if the receipt is negotiable and has
4 been duly negotiated.

5 Sec. 7.206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION.

6 (a) A warehouse, by giving notice to the person on whose account
7 the goods are held and any other person known to claim an interest
8 in the goods, may require payment of any charges and removal of the
9 goods from the warehouse at the termination of the period of storage
10 fixed by the document of title or, if a period is not fixed, within a
11 stated period not less than 30 days after the warehouse gives
12 notice. If the goods are not removed before the date specified in
13 the notice, the warehouse may sell them pursuant to Section 7.210.

14 (b) If a warehouse in good faith believes that goods are
15 about to deteriorate or decline in value to less than the amount of
16 its lien within the time provided in Subsection (a) and Section
17 7.210, the warehouse may specify in the notice given under
18 Subsection (a) any reasonable shorter time for removal of the goods
19 and, if the goods are not removed, may sell them at public sale held
20 not less than one week after a single advertisement or posting.

21 (c) If, as a result of a quality or condition of the goods of
22 which the warehouse did not have notice at the time of deposit, the
23 goods are a hazard to other property, the warehouse facilities, or
24 other persons, the warehouse may sell the goods at public or private
25 sale without advertisement or posting on reasonable notification to
26 all persons known to claim an interest in the goods. If the
27 warehouse, after a reasonable effort, is unable to sell the goods,

1 it may dispose of them in any lawful manner and does not incur
2 liability by reason of that disposition.

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

6 (e) A warehouse may satisfy its lien from the proceeds of
7 any sale or disposition under this section but shall hold the
8 balance for delivery on the demand of any person to which the
9 warehouse would have been bound to deliver the goods.

10 Sec. 7.207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.

11 (a) Unless the warehouse receipt provides otherwise, a warehouse
12 shall keep separate the goods covered by each receipt so as to
13 permit at all times identification and delivery of those goods.
14 However, different lots of fungible goods may be commingled.

15 (b) If different lots of fungible goods are commingled, the
16 goods are owned in common by the persons entitled thereto and the
17 warehouse is severally liable to each owner for that owner's share.
18 If, because of overissue, a mass of fungible goods is insufficient
19 to meet all the receipts the warehouse has issued against it, the
20 persons entitled include all holders to which overissued receipts
21 have been duly negotiated.

22 Sec. 7.208. ALTERED WAREHOUSE RECEIPTS. If a blank in a
23 negotiable tangible warehouse receipt has been filled in without
24 authority, a good faith purchaser for value and without notice of
25 the lack of authority may treat the insertion as authorized. Any
26 other unauthorized alteration leaves any tangible or electronic
27 warehouse receipt enforceable against the issuer according to its

1 original tenor.

2 Sec. 7.209. LIEN OF WAREHOUSE. (a) A warehouse has a lien
3 against the bailor on the goods covered by a warehouse receipt or
4 storage agreement or on the proceeds thereof in its possession for
5 charges for storage or transportation, including demurrage and
6 terminal charges, insurance, labor, or other charges, present or
7 future, in relation to the goods, and for expenses necessary for
8 preservation of the goods or reasonably incurred in their sale
9 pursuant to law. If the person on whose account the goods are held
10 is liable for similar charges or expenses in relation to other goods
11 whenever deposited and it is stated in the warehouse receipt or
12 storage agreement that a lien is claimed for charges and expenses in
13 relation to other goods, the warehouse also has a lien against the
14 goods covered by the warehouse receipt or storage agreement or on
15 the proceeds thereof in its possession for those charges and
16 expenses, whether or not the other goods have been delivered by the
17 warehouse. However, as against a person to which a negotiable
18 warehouse receipt is duly negotiated, a warehouse's lien is limited
19 to charges in an amount or at a rate specified in the warehouse
20 receipt or, if no charges are so specified, to a reasonable charge
21 for storage of the specific goods covered by the receipt subsequent
22 to the date of the receipt.

23 (b) The warehouse may also reserve a security interest under
24 Chapter 9 against the bailor for the maximum amount specified on the
25 receipt for charges other than those specified in Subsection (a),
26 such as for money advanced and interest. A security interest is
27 governed by Chapter 9.

1 (c) A warehouse's lien for charges and expenses under
2 Subsection (a) or a security interest under Subsection (b) is also
3 effective against any person that so entrusted the bailor with
4 possession of the goods that a pledge of them by the bailor to a good
5 faith purchaser for value would have been valid. However, the lien
6 or security interest is not effective against a person that before
7 issuance of a document of title had a legal interest or a perfected
8 security interest in the goods and that did not:

9 (1) deliver or entrust the goods or any document
10 covering the goods to the bailor or the bailor's nominee with actual
11 or apparent authority to ship, store, or sell; or with power to
12 obtain delivery under Section 7.403; or with power of disposition
13 under Section 2.403, 2A.304(a)(2), 2A.305(a)(2), or 9.320 or other
14 statute or rule of law; or

15 (2) acquiesce in the procurement by the bailor or its
16 nominee of any document.

17 (d) A warehouse's lien on household goods for charges and
18 expenses in relation to the goods under Subsection (a) is also
19 effective against all persons if the depositor was the legal
20 possessor of the goods at the time of deposit. In this subsection,
21 "household goods" means furniture, furnishings, or personal
22 effects used by the depositor in a dwelling.

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

25 Sec. 7.210. ENFORCEMENT OF WAREHOUSE'S LIEN. (a) Except as
26 otherwise provided in Subsection (b), a warehouse's lien may be
27 enforced by public or private sale of the goods, in bulk or in

1 packages, at any time or place and on any terms that are
2 commercially reasonable, after notifying all persons known to claim
3 an interest in the goods. The notification must include a statement
4 of the amount due, the nature of the proposed sale, and the time and
5 place of any public sale. The fact that a better price could have
6 been obtained by a sale at a different time or in a different method
7 from that selected by the warehouse is not of itself sufficient to
8 establish that the sale was not made in a commercially reasonable
9 manner. The warehouse has sold in a commercially reasonable manner
10 if the warehouse sells the goods in the usual manner in any
11 recognized market therefor, sells at the price current in that
12 market at the time of the sale, or has otherwise sold in conformity
13 with commercially reasonable practices among dealers in the type of
14 goods sold. A sale of more goods than apparently necessary to be
15 offered to ensure satisfaction of the obligation is not
16 commercially reasonable, except in cases covered by the preceding
17 sentence.

18 (b) A warehouse's lien on goods, other than goods stored by
19 a merchant in the course of its business, may be enforced only if
20 the following requirements are satisfied:

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

23 (2) The notification must include an itemized
24 statement of the claim, a description of the goods subject to the
25 lien, a demand for payment within a specified time not less than 10
26 days after receipt of the notification, and a conspicuous statement
27 that unless the claim is paid within that time the goods will be

1 advertised for sale and sold by auction at a specified time and
2 place.

3 (3) The sale must conform to the terms of the
4 notification.

5 (4) The sale must be held at the nearest suitable place
6 to where the goods are held or stored.

7 (5) After the expiration of the time given in the
8 notification, an advertisement of the sale must be published once a
9 week for two weeks consecutively in a newspaper of general
10 circulation where the sale is to be held. The advertisement must
11 include a description of the goods, the name of the person on whose
12 account the goods are being held, and the time and place of the
13 sale. The sale must take place at least 15 days after the first
14 publication. If there is no newspaper of general circulation where
15 the sale is to be held, the advertisement must be posted at least 10
16 days before the sale in not less than six conspicuous places in the
17 neighborhood of the proposed sale.

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

24 (d) A warehouse may buy at any public sale held pursuant to
25 this section.

26 (e) A purchaser in good faith of goods sold to enforce a
27 warehouse's lien takes the goods free of any rights of persons

1 against which the lien was valid, despite the warehouse's
2 noncompliance with this section.

3 (f) A warehouse may satisfy its lien from the proceeds of
4 any sale pursuant to this section but shall hold the balance, if
5 any, for delivery on demand to any person to which the warehouse
6 would have been bound to deliver the goods.

7 (g) The rights provided by this section are in addition to
8 all other rights allowed by law to a creditor against a debtor.

9 (h) If a lien is on goods stored by a merchant in the course
10 of its business, the lien may be enforced in accordance with
11 Subsection (a) or (b).

12 (i) A warehouse is liable for damages caused by failure to
13 comply with the requirements for sale under this section and, in
14 case of wilful violation, is liable for conversion.

15 SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS

16 Sec. 7.301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION;
17 "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.

18 (a) A consignee of a nonnegotiable bill of lading which has given
19 value in good faith, or a holder to which a negotiable bill has been
20 duly negotiated, relying upon the description of the goods in the
21 bill or upon the date shown in the bill, may recover from the issuer
22 damages caused by the misdating of the bill or the nonreceipt or
23 misdescription of the goods, except to the extent that the document
24 of title indicates that the issuer does not know whether any part or
25 all of the goods in fact were received or conform to the
26 description, such as in a case in which the description is in terms
27 of marks or labels or kind, quantity, or condition, or the receipt

1 or description is qualified by "contents or condition of contents
2 of packages unknown," "said to contain," "shipper's weight, load
3 and count," or words of similar import, if that indication is true.

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

10 (c) If bulk goods are loaded by a shipper that makes
11 available to the issuer of the bill of lading adequate facilities
12 for weighing those goods, the issuer shall ascertain the kind and
13 quantity within a reasonable time after receiving the shipper's
14 request in a record to do so. In that case, "shipper's weight" or
15 words of similar import are ineffective.

16 (d) The issuer, by including in the bill of lading the words
17 "shipper's weight, load and count," or words of similar import, may
18 indicate that the goods were loaded by the shipper, and, if that
19 statement is true, the issuer is not liable for damages caused by
20 the improper loading. However, omission of such words does not
21 imply liability for damages caused by improper loading.

22 (e) A shipper guarantees to the issuer the accuracy at the
23 time of shipment of the description, marks, labels, number, kind,
24 quantity, condition, and weight, as furnished by the shipper, and
25 the shipper shall indemnify the issuer against damage caused by
26 inaccuracies in those particulars. This right of the issuer to that
27 indemnity does not limit its responsibility or liability under the

1 contract of carriage to any person other than the shipper.

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

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

22 (c) The issuer of a through bill of lading or other document
23 of title described in Subsection (a) is entitled to recover from the
24 performing carrier, or other person in possession of the goods when
25 the breach of the obligation under the document occurred:

26 (1) the amount it may be required to pay to any person
27 entitled to recover on the document for the breach, as may be

1 evidenced by any receipt, judgment, or transcript of judgment; and
2 (2) the amount of any expense reasonably incurred by
3 the issuer in defending any action commenced by any person entitled
4 to recover on the document for the breach.

5 Sec. 7.303. DIVERSION; RECONSIGNMENT; CHANGE OF
6 INSTRUCTIONS. (a) Unless the bill of lading otherwise provides, a
7 carrier may deliver the goods to a person or destination other than
8 that stated in the bill or may otherwise dispose of the goods,
9 without liability for misdelivery, on instructions from:

10 (1) the holder of a negotiable bill;

11 (2) the consignor on a nonnegotiable bill even if the
12 consignee has given contrary instructions;

13 (3) the consignee on a nonnegotiable bill in the
14 absence of contrary instructions from the consignor, if the goods
15 have arrived at the billed destination or if the consignee is in
16 possession of the tangible bill or in control of the electronic
17 bill; or

18 (4) the consignee on a nonnegotiable bill, if the
19 consignee is entitled as against the consignor to dispose of the
20 goods.

21 (b) Unless instructions described in Subsection (a) are
22 included in a negotiable bill of lading, a person to which the bill
23 is duly negotiated may hold the bailee according to the original
24 terms.

25 Sec. 7.304. TANGIBLE BILLS OF LADING IN SET. (a) Except as
26 customary in international transportation, a tangible bill of
27 lading may not be issued in a set of parts. The issuer is liable for

1 damages caused by violation of this subsection.

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

6 (c) If a tangible negotiable bill of lading is lawfully
7 issued in a set of parts and different parts are negotiated to
8 different persons, the title of the holder to which the first due
9 negotiation is made prevails as to both the document of title and
10 the goods even if any later holder may have received the goods from
11 the carrier in good faith and discharged the carrier's obligation
12 by surrendering its part.

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

16 (e) The bailee is obliged to deliver in accordance with
17 Subchapter D against the first presented part of a tangible bill of
18 lading lawfully issued in a set. Delivery in this manner discharges
19 the bailee's obligation on the whole bill.

20 Sec. 7.305. DESTINATION BILLS. (a) Instead of issuing a
21 bill of lading to the consignor at the place of shipment, a carrier,
22 at the request of the consignor, may procure the bill to be issued
23 at destination or at any other place designated in the request.

24 (b) Upon request of any person entitled as against a carrier
25 to control the goods while in transit and on surrender of possession
26 or control of any outstanding bill of lading or other receipt
27 covering the goods, the issuer, subject to Section 7.105, may

1 procure a substitute bill to be issued at any place designated in
2 the request.

3 Sec. 7.306. ALTERED BILLS OF LADING. An unauthorized
4 alteration or filling in of a blank in a bill of lading leaves the
5 bill enforceable according to its original tenor.

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

16 (b) A lien for charges and expenses under Subsection (a) on
17 goods that the carrier was required by law to receive for
18 transportation is effective against the consignor or any person
19 entitled to the goods unless the carrier had notice that the
20 consignor lacked authority to subject the goods to those charges
21 and expenses. Any other lien under Subsection (a) is effective
22 against the consignor and any person that permitted the bailor to
23 have control or possession of the goods unless the carrier had
24 notice that the bailor lacked authority.

25 (c) A carrier loses its lien on any goods that it
26 voluntarily delivers or unjustifiably refuses to deliver.

27 Sec. 7.308. ENFORCEMENT OF CARRIER'S LIEN. (a) A carrier's

1 lien on goods may be enforced by public or private sale of the
2 goods, in bulk or in packages, at any time or place and on any terms
3 that are commercially reasonable, after notifying all persons known
4 to claim an interest in the goods. The notification must include a
5 statement of the amount due, the nature of the proposed sale, and
6 the time and place of any public sale. The fact that a better price
7 could have been obtained by a sale at a different time or in a
8 different method from that selected by the carrier is not of itself
9 sufficient to establish that the sale was not made in a commercially
10 reasonable manner. The carrier has sold goods in a commercially
11 reasonable manner if the carrier sells the goods in the usual manner
12 in any recognized market therefor, sells at the price current in
13 that market at the time of the sale, or has otherwise sold in
14 conformity with commercially reasonable practices among dealers in
15 the type of goods sold. A sale of more goods than apparently
16 necessary to be offered to ensure satisfaction of the obligation is
17 not commercially reasonable, except in cases covered by the
18 preceding sentence.

19 (b) Before any sale pursuant to this section, any person
20 claiming a right in the goods may pay the amount necessary to
21 satisfy the lien and the reasonable expenses incurred in complying
22 with this section. In that event, the goods may not be sold but must
23 be retained by the carrier, subject to the terms of the bill of
24 lading and this chapter.

25 (c) A carrier may buy at any public sale pursuant to this
26 section.

27 (d) A purchaser in good faith of goods sold to enforce a

1 carrier's lien takes the goods free of any rights of persons against
2 which the lien was valid, despite the carrier's noncompliance with
3 this section.

4 (e) A carrier may satisfy its lien from the proceeds of any
5 sale pursuant to this section but shall hold the balance, if any,
6 for delivery on demand to any person to which the carrier would have
7 been bound to deliver the goods.

8 (f) The rights provided by this section are in addition to
9 all other rights allowed by law to a creditor against a debtor.

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

12 (h) A carrier is liable for damages caused by failure to
13 comply with the requirements for sale under this section and, in
14 case of wilful violation, is liable for conversion.

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

23 (b) Damages may be limited by a term in the bill of lading or
24 in a transportation agreement that the carrier's liability may not
25 exceed a value stated in the bill or transportation agreement if the
26 carrier's rates are dependent upon value and the consignor is
27 afforded an opportunity to declare a higher value and is advised of

1 the opportunity. However, such a limitation is not effective with
2 respect to the carrier's liability for conversion to its own use.

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

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

7 OBLIGATIONS

8 Sec. 7.401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR
9 CONDUCT OF ISSUER. The obligations imposed by this chapter on an
10 issuer apply to a document of title even if:

11 (1) the document does not comply with the requirements
12 of this chapter or of any other statute, rule, or regulation
13 regarding its issue, form, or content;

14 (2) the issuer violated laws regulating the conduct of
15 its business;

16 (3) the goods covered by the document were owned by the
17 bailee when the document was issued; or

18 (4) the person issuing the document is not a warehouse
19 but the document purports to be a warehouse receipt.

20 Sec. 7.402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE. A
21 duplicate or any other document of title purporting to cover goods
22 already represented by an outstanding document of the same issuer
23 does not confer any right in the goods, except as provided in the
24 case of tangible bills of lading in a set of parts, overissue of
25 documents for fungible goods, substitutes for lost, stolen, or
26 destroyed documents, or substitute documents issued pursuant to
27 Section 7.105. The issuer is liable for damages caused by its

1 overissue or failure to identify a duplicate document by a
2 conspicuous notation.

3 Sec. 7.403. OBLIGATION OF WAREHOUSE OR CARRIER TO DELIVER;
4 EXCUSE. (a) A bailee shall deliver the goods to a person entitled
5 under a document of title if the person complies with Subsections
6 (b) and (c), unless and to the extent that the bailee establishes
7 any of the following:

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

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

12 (3) previous sale or other disposition of the goods in
13 lawful enforcement of a lien or on a warehouse's lawful termination
14 of storage;

15 (4) the exercise by a seller of its right to stop
16 delivery pursuant to Section 2.705 or by a lessor of its right to
17 stop delivery pursuant to Section 2A.526;

18 (5) a diversion, reconsignment, or other disposition
19 pursuant to Section 7.303;

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

22 (7) any other lawful excuse.

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

27 (c) Unless a person claiming the goods is one against which

1 the document of title does not confer a right under Section
2 7.503(a):

3 (1) the person claiming under a document shall
4 surrender possession or control of any outstanding negotiable
5 document covering the goods for cancellation or indication of
6 partial deliveries; and

7 (2) the bailee shall cancel the document or
8 conspicuously indicate in the document the partial delivery or be
9 liable to any person to which the document is duly negotiated.

10 Sec. 7.404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT
11 TO DOCUMENT OF TITLE. A bailee that in good faith has received
12 goods and delivered or otherwise disposed of the goods according to
13 the terms of a document of title or pursuant to this chapter is not
14 liable for the goods even if:

15 (1) the person from which the bailee received the
16 goods did not have authority to procure the document or to dispose
17 of the goods; or

18 (2) the person to which the bailee delivered the goods
19 did not have authority to receive the goods.

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

22 Sec. 7.501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE
23 NEGOTIATION. (a) The following rules apply to a negotiable
24 tangible document of title:

25 (1) If the document's original terms run to the order
26 of a named person, the document is negotiated by the named person's
27 indorsement and delivery. After the named person's indorsement in

1 blank or to bearer, any person may negotiate the document by
2 delivery alone.

3 (2) If the document's original terms run to bearer, it
4 is negotiated by delivery alone.

5 (3) If the document's original terms run to the order
6 of a named person and it is delivered to the named person, the
7 effect is the same as if the document had been negotiated.

8 (4) Negotiation of the document after it has been
9 indorsed to a named person requires indorsement by the named person
10 as well as delivery.

11 (5) A document is duly negotiated if it is negotiated
12 in the manner stated in this subsection to a holder that purchases
13 it in good faith, without notice of any defense against or claim to
14 it on the part of any person, and for value, unless it is
15 established that the negotiation is not in the regular course of
16 business or financing or involves receiving the document in
17 settlement or payment of a monetary obligation.

18 (b) The following rules apply to a negotiable electronic
19 document of title:

20 (1) If the document's original terms run to the order
21 of a named person or to bearer, the document is negotiated by
22 delivery of the document to another person. Indorsement by the
23 named person is not required to negotiate the document.

24 (2) If the document's original terms run to the order
25 of a named person and the named person has control of the document,
26 the effect is the same as if the document had been negotiated.

27 (3) A document is duly negotiated if it is negotiated

1 in the manner stated in this subsection to a holder that purchases
2 it in good faith, without notice of any defense against or claim to
3 it on the part of any person, and for value, unless it is
4 established that the negotiation is not in the regular course of
5 business or financing or involves taking delivery of the document
6 in settlement or payment of a monetary obligation.

7 (c) Indorsement of a nonnegotiable document of title
8 neither makes it negotiable nor adds to the transferee's rights.

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

13 Sec. 7.502. RIGHTS ACQUIRED BY DUE NEGOTIATION. (a)
14 Subject to Sections 7.205 and 7.503, a holder to which a negotiable
15 document of title has been duly negotiated acquires thereby:

16 (1) title to the document;

17 (2) title to the goods;

18 (3) all rights accruing under the law of agency or
19 estoppel, including rights to goods delivered to the bailee after
20 the document was issued; and

21 (4) the direct obligation of the issuer to hold or
22 deliver the goods according to the terms of the document free of any
23 defense or claim by the issuer except those arising under the terms
24 of the document or under this chapter. In the case of a delivery
25 order, the bailee's obligation accrues only upon the bailee's
26 acceptance of the delivery order and the obligation acquired by the
27 holder is that the issuer and any indorser will procure the

1 acceptance of the bailee.

2 (b) Subject to Section 7.503, title and rights acquired by
3 due negotiation are not defeated by any stoppage of the goods
4 represented by the document of title or by surrender of the goods by
5 the bailee and are not impaired even if:

6 (1) the due negotiation or any prior due negotiation
7 constituted a breach of duty;

8 (2) any person has been deprived of possession of a
9 negotiable tangible document or control of a negotiable electronic
10 document by misrepresentation, fraud, accident, mistake, duress,
11 loss, theft, or conversion; or

12 (3) a previous sale or other transfer of the goods or
13 document has been made to a third person.

14 Sec. 7.503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN
15 CASES. (a) A document of title confers no right in goods against a
16 person that before issuance of the document had a legal interest or
17 a perfected security interest in the goods and that did not:

18 (1) deliver or entrust the goods or any document
19 covering the goods to the bailor or the bailor's nominee with actual
20 or apparent authority to ship, store, or sell; with power to obtain
21 delivery under Section 7.403; or with power of disposition under
22 Section 2.403, 2A.304(a)(2), 2A.305(a)(2), or 9.320 or other
23 statute or rule of law; or

24 (2) acquiesce in the procurement by the bailor or its
25 nominee of any document.

26 (b) Title to goods based upon an unaccepted delivery order
27 is subject to the rights of any person to which a negotiable

1 warehouse receipt or bill of lading covering the goods has been duly
2 negotiated. That title may be defeated under Section 7.504 to the
3 same extent as the rights of the issuer or a transferee from the
4 issuer.

5 (c) Title to goods based upon a bill of lading issued to a
6 freight forwarder is subject to the rights of any person to which a
7 bill issued by the freight forwarder is duly negotiated. However,
8 delivery by the carrier in accordance with Subchapter D pursuant to
9 its own bill of lading discharges the carrier's obligation to
10 deliver.

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

17 (b) In the case of a nonnegotiable document of title, until
18 but not after the bailee receives notice of the transfer, the rights
19 of the transferee may be defeated:

20 (1) by those creditors of the transferor that could
21 treat the transfer as void under Section 2.402 or 2A.308;

22 (2) by a buyer from the transferor in ordinary course
23 of business if the bailee has delivered the goods to the buyer or
24 received notification of the buyer's rights;

25 (3) by a lessee from the transferor in ordinary course
26 of business if the bailee has delivered the goods to the lessee or
27 received notification of the lessee's rights; or

1 (4) as against the bailee, by good faith dealings of
2 the bailee with the transferor.

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

10 (d) Delivery of the goods pursuant to a nonnegotiable
11 document of title may be stopped by a seller under Section 2.705 or
12 a lessor under Section 2A.526, subject to the requirements of due
13 notification in those sections. A bailee honoring the seller's or
14 lessor's instructions is entitled to be indemnified by the seller
15 or lessor against any resulting loss or expense.

16 Sec. 7.505. INDORSER NOT GUARANTOR FOR OTHER PARTIES. The
17 indorsement of a tangible document of title issued by a bailee does
18 not make the indorser liable for any default by the bailee or
19 previous indorsers.

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

25 Sec. 7.507. WARRANTIES ON NEGOTIATION OR DELIVERY OF
26 DOCUMENT OF TITLE. If a person negotiates or delivers a document of
27 title for value, otherwise than as a mere intermediary under

1 Section 7.508, unless otherwise agreed, the transferor warrants to
2 its immediate purchaser only in addition to any warranty made in
3 selling or leasing the goods that:

4 (1) the document is genuine;

5 (2) the transferor does not have knowledge of any fact
6 that would impair the document's validity or worth; and

7 (3) the negotiation or delivery is rightful and fully
8 effective with respect to the title to the document and the goods it
9 represents.

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

18 Sec. 7.509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.
19 Whether a document of title is adequate to fulfill the obligations
20 of a contract for sale, a contract for lease, or the conditions of a
21 letter of credit is determined by Chapter 2, 2A, or 5.

22 SUBCHAPTER F. WAREHOUSE RECEIPTS AND BILLS OF LADING:

23 MISCELLANEOUS PROVISIONS

24 Sec. 7.601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE.
25 (a) If a document of title is lost, stolen, or destroyed, a court
26 may order delivery of the goods or issuance of a substitute document
27 and the bailee may without liability to any person comply with the

1 order. If the document was negotiable, a court may not order
2 delivery of the goods or issuance of a substitute document without
3 the claimant's posting security unless it finds that any person
4 that may suffer loss as a result of nonsurrender of possession or
5 control of the document is adequately protected against the loss.
6 If the document was nonnegotiable, the court may require security.
7 The court may also order payment of the bailee's reasonable costs
8 and attorney's fees in any action under this subsection.

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

17 Sec. 7.602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE
18 DOCUMENT OF TITLE. Unless a document of title was originally issued
19 upon delivery of the goods by a person that did not have power to
20 dispose of them, a lien does not attach by virtue of any judicial
21 process to goods in the possession of a bailee for which a
22 negotiable document of title is outstanding unless possession or
23 control of the document is first surrendered to the bailee or the
24 document's negotiation is enjoined. The bailee may not be
25 compelled to deliver the goods pursuant to process until possession
26 or control of the document is surrendered to the bailee or to the
27 court. A purchaser of the document for value without notice of the

1 process or injunction takes free of the lien imposed by judicial
2 process.

3 Sec. 7.603. CONFLICTING CLAIMS; INTERPLEADER. If more than
4 one person claims title to or possession of the goods, the bailee is
5 excused from delivery until the bailee has a reasonable time to
6 ascertain the validity of the adverse claims or to commence an
7 action for interpleader. The bailee may assert an interpleader
8 either in defending an action for nondelivery of the goods or by
9 original action.

10 [~~CHAPTER 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER~~
11 ~~DOCUMENTS OF TITLE~~

12 [~~SUBCHAPTER A. GENERAL~~

13 [~~Sec. 7.101. SHORT TITLE. This chapter may be cited as~~
14 ~~Uniform Commercial Code--Documents of Title.~~

15 [~~Sec. 7.102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In~~
16 ~~this chapter, unless the context otherwise requires:~~

17 [~~(1) "Bailee" means the person who by a warehouse~~
18 ~~receipt, bill of lading or other document of title acknowledges~~
19 ~~possession of goods and contracts to deliver them.~~

20 [~~(2) "Consignee" means the person named in a bill to~~
21 ~~whom or to whose order the bill promises delivery.~~

22 [~~(3) "Consignor" means the person named in a bill as~~
23 ~~the person from whom the goods have been received for shipment.~~

24 [~~(4) "Delivery order" means a written order to deliver~~
25 ~~goods directed to a warehouseman, carrier or other person who in the~~
26 ~~ordinary course of business issues warehouse receipts or bills of~~
27 ~~lading.~~

1 ~~[(5) "Document" means document of title as defined in~~
2 ~~the general definitions in Chapter 1 (Section 1.201).~~

3 ~~[(6) "Goods" means all things which are treated as~~
4 ~~movable for the purposes of a contract of storage or~~
5 ~~transportation.~~

6 ~~[(7) "Issuer" means a bailee who issues a document~~
7 ~~except that in relation to an unaccepted delivery order it means the~~
8 ~~person who orders the possessor of goods to deliver. Issuer~~
9 ~~includes any person for whom an agent or employee purports to act in~~
10 ~~issuing a document if the agent or employee has real or apparent~~
11 ~~authority to issue documents, notwithstanding that the issuer~~
12 ~~received no goods or that the goods were misdescribed or that in any~~
13 ~~other respect the agent or employee violated his instructions.~~

14 ~~[(8) "Warehouseman" is a person engaged in the~~
15 ~~business of storing goods for hire.~~

16 ~~[(b) Other definitions applying to this chapter or to~~
17 ~~specified subchapters thereof, and the sections in which they~~
18 ~~appear are:~~

19 ~~["Duly negotiate". Section 7.501.~~

20 ~~["Person entitled under the document". Section~~
21 ~~7.403(d).~~

22 ~~[(c) Definitions in other chapters applying to this chapter~~
23 ~~and the sections in which they appear are:~~

24 ~~["Contract for sale". Section 2.106.~~

25 ~~["Overseas". Section 2.323.~~

26 ~~["Receipt" of goods. Section 2.103.~~

27 ~~[(d) In addition Chapter 1 contains general definitions and~~

1 ~~principles of construction and interpretation applicable~~
2 ~~throughout this chapter.~~

3 ~~[Sec. 7.103. RELATION OF CHAPTER TO TREATY, STATUTE,~~
4 ~~TARIFF, CLASSIFICATION OR REGULATION. To the extent that any~~
5 ~~treaty or statute of the United States, regulatory statute of this~~
6 ~~state or tariff, classification or regulation filed or issued~~
7 ~~pursuant thereto is applicable, the provisions of this chapter are~~
8 ~~subject thereto.~~

9 ~~[Sec. 7.104. NEGOTIABLE AND NON-NEGOTIABLE WAREHOUSE~~
10 ~~RECEIPT, BILL OF LADING OR OTHER DOCUMENT OF TITLE. (a) A~~
11 ~~warehouse receipt, bill of lading or other document of title is~~
12 ~~negotiable~~

13 ~~[(1) if by its terms the goods are to be delivered to~~
14 ~~bearer or to the order of a named person; or~~

15 ~~[(2) where recognized in overseas trade, if it runs to~~
16 ~~a named person or assigns.~~

17 ~~[(b) Any other document is non-negotiable. A bill of lading~~
18 ~~in which it is stated that the goods are consigned to a named person~~
19 ~~is not made negotiable by a provision that the goods are to be~~
20 ~~delivered only against a written order signed by the same or another~~
21 ~~named person.~~

22 ~~[Sec. 7.105. CONSTRUCTION AGAINST NEGATIVE IMPLICATION.~~
23 ~~The omission from either Subchapter B or Subchapter C of this~~
24 ~~chapter of a provision corresponding to a provision made in the~~
25 ~~other subchapter does not imply that a corresponding rule of law is~~
26 ~~not applicable.~~

27 ~~[SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS~~

1 ~~[Sec. 7.201. WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE~~
2 ~~UNDER GOVERNMENT BOND. (a) A warehouse receipt may be issued by~~
3 ~~any warehouseman.~~

4 ~~[(b) Where goods including distilled spirits and~~
5 ~~agricultural commodities are stored under a statute requiring a~~
6 ~~bond against withdrawal or a license for the issuance of receipts in~~
7 ~~the nature of warehouse receipts, a receipt issued for the goods has~~
8 ~~like effect as a warehouse receipt even though issued by a person~~
9 ~~who is the owner of the goods and is not a warehouseman.~~

10 ~~[Sec. 7.202. FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS;~~
11 ~~OPTIONAL TERMS. (a) A warehouse receipt need not be in any~~
12 ~~particular form.~~

13 ~~[(b) Unless a warehouse receipt embodies within its written~~
14 ~~or printed terms each of the following, the warehouseman is liable~~
15 ~~for damages caused by the omission to a person injured thereby:~~

16 ~~[(1) the location of the warehouse where the goods are~~
17 ~~stored,~~

18 ~~[(2) the date of issue of the receipt,~~

19 ~~[(3) the consecutive number of the receipt,~~

20 ~~[(4) a statement whether the goods received will be~~
21 ~~delivered to the bearer, to a specified person, or to a specified~~
22 ~~person or his order,~~

23 ~~[(5) the rate of storage and handling charges, except~~
24 ~~that where goods are stored under a field warehousing arrangement a~~
25 ~~statement of that fact is sufficient on a non-negotiable receipt,~~

26 ~~[(6) a description of the goods or of the packages~~
27 ~~containing them,~~

1 ~~[(7) the signature of the warehouseman, which may be~~
2 ~~made by his authorized agent,~~

3 ~~[(8) if the receipt is issued for goods of which the~~
4 ~~warehouseman is owner, either solely or jointly or in common with~~
5 ~~others, the fact of such ownership, and~~

6 ~~[(9) a statement of the amount of advances made and of~~
7 ~~liabilities incurred for which the warehouseman claims a lien or~~
8 ~~security interest (Section 7.209). If the precise amount of such~~
9 ~~advances made or of such liabilities incurred is, at the time of the~~
10 ~~issue of the receipt, unknown to the warehouseman or to his agent~~
11 ~~who issues it, a statement of the fact that advances have been made~~
12 ~~or liabilities incurred and the purpose thereof is sufficient.~~

13 ~~[(c) A warehouseman may insert in his receipt any other~~
14 ~~terms which are not contrary to the provisions of this title and do~~
15 ~~not impair his obligation of delivery (Section 7.403) or his duty of~~
16 ~~care (Section 7.204). Any contrary provisions shall be~~
17 ~~ineffective.~~

18 ~~[Sec. 7.203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.~~
19 ~~A party to or purchaser for value in good faith of a document of~~
20 ~~title other than a bill of lading relying in either case upon the~~
21 ~~description therein of the goods may recover from the issuer~~
22 ~~damages caused by the non-receipt or misdescription of the goods,~~
23 ~~except to the extent that the document conspicuously indicates that~~
24 ~~the issuer does not know whether any part or all of the goods in fact~~
25 ~~were received or conform to the description, as where the~~
26 ~~description is in terms of marks or labels or kind, quantity or~~
27 ~~condition, or the receipt or description is qualified by "contents,~~

1 ~~condition and quality unknown", "said to contain" or the like, if~~
2 ~~such indication be true, or the party or purchaser otherwise has~~
3 ~~notice.~~

4 ~~[Sec. 7.204. DUTY OF CARE; CONTRACTUAL LIMITATION OF~~
5 ~~WAREHOUSEMAN'S LIABILITY. (a) A warehouseman is liable for~~
6 ~~damages for loss of or injury to the goods caused by his failure to~~
7 ~~exercise such care in regard to them as a reasonably careful man~~
8 ~~would exercise under like circumstances but unless otherwise agreed~~
9 ~~he is not liable for damages which could not have been avoided by~~
10 ~~the exercise of such care.~~

11 ~~[(b) Damages may be limited by a term in the warehouse~~
12 ~~receipt or storage agreement limiting the amount of liability in~~
13 ~~case of loss or damage, and setting forth a specific liability per~~
14 ~~article or item, or value per unit of weight, beyond which the~~
15 ~~warehouseman shall not be liable; provided, however, that such~~
16 ~~liability may on written request of the bailor at the time of~~
17 ~~signing such storage agreement or within a reasonable time after~~
18 ~~receipt of the warehouse receipt be increased on part or all of the~~
19 ~~goods thereunder, in which event increased rates may be charged~~
20 ~~based on such increased valuation, but that no such increase shall~~
21 ~~be permitted contrary to a lawful limitation of liability contained~~
22 ~~in the warehouseman's tariff, if any. No such limitation is~~
23 ~~effective with respect to the warehouseman's liability for~~
24 ~~conversion to his own use.~~

25 ~~[(c) Reasonable provisions as to the time and manner of~~
26 ~~presenting claims and instituting actions based on the bailment may~~
27 ~~be included in the warehouse receipt or tariff.~~

1 ~~[(d) This section does not impair or repeal Texas Revised~~
2 ~~Civil Statutes of 1925, Articles 5545 and 5546.~~

3 ~~[Sec. 7.205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN~~
4 ~~CERTAIN CASES. A buyer in the ordinary course of business of~~
5 ~~fungible goods sold and delivered by a warehouseman who is also in~~
6 ~~the business of buying and selling such goods takes free of any~~
7 ~~claim under a warehouse receipt even though it has been duly~~
8 ~~negotiated.~~

9 ~~[Sec. 7.206. TERMINATION OF STORAGE AT WAREHOUSEMAN'S~~
10 ~~OPTION. (a) A warehouseman may on notifying the person on whose~~
11 ~~account the goods are held and any other person known to claim an~~
12 ~~interest in the goods require payment of any charges and removal of~~
13 ~~the goods from the warehouse at the termination of the period of~~
14 ~~storage fixed by the document, or, if no period is fixed, within a~~
15 ~~stated period not less than thirty days after the notification. If~~
16 ~~the goods are not removed before the date specified in the~~
17 ~~notification, the warehouseman may sell them in accordance with the~~
18 ~~provisions of the section on enforcement of a warehouseman's lien~~
19 ~~(Section 7.210).~~

20 ~~[(b) If a warehouseman in good faith believes that the goods~~
21 ~~are about to deteriorate or decline in value to less than the amount~~
22 ~~of his lien within the time prescribed in Subsection (a) for~~
23 ~~notification, advertisement and sale, the warehouseman may specify~~
24 ~~in the notification any reasonable shorter time for removal of the~~
25 ~~goods and in case the goods are not removed, may sell them at public~~
26 ~~sale held not less than one week after a single advertisement or~~
27 ~~posting.~~

1 ~~[(c) If as a result of a quality or condition of the goods of~~
2 ~~which the warehouseman had no notice at the time of deposit the~~
3 ~~goods are a hazard to other property or to the warehouse or to~~
4 ~~persons, the warehouseman may sell the goods at public or private~~
5 ~~sale without advertisement on reasonable notification to all~~
6 ~~persons known to claim an interest in the goods. If the~~
7 ~~warehouseman after a reasonable effort is unable to sell the goods~~
8 ~~he may dispose of them in any lawful manner and shall incur no~~
9 ~~liability by reason of such disposition.~~

10 ~~[(d) The warehouseman must deliver the goods to any person~~
11 ~~entitled to them under this chapter upon due demand made at any time~~
12 ~~prior to sale or other disposition under this section.~~

13 ~~[(e) The warehouseman may satisfy his lien from the proceeds~~
14 ~~of any sale or disposition under this section but must hold the~~
15 ~~balance for delivery on the demand of any person to whom he would~~
16 ~~have been bound to deliver the goods.~~

17 ~~[Sec. 7.207. GOODS MUST BE KEPT SEPARATE, FUNGIBLE GOODS.~~

18 ~~(a) Unless the warehouse receipt otherwise provides, a~~
19 ~~warehouseman must keep separate the goods covered by each receipt~~
20 ~~so as to permit at all times identification and delivery of those~~
21 ~~goods except that different lots of fungible goods may be~~
22 ~~commingled.~~

23 ~~[(b) Fungible goods so commingled are owned in common by the~~
24 ~~persons entitled thereto and the warehouseman is severally liable~~
25 ~~to each owner for that owner's share. Where because of overissue a~~
26 ~~mass of fungible goods is insufficient to meet all the receipts~~
27 ~~which the warehouseman has issued against it, the persons entitled~~

1 ~~include all holders to whom overissued receipts have been duly~~
2 ~~negotiated.~~

3 ~~[Sec. 7.208. ALTERED WAREHOUSE RECEIPTS. Where a blank in a~~
4 ~~negotiable warehouse receipt has been filled in without authority,~~
5 ~~a purchaser for value and without notice of the want of authority~~
6 ~~may treat the insertion as authorized. Any other unauthorized~~
7 ~~alteration leaves any receipt enforceable against the issuer~~
8 ~~according to its original tenor.~~

9 ~~[Sec. 7.209. LIEN OF WAREHOUSEMAN. (a)(1) A warehouseman~~
10 ~~has a lien against the bailor on the goods covered by a warehouse~~
11 ~~receipt or on the proceeds thereof in his possession for charges for~~
12 ~~storage or transportation (including demurrage and terminal~~
13 ~~charges), insurance, labor, or charges present or future in~~
14 ~~relation to the goods, and for expenses necessary for preservation~~
15 ~~of the goods or reasonably incurred in their sale pursuant to law.~~

16 ~~[(2) If the person on whose account the goods are held~~
17 ~~is liable for like charges or expenses in relation to other goods~~
18 ~~whenever deposited and it is stated in the receipt that a lien is~~
19 ~~claimed for charges and expenses in relation to other goods, the~~
20 ~~warehouseman also has a lien against him for such charges and~~
21 ~~expenses whether or not the other goods have been delivered by the~~
22 ~~warehouseman. But against a person to whom a negotiable warehouse~~
23 ~~receipt is duly negotiated a warehouseman's lien is limited to~~
24 ~~charges in an amount or at a rate specified on the receipt or if no~~
25 ~~charges are so specified then to a reasonable charge for storage of~~
26 ~~the goods covered by the receipt subsequent to the date of the~~
27 ~~receipt.~~

1 ~~[(b) The warehouseman may also reserve a security interest~~
2 ~~against the bailor for a maximum amount specified on the receipt for~~
3 ~~charges other than those specified in Subsection (a), such as for~~
4 ~~money advanced and interest. Such a security interest is governed~~
5 ~~by the chapter on Secured Transactions (Chapter 9).~~

6 ~~[(c) A warehouseman's lien for a security interest under~~
7 ~~Subsection (b) is effective against any person who so entrusted the~~
8 ~~bailor with possession of the goods that a pledge of them by him to a~~
9 ~~good faith purchaser for value would have been valid but is not~~
10 ~~effective against a person as to whom the document confers no right~~
11 ~~in the goods covered by it under Section 7.503. However, the~~
12 ~~warehouseman's specific lien for charges and expenses under~~
13 ~~Subsection (a)(1) is effective against any security interest. If~~
14 ~~the warehouseman learns of a perfected security interest owned by a~~
15 ~~person as to whom the document confers no right in the goods covered~~
16 ~~by it under Section 7.503 against the goods and fails thereafter to~~
17 ~~give such secured party (Section 9.105) written notice of the~~
18 ~~accrued and unpaid charges and expenses at the time when they have~~
19 ~~accrued for between two and six months, then the warehouseman's~~
20 ~~specific lien under Subsection (a)(1) is effective as against such~~
21 ~~secured party only with respect to unpaid charges and expenses~~
22 ~~which have accrued by the end of six months.~~

23 ~~[(d) A warehouseman loses his lien on any goods which he~~
24 ~~voluntarily delivers or which he unjustifiably refuses to deliver.~~

25 ~~[Sec. 7.210. ENFORCEMENT OF WAREHOUSEMAN'S LIEN. (a)~~
26 ~~Except as provided in Subsection (b), a warehouseman's lien may be~~
27 ~~enforced by public or private sale of the goods in block or in~~

1 ~~parcels, at any time or place and on any terms which are~~
2 ~~commercially reasonable, after notifying all persons known to claim~~
3 ~~an interest in the goods. Such notification must include a~~
4 ~~statement of the amount due, the nature of the proposed sale and the~~
5 ~~time and place of any public sale. The fact that a better price~~
6 ~~could have been obtained by a sale at a different time or in a~~
7 ~~different method from that selected by the warehouseman is not of~~
8 ~~itself sufficient to establish that the sale was not made in a~~
9 ~~commercially reasonable manner. If the warehouseman either sells~~
10 ~~the goods in the usual manner in any recognized market therefor, or~~
11 ~~if he sells at the price current in such market at the time of his~~
12 ~~sale, or if he has otherwise sold in conformity with commercially~~
13 ~~reasonable practices among dealers in the type of goods sold, he has~~
14 ~~sold in a commercially reasonable manner. A sale of more goods than~~
15 ~~apparently necessary to be offered to insure satisfaction of the~~
16 ~~obligation is not commercially reasonable except in cases covered~~
17 ~~by the preceding sentence.~~

18 ~~[(b) A warehouseman's lien on goods other than goods stored~~
19 ~~by a merchant in the course of his business may be enforced only as~~
20 ~~follows:~~

21 ~~[(1) All persons known to claim an interest in the~~
22 ~~goods must be notified.~~

23 ~~[(2) The notification must be delivered in person or~~
24 ~~sent by registered or certified letter to the last known address of~~
25 ~~any person to be notified.~~

26 ~~[(3) The notification must include an itemized~~
27 ~~statement of the claim, a description of the goods subject to the~~

1 ~~lien, a demand for payment within a specified time not less than ten~~
2 ~~days after receipt of the notification, and a conspicuous statement~~
3 ~~that unless the claim is paid within that time the goods will be~~
4 ~~advertised for sale and sold by auction at a specified time and~~
5 ~~place.~~

6 ~~[(4) The sale must conform to the terms of the~~
7 ~~notification.~~

8 ~~[(5) The sale must be held at the nearest suitable~~
9 ~~place to that where the goods are held or stored.~~

10 ~~[(6) After the expiration of the time given in the~~
11 ~~notification, an advertisement of the sale must be published once a~~
12 ~~week for two weeks consecutively in a newspaper of general~~
13 ~~circulation where the sale is to be held. The advertisement must~~
14 ~~include a description of the goods, the name of the person on whose~~
15 ~~account they are being held, and the time and place of the sale. The~~
16 ~~sale must take place at least fifteen days after the first~~
17 ~~publication. If there is no newspaper of general circulation where~~
18 ~~the sale is to be held, the advertisement must be posted at least~~
19 ~~ten days before the sale in not less than six conspicuous places in~~
20 ~~the neighborhood of the proposed sale.~~

21 ~~[(c) Before any sale pursuant to this section any person~~
22 ~~claiming a right in the goods may pay the amount necessary to~~
23 ~~satisfy the lien and the reasonable expenses incurred under this~~
24 ~~section. In that event the goods must not be sold, but must be~~
25 ~~retained by the warehouseman subject to the terms of the receipt and~~
26 ~~this chapter.~~

27 ~~[(d) The warehouseman may buy at any public sale pursuant to~~

1 ~~this section.~~

2 ~~[(c) A purchaser in good faith of goods sold to enforce a~~
3 ~~warehouseman's lien takes the goods free of any rights of persons~~
4 ~~against whom the lien was valid, despite noncompliance by the~~
5 ~~warehouseman with the requirements of this section.~~

6 ~~[(f) The warehouseman may satisfy his lien from the proceeds~~
7 ~~of any sale pursuant to this section but must hold the balance, if~~
8 ~~any, for delivery on demand to any person to whom he would have been~~
9 ~~bound to deliver the goods.~~

10 ~~[(g) The rights provided by this section shall be in~~
11 ~~addition to all other rights allowed by law to a creditor against~~
12 ~~his debtor.~~

13 ~~[(h) Where a lien is on goods stored by a merchant in the~~
14 ~~course of his business the lien may be enforced in accordance with~~
15 ~~either Subsection (a) or (b).~~

16 ~~[(i) The warehouseman is liable for damages caused by~~
17 ~~failure to comply with the requirements for sale under this section~~
18 ~~and in case of willful violation is liable for conversion.~~

19 ~~[SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS~~

20 ~~[Sec. 7.301. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION,~~
21 ~~"SAID TO CONTAIN", "SHIPPER'S LOAD AND COUNT", IMPROPER HANDLING.~~

22 ~~(a) A consignee of a non-negotiable bill who has given value in~~
23 ~~good faith or a holder to whom a negotiable bill has been duly~~
24 ~~negotiated relying in either case upon the description therein of~~
25 ~~the goods, or upon the date therein shown, may recover from the~~
26 ~~issuer damages caused by the misdating of the bill or the~~
27 ~~non-receipt or misdescription of the goods, except to the extent~~

1 ~~that the document indicates that the issuer does not know whether~~
2 ~~any part or all of the goods in fact were received or conform to the~~
3 ~~description, as where the description is in terms of marks or labels~~
4 ~~or kind, quantity, or condition or the receipt or description is~~
5 ~~qualified by "contents or condition of contents of packages~~
6 ~~unknown", "said to contain", "shipper's weight, load and count" or~~
7 ~~the like, if such indication be true.~~

8 ~~[(b) When goods are loaded by an issuer who is a common~~
9 ~~carrier, the issuer must count the packages of goods if package~~
10 ~~freight and ascertain the kind and quantity if bulk freight. In~~
11 ~~such cases "shipper's weight, load and count" or other words~~
12 ~~indicating that the description was made by the shipper are~~
13 ~~ineffective except as to freight concealed by packages.~~

14 ~~[(c) When bulk freight is loaded by a shipper who makes~~
15 ~~available to the issuer adequate facilities for weighing such~~
16 ~~freight, an issuer who is a common carrier must ascertain the kind~~
17 ~~and quantity within a reasonable time after receiving the written~~
18 ~~request of the shipper to do so. In such cases "shipper's weight"~~
19 ~~or other words of like purport are ineffective.~~

20 ~~[(d) The issuer may by inserting in the bill the words~~
21 ~~"shipper's weight, load and count" or other words of like purport~~
22 ~~indicate that the goods were loaded by the shipper, and if such~~
23 ~~statement be true the issuer shall not be liable for damages caused~~
24 ~~by the improper loading. But their omission does not imply~~
25 ~~liability for such damages.~~

26 ~~[(e) The shipper shall be deemed to have guaranteed to the~~
27 ~~issuer the accuracy at the time of shipment of the description,~~

1 ~~marks, labels, number, kind, quantity, condition and weight, as~~
2 ~~furnished by him; and the shipper shall indemnify the issuer~~
3 ~~against damage caused by inaccuracies in such particulars. The~~
4 ~~right of the issuer to such indemnity shall in no way limit his~~
5 ~~responsibility and liability under the contract of carriage to any~~
6 ~~person other than the shipper.~~

7 ~~[Sec. 7.302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.]~~

8 ~~(a) The issuer of a through bill of lading or other document~~
9 ~~embodying an undertaking to be performed in part by persons acting~~
10 ~~as its agents or by connecting carriers is liable to anyone entitled~~
11 ~~to recover on the document for any breach by such other persons or~~
12 ~~by a connecting carrier of its obligation under the document but to~~
13 ~~the extent that the bill covers an undertaking to be performed~~
14 ~~overseas or in territory not contiguous to the continental United~~
15 ~~States or an undertaking including matters other than~~
16 ~~transportation this liability may be varied by agreement of the~~
17 ~~parties.~~

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

26 ~~[(c) The issuer of such through bill of lading or other~~
27 ~~document shall be entitled to recover from the connecting carrier~~

1 ~~or such other person in possession of the goods when the breach of~~
2 ~~the obligation under the document occurred, the amount it may be~~
3 ~~required to pay to anyone entitled to recover on the document~~
4 ~~therefor, as may be evidenced by any receipt, judgment, or~~
5 ~~transcript thereof, and the amount of any expense reasonably~~
6 ~~incurred by it in defending any action brought by anyone entitled to~~
7 ~~recover on the document therefor.~~

8 ~~[Sec. 7.303. DIVERSION; RECONSIGNMENT; CHANGE OF~~
9 ~~INSTRUCTIONS. (a) Unless the bill of lading otherwise provides,~~
10 ~~the carrier may deliver the goods to a person or destination other~~
11 ~~than that stated in the bill or may otherwise dispose of the goods~~
12 ~~on instructions from~~

13 ~~[(1) the holder of a negotiable bill, or~~

14 ~~[(2) the consignor on a non-negotiable bill~~
15 ~~notwithstanding contrary instructions from the consignee, or~~

16 ~~[(3) the consignee on a non-negotiable bill in the~~
17 ~~absence of contrary instructions from the consignor, if the goods~~
18 ~~have arrived at the billed destination or if the consignee is in~~
19 ~~possession of the bill, or~~

20 ~~[(4) the consignee on a non-negotiable bill if he is~~
21 ~~entitled as against the consignor to dispose of them.~~

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

25 ~~[Sec. 7.304. BILLS OF LADING IN A SET. (a) Except where~~
26 ~~customary in overseas transportation, a bill of lading must not be~~
27 ~~issued in a set of parts. The issuer is liable for damages caused by~~

1 ~~violation of this subsection.~~

2 ~~[(b) Where a bill of lading is lawfully drawn in a set of~~
3 ~~parts, each of which is numbered and expressed to be valid only if~~
4 ~~the goods have not been delivered against any other part, the whole~~
5 ~~of the parts constitute one bill.~~

6 ~~[(c) Where a bill of lading is lawfully issued in a set of~~
7 ~~parts and different parts are negotiated to different persons, the~~
8 ~~title of the holder to whom the first due negotiation is made~~
9 ~~prevails as to both the document and the goods even though any later~~
10 ~~holder may have received the goods from the carrier in good faith~~
11 ~~and discharged the carrier's obligation by surrender of his part.~~

12 ~~[(d) Any person who negotiates or transfers a single part of~~
13 ~~a bill of lading drawn in a set is liable to holders of that part as~~
14 ~~if it were the whole set.~~

15 ~~[(e) The bailee is obliged to deliver in accordance with~~
16 ~~Subchapter D of this chapter against the first presented part of a~~
17 ~~bill of lading lawfully drawn in a set. Such delivery discharges~~
18 ~~the bailee's obligation on the whole bill.~~

19 ~~[Sec. 7.305. DESTINATION BILLS. (a) Instead of issuing a~~
20 ~~bill of lading to the consignor at the place of shipment a carrier~~
21 ~~may at the request of the consignor procure the bill to be issued at~~
22 ~~destination or at any other place designated in the request.~~

23 ~~[(b) Upon request of anyone entitled as against the carrier~~
24 ~~to control the goods while in transit and on surrender of any~~
25 ~~outstanding bill of lading or other receipt covering such goods,~~
26 ~~the issuer may procure a substitute bill to be issued at any place~~
27 ~~designated in the request.~~

1 ~~[Sec. 7.306. ALTERED BILLS OF LADING. An unauthorized~~
2 ~~alteration or filling in of a blank in a bill of lading leaves the~~
3 ~~bill enforceable according to its original tenor.~~

4 ~~[Sec. 7.307. LIEN OF CARRIER. (a) A carrier has a lien on~~
5 ~~the goods covered by a bill of lading for charges subsequent to the~~
6 ~~date of its receipt of the goods for storage or transportation~~
7 ~~(including demurrage and terminal charges) and for expenses~~
8 ~~necessary for preservation of the goods incident to their~~
9 ~~transportation or reasonably incurred in their sale pursuant to~~
10 ~~law. But against a purchaser for value of a negotiable bill of~~
11 ~~lading a carrier's lien is limited to charges stated in the bill or~~
12 ~~the applicable tariffs, or if no charges are stated then to a~~
13 ~~reasonable charge.~~

14 ~~[(b) A lien for charges and expenses under Subsection (a) on~~
15 ~~goods which the carrier was required by law to receive for~~
16 ~~transportation is effective against the consignor or any person~~
17 ~~entitled to the goods unless the carrier had notice that the~~
18 ~~consignor lacked authority to subject the goods to such charges and~~
19 ~~expenses. Any other lien under Subsection (a) is effective against~~
20 ~~the consignor and any person who permitted the bailor to have~~
21 ~~control or possession of the goods unless the carrier had notice~~
22 ~~that the bailor lacked such authority.~~

23 ~~[(c) A carrier loses his lien on any goods which he~~
24 ~~voluntarily delivers or which he unjustifiably refuses to deliver.~~

25 ~~[Sec. 7.308. ENFORCEMENT OF CARRIER'S LIEN. (a) A~~
26 ~~carrier's lien may be enforced by public or private sale of the~~
27 ~~goods, in block or in parcels, at any time or place and on any terms~~

1 ~~which are commercially reasonable, after notifying all persons~~
2 ~~known to claim an interest in the goods. Such notification must~~
3 ~~include a statement of the amount due, the nature of the proposed~~
4 ~~sale and the time and place of any public sale. The fact that a~~
5 ~~better price could have been obtained by a sale at a different time~~
6 ~~or in a different method from that selected by the carrier is not of~~
7 ~~itself sufficient to establish that the sale was not made in a~~
8 ~~commercially reasonable manner. If the carrier either sells the~~
9 ~~goods in the usual manner in any recognized market therefor or if he~~
10 ~~sells at the price current in such market at the time of his sale or~~
11 ~~if he has otherwise sold in conformity with commercially reasonable~~
12 ~~practices among dealers in the type of goods sold he has sold in a~~
13 ~~commercially reasonable manner. A sale of more goods than~~
14 ~~apparently necessary to be offered to ensure satisfaction of the~~
15 ~~obligation is not commercially reasonable except in cases covered~~
16 ~~by the preceding sentence.~~

17 ~~[(b) Before any sale pursuant to this section any person~~
18 ~~claiming a right in the goods may pay the amount necessary to~~
19 ~~satisfy the lien and the reasonable expenses incurred under this~~
20 ~~section. In that event the goods must not be sold, but must be~~
21 ~~retained by the carrier subject to the terms of the bill and this~~
22 ~~chapter.~~

23 ~~[(c) The carrier may buy at any public sale pursuant to this~~
24 ~~section.~~

25 ~~[(d) A purchaser in good faith of goods sold to enforce a~~
26 ~~carrier's lien takes the goods free of any rights of persons against~~
27 ~~whom the lien was valid, despite noncompliance by the carrier with~~

1 ~~the requirements of this section.~~

2 ~~[(c) The carrier may satisfy his lien from the proceeds of~~
3 ~~any sale pursuant to this section but must hold the balance, if any,~~
4 ~~for delivery on demand to any person to whom he would have been~~
5 ~~bound to deliver the goods.~~

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

9 ~~[(g) A carrier's lien may be enforced in accordance with~~
10 ~~either Subsection (a) or the procedure set forth in Subsection (b)~~
11 ~~of Section 7.210.~~

12 ~~[(h) The carrier is liable for damages caused by failure to~~
13 ~~comply with the requirements for sale under this section and in case~~
14 ~~of willful violation is liable for conversion.~~

15 ~~[Sec. 7.309. DUTY OF CARE; CONTRACTUAL LIMITATION OF~~
16 ~~CARRIER'S LIABILITY. (a) A carrier who issues a bill of lading~~
17 ~~whether negotiable or non-negotiable must exercise the degree of~~
18 ~~care in relation to the goods which a reasonably careful man would~~
19 ~~exercise under like circumstances. This subsection does not repeal~~
20 ~~or change any law or rule of law which imposes liability upon a~~
21 ~~common carrier for damages not caused by its negligence.~~

22 ~~[(b) Damages may be limited by a provision that the~~
23 ~~carrier's liability shall not exceed a value stated in the document~~
24 ~~if the carrier's rates are dependent upon value and the consignor by~~
25 ~~the carrier's tariff is afforded an opportunity to declare a higher~~
26 ~~value or a value as lawfully provided in the tariff, or where no~~
27 ~~tariff is filed he is otherwise advised of such opportunity, but no~~

1 ~~such limitation is effective with respect to the carrier's~~
2 ~~liability for conversion to its own use.~~

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

6 ~~[SUBCHAPTER D. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL~~
7 ~~OBLIGATIONS~~

8 ~~[Sec. 7.401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR~~
9 ~~CONDUCT OF ISSUER. The obligations imposed by this chapter on an~~
10 ~~issuer apply to a document of title regardless of the fact that~~

11 ~~[(1) the document may not comply with the requirements~~
12 ~~of this chapter or of any other law or regulation regarding its~~
13 ~~issue, form or content, or~~

14 ~~[(2) the issuer may have violated laws regulating the~~
15 ~~conduct of his business, or~~

16 ~~[(3) the goods covered by the document were owned by~~
17 ~~the bailee at the time the document was issued, or~~

18 ~~[(4) the person issuing the document does not come~~
19 ~~within the definition of warehouseman if it purports to be a~~
20 ~~warehouse receipt.~~

21 ~~[Sec. 7.402. DUPLICATE RECEIPT OR BILL; OVERISSUE. Neither~~
22 ~~a duplicate nor any other document of title purporting to cover~~
23 ~~goods already represented by an outstanding document of the same~~
24 ~~issuer confers any right in the goods, except as provided in the~~
25 ~~case of bills in a set, overissue of documents for fungible goods~~
26 ~~substitutes for lost, stolen or destroyed documents. But the~~
27 ~~issuer is liable for damages caused by his overissue or failure to~~

1 ~~identify a duplicate document as such by conspicuous notation on~~
2 ~~its face.~~

3 ~~[Sec. 7.403. OBLIGATION OF WAREHOUSEMAN OR CARRIER TO~~
4 ~~DELIVER; EXCUSE. (a) The bailee must deliver the goods to a person~~
5 ~~entitled under the document who complies with Subsections (b) and~~
6 ~~(c), unless and to the extent that the bailee establishes any of the~~
7 ~~following:~~

8 ~~[(1) delivery of the goods to a person whose receipt~~
9 ~~was rightful as against the claimant;~~

10 ~~[(2) damage to or delay, loss or destruction of the~~
11 ~~goods for which the bailee is not liable, but the burden of~~
12 ~~establishing negligence in case of damage or destruction by fire is~~
13 ~~on the person entitled under the document;~~

14 ~~[(3) previous sale or other disposition of the goods~~
15 ~~in lawful enforcement of a lien or on warehouseman's lawful~~
16 ~~termination of storage;~~

17 ~~[(4) the exercise by a seller of his right to stop~~
18 ~~delivery pursuant to the provisions of the chapter on Sales~~
19 ~~(Section 2.705);~~

20 ~~[(5) a diversion, reconsignment or other disposition~~
21 ~~pursuant to the provisions of this chapter (Section 7.303) or~~
22 ~~tariff regulating such right;~~

23 ~~[(6) release, satisfaction or any other fact affording~~
24 ~~a personal defense against the claimant;~~

25 ~~[(7) any other lawful excuse.~~

26 ~~[(b) A person claiming goods covered by a document of title~~
27 ~~must satisfy the bailee's lien where the bailee so requests or where~~

1 ~~the bailee is prohibited by law from delivering the goods until the~~
2 ~~charges are paid.~~

3 ~~[(c) Unless the person claiming is one against whom the~~
4 ~~document confers no right under Section 7.503(a), he must surrender~~
5 ~~for cancellation or notation of partial deliveries any outstanding~~
6 ~~negotiable document covering the goods, and the bailee must cancel~~
7 ~~the document or conspicuously note the partial delivery thereon or~~
8 ~~be liable to any person to whom the document is duly negotiated.~~

9 ~~[(d) "Person entitled under the document" means holder in~~
10 ~~the case of a negotiable document, or the person to whom delivery is~~
11 ~~to be made by the terms of or pursuant to written instructions under~~
12 ~~a non-negotiable document.~~

13 ~~[Sec. 7.404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT~~
14 ~~TO RECEIPT OR BILL. A bailee who in good faith including observance~~
15 ~~of reasonable commercial standards has received goods and delivered~~
16 ~~or otherwise disposed of them according to the terms of the document~~
17 ~~of title or pursuant to this chapter is not liable therefor. This~~
18 ~~rule applies even though the person from whom he received the goods~~
19 ~~had no authority to procure the document or to dispose of the goods~~
20 ~~and even though the person to whom he delivered the goods had no~~
21 ~~authority to receive them.~~

22 ~~[SUBCHAPTER E. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION~~
23 ~~AND TRANSFER~~

24 ~~[Sec. 7.501. FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE~~
25 ~~NEGOTIATION". (a) A negotiable document of title running to the~~
26 ~~order of a named person is negotiated by his indorsement and~~
27 ~~delivery. After his indorsement in blank or to bearer any person~~

1 ~~can negotiate it by delivery alone.~~

2 ~~[(b)(1) A negotiable document of title is also negotiated by~~
3 ~~delivery alone when by its original terms it runs to bearer.~~

4 ~~[(2) When a document running to the order of a named~~
5 ~~person is delivered to him the effect is the same as if the document~~
6 ~~had been negotiated.~~

7 ~~[(c) Negotiation of a negotiable document of title after it~~
8 ~~has been indorsed to a specified person requires indorsement by the~~
9 ~~special indorsee as well as delivery.~~

10 ~~[(d) A negotiable document of title is "duly negotiated"~~
11 ~~when it is negotiated in the manner stated in this section to a~~
12 ~~holder who purchases it in good faith without notice of any defense~~
13 ~~against or claim to it on the part of any person and for value,~~
14 ~~unless it is established that the negotiation is not in the regular~~
15 ~~course of business or financing or involves receiving the document~~
16 ~~in settlement or payment of a money obligation.~~

17 ~~[(e) Indorsement of a non-negotiable document neither makes~~
18 ~~it negotiable nor adds to the transferee's rights.~~

19 ~~[(f) The naming in a negotiable bill of a person to be~~
20 ~~notified of the arrival of the goods does not limit the~~
21 ~~negotiability of the bill nor constitute notice to a purchaser~~
22 ~~thereof of any interest of such person in the goods.~~

23 ~~[Sec. 7.502. RIGHTS ACQUIRED BY DUE NEGOTIATION. (a)~~
24 ~~Subject to the following section and to the provisions of Section~~
25 ~~7.205 on fungible goods, a holder to whom a negotiable document of~~
26 ~~title has been duly negotiated acquires thereby:~~

27 ~~[(1) title to the document,~~

1 ~~[(2) title to the goods;~~

2 ~~[(3) all rights accruing under the law of agency or~~
3 ~~estoppel, including rights to goods delivered to the bailee after~~
4 ~~the document was issued; and~~

5 ~~[(4) the direct obligation of the issuer to hold or~~
6 ~~deliver the goods according to the terms of the document free of any~~
7 ~~defense or claim by him except those arising under the terms of the~~
8 ~~document or under this chapter. In the case of a delivery order the~~
9 ~~bailee's obligation accrues only upon acceptance and the obligation~~
10 ~~acquired by the holder is that the issuer and any indorser will~~
11 ~~procure the acceptance of the bailee.~~

12 ~~[(b) Subject to the following section, title and rights so~~
13 ~~acquired are not defeated by any stoppage of the goods represented~~
14 ~~by the document or by surrender of such goods by the bailee, and are~~
15 ~~not impaired even though the negotiation or any prior negotiation~~
16 ~~constituted a breach of duty or even though any person has been~~
17 ~~deprived of possession of the document by misrepresentation, fraud,~~
18 ~~accident, mistake, duress, loss, theft or conversion, or even~~
19 ~~though a previous sale or other transfer of the goods or document~~
20 ~~has been made to a third person.~~

21 ~~[Sec. 7.503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN~~
22 ~~CASES. (a) A document of title confers no right in goods against a~~
23 ~~person who before issuance of the document had a legal interest or a~~
24 ~~perfected security interest in them and who neither~~

25 ~~[(1) delivered or entrusted them or any document of~~
26 ~~title covering them to the bailor or his nominee with actual or~~
27 ~~apparent authority to ship, store or sell or with power to obtain~~

1 ~~delivery under this chapter (Section 7.403) or with power of~~
2 ~~disposition under this title (Sections 2.403 and 9.320) or other~~
3 ~~statute or rule of law; nor~~

4 ~~[(2) acquiesced in the procurement by the bailor or~~
5 ~~his nominee of any document of title.~~

6 ~~[(b) Title to goods based upon an unaccepted delivery order~~
7 ~~is subject to the rights of anyone to whom a negotiable warehouse~~
8 ~~receipt or bill of lading covering the goods has been duly~~
9 ~~negotiated. Such a title may be defeated under the next section to~~
10 ~~the same extent as the rights of the issuer or a transferee from the~~
11 ~~issuer.~~

12 ~~[(c) Title to goods based upon a bill of lading issued to a~~
13 ~~freight forwarder is subject to the rights of anyone to whom a bill~~
14 ~~issued by the freight forwarder is duly negotiated; but delivery by~~
15 ~~the carrier in accordance with Subchapter D of this chapter~~
16 ~~pursuant to its own bill of lading discharges the carrier's~~
17 ~~obligation to deliver.~~

18 ~~[Sec. 7.504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE~~
19 ~~NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.~~

20 ~~(a) A transferee of a document, whether negotiable or~~
21 ~~non-negotiable, to whom the document has been delivered but not~~
22 ~~duly negotiated, acquires the title and rights which his transferor~~
23 ~~had or had actual authority to convey.~~

24 ~~[(b) In the case of a non-negotiable document, until but not~~
25 ~~after the bailee receives notification of the transfer, the rights~~
26 ~~of the transferee may be defeated~~

27 ~~[(1) by those creditors of the transferor who could~~

1 ~~treat the sale as void under Section 2.402; or~~

2 ~~[(2) by a buyer from the transferor in ordinary course~~
3 ~~of business if the bailee has delivered the goods to the buyer or~~
4 ~~received notification of his rights; or~~

5 ~~[(3) as against the bailee by good faith dealings of~~
6 ~~the bailee with the transferor.~~

7 ~~[(c) A diversion or other change of shipping instructions by~~
8 ~~the consignor in a non-negotiable bill of lading which causes the~~
9 ~~bailee not to deliver to the consignee defeats the consignee's~~
10 ~~title to the goods if they have been delivered to a buyer in~~
11 ~~ordinary course of business and in any event defeats the~~
12 ~~consignee's rights against the bailee.~~

13 ~~[(d) Delivery pursuant to a non-negotiable document may be~~
14 ~~stopped by a seller under Section 2.705, and subject to the~~
15 ~~requirement of due notification there provided. A bailee honoring~~
16 ~~the seller's instructions is entitled to be indemnified by the~~
17 ~~seller against any resulting loss or expense.~~

18 ~~[Sec. 7.505. INDORSER NOT A GUARANTOR FOR OTHER PARTIES.~~
19 ~~The indorsement of a document of title issued by a bailee does not~~
20 ~~make the indorser liable for any default by the bailee or by~~
21 ~~previous indorsers.~~

22 ~~[Sec. 7.506. DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL~~
23 ~~INDORSEMENT. The transferee of a negotiable document of title has a~~
24 ~~specifically enforceable right to have his transferor supply any~~
25 ~~necessary indorsement but the transfer becomes a negotiation only~~
26 ~~as of the time the indorsement is supplied.~~

27 ~~[Sec. 7.507. WARRANTIES ON NEGOTIATION OR TRANSFER OF~~

1 ~~RECEIPT OR BILL. Where a person negotiates or transfers a document~~
2 ~~of title for value otherwise than as a mere intermediary under the~~
3 ~~next following section, then unless otherwise agreed he warrants to~~
4 ~~his immediate purchaser only in addition to any warranty made in~~
5 ~~selling the goods~~

6 ~~[(1) that the document is genuine; and~~

7 ~~[(2) that he has no knowledge of any fact which would~~
8 ~~impair its validity or worth; and~~

9 ~~[(3) that his negotiation or transfer is rightful and~~
10 ~~fully effective with respect to the title to the document and the~~
11 ~~goods it represents.~~

12 ~~[Sec. 7.508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS.~~
13 ~~A collecting bank or other intermediary known to be entrusted with~~
14 ~~documents on behalf of another or with collection of a draft or~~
15 ~~other claim against delivery of documents warrants by such delivery~~
16 ~~of the documents only its own good faith and authority. This rule~~
17 ~~applies even though the intermediary has purchased or made advances~~
18 ~~against the claim or draft to be collected.~~

19 ~~[Sec. 7.509. RECEIPT OR BILL: WHEN ADEQUATE COMPLIANCE~~
20 ~~WITH COMMERCIAL CONTRACT. The question whether a document is~~
21 ~~adequate to fulfill the obligations of a contract for sale or the~~
22 ~~conditions of a credit is governed by the chapters on Sales (Chapter~~
23 ~~2) and on Letters of Credit (Chapter 5).~~

24 ~~[SUBCHAPTER F. WAREHOUSE RECEIPTS AND BILLS OF LADING:~~

25 ~~MISCELLANEOUS PROVISIONS~~

26 ~~[Sec. 7.601. LOST AND MISSING DOCUMENTS. (a) If a document~~
27 ~~has been lost, stolen or destroyed, a court may order delivery of~~

1 ~~the goods or issuance of a substitute document and the bailee may~~
2 ~~without liability to any person comply with such order. If the~~
3 ~~document was negotiable the claimant must post security approved by~~
4 ~~the court to indemnify any person who may suffer loss as a result of~~
5 ~~a non-surrender of the document. If the document was not~~
6 ~~negotiable, such security may be required at the discretion of the~~
7 ~~court. The court may also in its discretion order payment of the~~
8 ~~bailee's reasonable costs and counsel fees.~~

9 ~~[(b) A bailee who without court order delivers goods to a~~
10 ~~person claiming under a missing negotiable document is liable to~~
11 ~~any person injured thereby, and if the delivery is not in good faith~~
12 ~~becomes liable for conversion. Delivery in good faith is not~~
13 ~~conversion if made in accordance with a filed classification or~~
14 ~~tariff or, where no classification or tariff is filed, if the~~
15 ~~claimant posts security with the bailee in an amount at least double~~
16 ~~the value of the goods at the time of posting to indemnify any~~
17 ~~person injured by the delivery who files a notice of claim within~~
18 ~~one year after the delivery.~~

19 ~~[Sec. 7.602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE~~
20 ~~DOCUMENT. Except where the document was originally issued upon~~
21 ~~delivery of the goods by a person who had no power to dispose of~~
22 ~~them, no lien attaches by virtue of any judicial process to goods in~~
23 ~~the possession of a bailee for which a negotiable document of title~~
24 ~~is outstanding unless the document be first surrendered to the~~
25 ~~bailee or its negotiation enjoined, and the bailee shall not be~~
26 ~~compelled to deliver the goods pursuant to process until the~~
27 ~~document is surrendered to him or impounded by the court. One who~~

1 ~~purchases the document for value without notice of the process or~~
2 ~~injunction takes free of the lien imposed by judicial process.~~

3 ~~[Sec. 7.603. CONFLICTING CLAIMS, INTERPLEADER. If more~~
4 ~~than one person claims title or possession of the goods, the bailee~~
5 ~~is excused from delivery until he has had a reasonable time to~~
6 ~~ascertain the validity of the adverse claims or to bring an action~~
7 ~~to compel all claimants to interplead and may compel such~~
8 ~~interpleader, either in defending an action for non-delivery of the~~
9 ~~goods, or by original action, whichever is appropriate.]~~

10 SECTION 2. Sections 1.201(b)(5), (6), (15), (16), (21), and
11 (42), Business & Commerce Code, are amended to read as follows:

12 (5) "Bearer" means a person in control of a negotiable
13 electronic document of title or a person in possession of a
14 negotiable instrument, a negotiable tangible document of title, or
15 a certificated security that is payable to bearer or indorsed in
16 blank.

17 (6) "Bill of lading" means a document of title
18 evidencing the receipt of goods for shipment issued by a person
19 engaged in the business of directly or indirectly transporting or
20 forwarding goods. The term does not include a warehouse receipt.

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

25 (16) "Document of title" means a record that ~~[includes~~
26 ~~bill of lading, dock warrant, dock receipt, warehouse receipt or~~
27 ~~order for the delivery of goods, and also any other document which]~~

1 in the regular course of business or financing is treated as
2 adequately evidencing that the person in possession or control of
3 the record [~~it~~] is entitled to receive, control, hold, and dispose
4 of the record [~~document~~] and the goods the record [~~it~~] covers, and
5 purports to be issued by or addressed to a bailee and to cover goods
6 in the bailee's possession which are either identified or are
7 fungible portions of an identified mass. The term includes a bill
8 of lading, transport document, dock warrant, dock receipt,
9 warehouse receipt, and order for delivery of goods. An electronic
10 document of title is evidenced by a record consisting of
11 information stored in an electronic medium. A tangible document of
12 title is evidenced by a record consisting of information that is
13 inscribed on a tangible medium. [~~To be a document of title a~~
14 document must purport to be issued by or addressed to a bailee and
15 purport to cover goods in the bailee's possession which are either
16 identified or are fungible portions of an identified mass.]

17 (21) "Holder" means:

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

21 (B) the person in possession of a negotiable
22 tangible document of title if the goods are deliverable either to
23 bearer or to the order of the person in possession; or

24 (C) a person in control of a negotiable
25 electronic document of title.

26 (42) "Warehouse receipt" means a document of title
27 [~~receipt~~] issued by a person engaged in the business of storing

1 goods for hire.

2 SECTION 3. Section 2.103(c), Business & Commerce Code, is
3 amended to read as follows:

4 (c) The following definitions in other chapters apply to
5 this chapter:

6 "Check". Section 3.104.

7 "Consignee". Section 7.102.

8 "Consignor". Section 7.102.

9 "Consumer goods". Section 9.102.

10 "Control". Section 7.106.

11 "Dishonor". Section 3.502.

12 "Draft". Section 3.104.

13 SECTION 4. Section 2.104(b), Business & Commerce Code, is
14 amended to read as follows:

15 (b) "Financing agency" means a bank, finance company or
16 other person who in the ordinary course of business makes advances
17 against goods or documents of title or who by arrangement with
18 either the seller or the buyer intervenes in ordinary course to make
19 or collect payment due or claimed under the contract for sale, as by
20 purchasing or paying the seller's draft or making advances against
21 it or by merely taking it for collection whether or not documents of
22 title accompany or are associated with the draft. "Financing
23 agency" includes also a bank or other person who similarly
24 intervenes between persons who are in the position of seller and
25 buyer in respect to the goods (Section 2.707).

26 SECTION 5. Section 2.310, Business & Commerce Code, is
27 amended to read as follows:

1 Sec. 2.310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT;
2 AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed

3 (1) payment is due at the time and place at which the
4 buyer is to receive the goods even though the place of shipment is
5 the place of delivery; and

6 (2) if the seller is authorized to send the goods he
7 may ship them under reservation, and may tender the documents of
8 title, but the buyer may inspect the goods after their arrival
9 before payment is due unless such inspection is inconsistent with
10 the terms of the contract (Section 2.513); and

11 (3) if delivery is authorized and made by way of
12 documents of title otherwise than by Subdivision (2) then payment
13 is due regardless of where the goods are to be received:

14 (A) at the time and place at which the buyer is to
15 receive delivery of the tangible documents; or

16 (B) at the time the buyer is to receive delivery
17 of the electronic documents and at the seller's place of business or
18 if none, the seller's residence [~~regardless of where the goods are~~
19 ~~to be received~~]; and

20 (4) where the seller is required or authorized to ship
21 the goods on credit the credit period runs from the time of shipment
22 but post-dating the invoice or delaying its dispatch will
23 correspondingly delay the starting of the credit period.

24 SECTION 6. Section 2.401(c), Business & Commerce Code, is
25 amended to read as follows:

26 (c) Unless otherwise explicitly agreed where delivery is to
27 be made without moving the goods,

1 (1) if the seller is to deliver a tangible document of
2 title, title passes at the time when and the place where he delivers
3 such documents and if the seller is to deliver an electronic
4 document of title, title passes when the seller delivers the
5 document; or

6 (2) if the goods are at the time of contracting already
7 identified and no documents are to be delivered, title passes at the
8 time and place of contracting.

9 SECTION 7. Section 2.503(e), Business & Commerce Code, is
10 amended to read as follows:

11 (e) Where the contract requires the seller to deliver
12 documents

13 (1) he must tender all such documents in correct form,
14 except as provided in this chapter with respect to bills of lading
15 in a set (Subsection (b) of Section 2.323); and

16 (2) tender through customary banking channels is
17 sufficient and dishonor of a draft accompanying or associated with
18 the documents constitutes non-acceptance or rejection.

19 SECTION 8. Section 2.505, Business & Commerce Code, is
20 amended to read as follows:

21 Sec. 2.505. SELLER'S SHIPMENT UNDER RESERVATION. (a)
22 Where the seller has identified goods to the contract by or before
23 shipment:

24 (1) his procurement of a negotiable bill of lading to
25 his own order or otherwise reserves in him a security interest in
26 the goods. His procurement of the bill to the order of a financing
27 agency or of the buyer indicates in addition only the seller's

1 expectation of transferring that interest to the person named.

2 (2) a non-negotiable bill of lading to himself or his
3 nominee reserves possession of the goods as security but except in a
4 case of conditional delivery (Subsection (b) of Section 2.507) a
5 non-negotiable bill of lading naming the buyer as consignee
6 reserves no security interest even though the seller retains
7 possession or control of the bill of lading.

8 (b) When shipment by the seller with reservation of a
9 security interest is in violation of the contract for sale it
10 constitutes an improper contract for transportation within the
11 preceding section but impairs neither the rights given to the buyer
12 by shipment and identification of the goods to the contract nor the
13 seller's powers as a holder of a negotiable document of title.

14 SECTION 9. Section 2.506(b), Business & Commerce Code, is
15 amended to read as follows:

16 (b) The right to reimbursement of a financing agency which
17 has in good faith honored or purchased the draft under commitment to
18 or authority from the buyer is not impaired by subsequent discovery
19 of defects with reference to any relevant document which was
20 apparently regular [~~on its face~~].

21 SECTION 10. Section 2.509(b), Business & Commerce Code, is
22 amended to read as follows:

23 (b) Where the goods are held by a bailee to be delivered
24 without being moved, the risk of loss passes to the buyer

25 (1) on the buyer's [~~his~~] receipt of possession or
26 control of a negotiable document of title covering the goods; or

27 (2) on acknowledgment by the bailee of the buyer's

1 right to possession of the goods; or

2 (3) after the buyer's [~~his~~] receipt of possession or
3 control of a non-negotiable document of title or other written
4 direction to deliver, as provided in Subsection (d)(2) of Section
5 2.503.

6 SECTION 11. Section 2.605(b), Business & Commerce Code, is
7 amended to read as follows:

8 (b) Payment against documents made without reservation of
9 rights precludes recovery of the payment for defects apparent in
10 [~~on the face of~~] the documents.

11 SECTION 12. Sections 2.705(b) and (c), Business & Commerce
12 Code, are amended to read as follows:

13 (b) As against such buyer the seller may stop delivery until

14 (1) receipt of the goods by the buyer; or

15 (2) acknowledgment to the buyer by any bailee of the
16 goods except a carrier that the bailee holds the goods for the
17 buyer; or

18 (3) such acknowledgment to the buyer by a carrier by
19 reshipment or as a warehouse [~~warehouseman~~]; or

20 (4) negotiation to the buyer of any negotiable
21 document of title covering the goods.

22 (c)(1) To stop delivery the seller must so notify as to
23 enable the bailee by reasonable diligence to prevent delivery of
24 the goods.

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

1 (3) If a negotiable document of title has been issued
2 for goods the bailee is not obliged to obey a notification to stop
3 until surrender of possession or control of the document.

4 (4) A carrier who has issued a non-negotiable bill of
5 lading is not obliged to obey a notification to stop received from a
6 person other than the consignor.

7 SECTION 13. Sections 2A.103(a)(1) and (15), Business &
8 Commerce Code, are amended to read as follows:

9 (1) "Buyer in the ordinary course of business" means a
10 person who in good faith and without knowledge that the sale to him
11 or her is in violation of the ownership rights or security interest
12 or leasehold interest of a third party in the goods buys in the
13 ordinary course from a person in the business of selling goods of
14 that kind but does not include a pawnbroker. "Buying" may be for
15 cash or by exchange of other property or on secured or unsecured
16 credit and includes acquiring [~~receiving~~] goods or documents of
17 title under a preexisting contract for sale but does not include a
18 transfer in bulk or as security for or in total or partial
19 satisfaction of a money debt.

20 (15) "Lessee in ordinary course of business" means a
21 person who in good faith and without knowledge that the lease to him
22 or her is in violation of the ownership rights or security interest
23 or leasehold interest of a third party in the goods, leases in
24 ordinary course from a person in the business of selling or leasing
25 goods of that kind but does not include a pawnbroker. "Leasing" may
26 be for cash or by exchange of other property or on secured or
27 unsecured credit and includes acquiring [~~receiving~~] goods or

1 documents of title under a preexisting lease contract but does not
2 include a transfer in bulk or as security for or in total or partial
3 satisfaction of a money debt.

4 SECTION 14. Section 2A.514(b), Business & Commerce Code, is
5 amended to read as follows:

6 (b) A lessee's failure to reserve rights when paying rent or
7 other consideration against documents precludes recovery of the
8 payment for defects apparent in [~~on the face of~~] the documents.

9 SECTION 15. Section 2A.526(b), Business & Commerce Code, is
10 amended to read as follows:

11 (b) In pursuing its remedies under Subsection (a), the
12 lessor may stop delivery until:

- 13 (1) receipt of the goods by the lessee;
14 (2) acknowledgement to the lessee by any bailee of the
15 goods, except a carrier, that the bailee holds the goods for the
16 lessee; or
17 (3) such an acknowledgement to the lessee by a carrier
18 via reshipment or as a warehouse [~~warehouseman~~].

19 SECTION 16. Section 4.104(c), Business & Commerce Code, is
20 amended to read as follows:

21 (c) The following definitions in other chapters apply to
22 this chapter:

23 "Acceptance"	Section 3.409.
24 "Alteration"	Section 3.407.
25 "Cashier's check"	Section 3.104.
26 "Certificate of deposit"	Section 3.104.
27 "Certified check"	Section 3.409.

1	"Check"	Section 3.104.
2	<u>"Control"</u>	<u>Section 7.106.</u>
3	"Holder in due course"	Section 3.302.
4	"Instrument"	Section 3.104.
5	"Notice of dishonor"	Section 3.503.
6	"Order"	Section 3.103.
7	"Ordinary care"	Section 3.103.
8	"Person entitled to enforce"	Section 3.301.
9	"Presentment"	Section 3.501.
10	"Promise"	Section 3.103.
11	"Prove"	Section 3.103.
12	"Teller's check"	Section 3.104.
13	"Unauthorized signature"	Section 3.403.

14 SECTION 17. Section 4.210(c), Business & Commerce Code, is
15 amended to read as follows:

16 (c) Receipt by a collecting bank of a final settlement for
17 an item is a realization on its security interest in the item,
18 accompanying documents, and proceeds. So long as the bank does not
19 receive final settlement for the item or give up possession of the
20 item or possession or control of the accompanying documents for
21 purposes other than collection, the security interest continues to
22 that extent and is subject to Chapter 9, but:

23 (1) no security agreement is necessary to make the
24 security interest enforceable (Section 9.203(b)(3)(A));

25 (2) no filing is required to perfect the security
26 interest; and

27 (3) the security interest has priority over

1 conflicting perfected security interests in the item, accompanying
2 documents, or proceeds.

3 SECTION 18. Section 8.103, Business & Commerce Code, is
4 amended by adding Subsection (g) to read as follows:

5 (g) A document of title, as defined in Section 1.201(b)(16),
6 is not a financial asset unless Section 8.102(a)(9)(C) applies.

7 SECTION 19. Section 9.102(b), Business & Commerce Code, is
8 amended to read as follows:

9 (b) The following definitions in other chapters apply to
10 this chapter:

11 "Applicant"	Section 5.102.
12 "Beneficiary"	Section 5.102.
13 "Broker"	Section 8.102.
14 "Certificated security"	Section 8.102.
15 "Check"	Section 3.104.
16 "Clearing corporation"	Section 8.102.
17 "Contract for sale"	Section 2.106.
18 <u>"Control" (with respect to a document of title)</u>	<u>Section 7.106.</u>
19 "Customer"	Section 4.104.
20 "Entitlement holder"	Section 8.102.
21 "Financial asset"	Section 8.102.
22 "Holder in due course"	Section 3.302.
23 "Issuer" (with respect to a letter of credit 24 or letter-of-credit right)	Section 5.102.
25 "Issuer" (with respect to a security)	Section 8.201.
26 "Lease"	Section 2A.103.
27 "Lease agreement"	Section 2A.103.

1	"Lease contract"	Section 2A.103.
2	"Leasehold interest"	Section 2A.103.
3	"Lessee"	Section 2A.103.
4	"Lessee in ordinary course of business"	Section 2A.103.
5	"Lessor"	Section 2A.103.
6	"Lessor's residual interest"	Section 2A.103.
7	"Letter of credit"	Section 5.102.
8	"Merchant"	Section 2.104.
9	"Negotiable instrument"	Section 3.104.
10	"Nominated person"	Section 5.102.
11	"Note"	Section 3.104.
12	"Proceeds of a letter of credit"	Section 5.114.
13	"Prove"	Section 3.103.
14	"Sale"	Section 2.106.
15	"Securities account"	Section 8.501.
16	"Securities intermediary"	Section 8.102.
17	"Security"	Section 8.102.
18	"Security certificate"	Section 8.102.
19	"Security entitlement"	Section 8.102.
20	"Uncertificated security"	Section 8.102.

21 SECTION 20. Section 9.203(b), Business & Commerce Code, is
22 amended to read as follows:

23 (b) Except as otherwise provided in Subsections (c)-(j), a
24 security interest is enforceable against the debtor and third
25 parties with respect to the collateral only if:

- 26 (1) value has been given;
- 27 (2) the debtor has rights in the collateral or the

1 power to transfer rights in the collateral to a secured party; and

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

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

7 (B) the collateral is not a certificated security
8 and is in the possession of the secured party under Section 9.313
9 pursuant to the debtor's security agreement;

10 (C) the collateral is a certificated security in
11 registered form and the security certificate has been delivered to
12 the secured party under Section 8.301 pursuant to the debtor's
13 security agreement; or

14 (D) the collateral is deposit accounts,
15 electronic chattel paper, investment property, [~~or~~]
16 letter-of-credit rights, or electronic documents, and the secured
17 party has control under Section 7.106, 9.104, 9.105, 9.106, or
18 9.107 pursuant to the debtor's security agreement.

19 SECTION 21. Section 9.207(c), Business & Commerce Code, is
20 amended to read as follows:

21 (c) Except as otherwise provided in Subsection (d), a
22 secured party having possession of collateral or control of
23 collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107:

24 (1) may hold as additional security any proceeds,
25 except money or funds, received from the collateral;

26 (2) shall apply money or funds received from the
27 collateral to reduce the secured obligation, unless remitted to the

1 debtor; and

2 (3) may create a security interest in the collateral.

3 SECTION 22. Section 9.208(b), Business & Commerce Code, is
4 amended to read as follows:

5 (b) Within 10 days after receiving an authenticated demand
6 by the debtor:

7 (1) a secured party having control of a deposit
8 account under Section 9.104(a)(2) shall send to the bank with which
9 the deposit account is maintained an authenticated statement that
10 releases the bank from any further obligation to comply with
11 instructions originated by the secured party;

12 (2) a secured party having control of a deposit
13 account under Section 9.104(a)(3) shall:

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

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

18 (3) a secured party, other than a buyer, having
19 control of electronic chattel paper under Section 9.105 shall:

20 (A) communicate the authoritative copy of the
21 electronic chattel paper to the debtor or its designated custodian;

22 (B) if the debtor designates a custodian that is
23 the designated custodian with which the authoritative copy of the
24 electronic chattel paper is maintained for the secured party,
25 communicate to the custodian an authenticated record releasing the
26 designated custodian from any further obligation to comply with
27 instructions originated by the secured party and instructing the

1 custodian to comply with instructions originated by the debtor; and

2 (C) take appropriate action to enable the debtor
3 or its designated custodian to make copies of or revisions to the
4 authoritative copy that add or change an identified assignee of the
5 authoritative copy without the consent of the secured party;

6 (4) a secured party having control of investment
7 property under Section 8.106(d)(2) or 9.106(b) shall send to the
8 securities intermediary or commodity intermediary with which the
9 security entitlement or commodity contract is maintained an
10 authenticated record that releases the securities intermediary or
11 commodity intermediary from any further obligation to comply with
12 entitlement orders or directions originated by the secured party;
13 ~~[and]~~

14 (5) a secured party having control of a
15 letter-of-credit right under Section 9.107 shall send to each
16 person having an unfulfilled obligation to pay or deliver proceeds
17 of the letter of credit to the secured party an authenticated
18 release from any further obligation to pay or deliver proceeds of
19 the letter of credit to the secured party; and

20 (6) a secured party having control of an electronic
21 document shall:

22 (A) give control of the electronic document to
23 the debtor or its designated custodian;

24 (B) if the debtor designates a custodian that is
25 the designated custodian with which the authoritative copy of the
26 electronic document is maintained for the secured party,
27 communicate to the custodian an authenticated record releasing the

1 designated custodian from any further obligation to comply with
2 instructions originated by the secured party and instructing the
3 custodian to comply with instructions originated by the debtor; and
4 (C) take appropriate action to enable the debtor
5 or its designated custodian to make copies of or revisions to the
6 authoritative copy which add or change an identified assignee of
7 the authoritative copy without the consent of the secured party.

8 SECTION 23. Section 9.301, Business & Commerce Code, is
9 amended to read as follows:

10 Sec. 9.301. LAW GOVERNING PERFECTION AND PRIORITY OF
11 SECURITY INTERESTS. Except as otherwise provided in Sections 9.303
12 through 9.306, the following rules determine the law governing
13 perfection, the effect of perfection or nonperfection, and the
14 priority of a security interest in collateral:

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

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

24 (3) Except as otherwise provided in Subdivision (4),
25 while tangible negotiable documents, goods, instruments, money, or
26 tangible chattel paper is located in a jurisdiction, the local law
27 of that jurisdiction governs:

1 (A) perfection of a security interest in the
2 goods by filing a fixture filing;

3 (B) perfection of a security interest in timber
4 to be cut; and

5 (C) the effect of perfection or nonperfection and
6 the priority of a nonpossessory security interest in the
7 collateral.

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

12 SECTION 24. Section 9.310(b), Business & Commerce Code, is
13 amended to read as follows:

14 (b) The filing of a financing statement is not necessary to
15 perfect a security interest:

16 (1) that is perfected under Section 9.308(d), (e),
17 (f), or (g);

18 (2) that is perfected under Section 9.309 when it
19 attaches;

20 (3) in property subject to a statute, regulation, or
21 treaty described in Section 9.311(a);

22 (4) in goods in possession of a bailee that is
23 perfected under Section 9.312(d)(1) or (2);

24 (5) in certificated securities, documents, goods, or
25 instruments which is perfected without filing, control or
26 possession under Section 9.312(e), (f), or (g);

27 (6) in collateral in the secured party's possession

1 under Section 9.313;

2 (7) in a certificated security that is perfected by
3 delivery of the security certificate to the secured party under
4 Section 9.313;

5 (8) in deposit accounts, electronic chattel paper,
6 electronic documents, investment property, or letter-of-credit
7 rights that is perfected by control under Section 9.314;

8 (9) in proceeds that is perfected under Section 9.315;

9 (10) that is perfected under Section 9.316; or

10 (11) in oil or gas production or their proceeds under
11 Section 9.343.

12 SECTION 25. Section 9.312(e), Business & Commerce Code, is
13 amended to read as follows:

14 (e) A security interest in certificated securities,
15 negotiable documents, or instruments is perfected without filing or
16 the taking of possession or control for a period of 20 days from the
17 time it attaches to the extent that it arises for new value given
18 under an authenticated security agreement.

19 SECTION 26. Section 9.313(a), Business & Commerce Code, is
20 amended to read as follows:

21 (a) Except as otherwise provided in Subsection (b), a
22 secured party may perfect a security interest in tangible
23 negotiable documents, goods, instruments, money, or tangible
24 chattel paper by taking possession of the collateral. A secured
25 party may perfect a security interest in certificated securities by
26 taking delivery of the certificated securities under Section 8.301.

27 SECTION 27. Sections 9.314(a) and (b), Business & Commerce

1 Code, are amended to read as follows:

2 (a) A security interest in investment property, deposit
3 accounts, letter-of-credit rights, [~~or~~] electronic chattel paper,
4 or electronic documents may be perfected by control of the
5 collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107.

6 (b) A security interest in deposit accounts, electronic
7 chattel paper, [~~or~~] letter-of-credit rights, or electronic
8 documents is perfected by control under Section 7.106, 9.104,
9 9.105, or 9.107 when the secured party obtains control and remains
10 perfected by control only while the secured party retains control.

11 SECTION 28. Sections 9.317(b) and (d), Business & Commerce
12 Code, are amended to read as follows:

13 (b) Except as otherwise provided in Subsection (e), a buyer,
14 other than a secured party, of tangible chattel paper, tangible
15 documents, goods, instruments, or a security certificate takes free
16 of a security interest or agricultural lien if the buyer gives value
17 and receives delivery of the collateral without knowledge of the
18 security interest or agricultural lien and before it is perfected.

19 (d) A licensee of a general intangible or a buyer, other
20 than a secured party, of accounts, electronic chattel paper,
21 electronic documents, general intangibles, or investment property
22 other than a certificated security takes free of a security
23 interest if the licensee or buyer gives value without knowledge of
24 the security interest and before it is perfected.

25 SECTION 29. Section 9.338, Business & Commerce Code, is
26 amended to read as follows:

27 Sec. 9.338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL

1 LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN
2 INCORRECT INFORMATION. If a security interest or agricultural lien
3 is perfected by a filed financing statement providing information
4 described in Section 9.516(b)(5) that is incorrect at the time the
5 financing statement is filed:

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

11 (2) a purchaser, other than a secured party, of the
12 collateral takes free of the security interest or agricultural lien
13 to the extent that, in reasonable reliance upon the incorrect
14 information, the purchaser gives value and, in the case of tangible
15 chattel paper, tangible documents, goods, instruments, or a
16 security certificate, receives delivery of the collateral.

17 SECTION 30. Section 9.601(b), Business & Commerce Code, is
18 amended to read as follows:

19 (b) A secured party in possession of collateral or control
20 of collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107
21 has the rights and duties provided in Section 9.207.

22 SECTION 31. This Act applies to a document of title that is
23 issued or a bailment that arises on or after the effective date of
24 this Act. This Act does not apply to a document of title that is
25 issued or a bailment that arises before the effective date of this
26 Act even if the document of title or bailment would be subject to
27 this Act if the document of title had been issued or bailment had

1 arisen after the effective date of this Act. This Act does not
2 apply to a right of action that has accrued before the effective
3 date of this Act.

4 SECTION 32. A document of title issued or a bailment that
5 arises before the effective date of this Act and the rights,
6 obligations, and interests flowing from that document or bailment
7 are governed by any statute or other rule amended or repealed by
8 this Act as if amendment or repeal had not occurred and may be
9 terminated, completed, consummated, or enforced under that statute
10 or other rule.

11 SECTION 33. This Act takes effect September 1, 2005.