

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 1555*

Short Title: Revise Articles 1 and 7 of the UCC.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

May 18, 2006

A BILL TO BE ENTITLED

1 AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL
2 CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE
3 ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER
4 ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER
5 SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7
6 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE
7 RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING
8 AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL
9 CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO
10 REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM
11 WAREHOUSE RECEIPTS ACT, AS RECOMMENDED BY THE GENERAL
12 STATUTES COMMISSION.
13

14 The General Assembly of North Carolina enacts:

15
16 **PART I. REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE
17 AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.**

18 **SUBPART A. REVISED ARTICLE 1 OF THE UNIFORM
19 COMMERCIAL CODE.**

20 **SECTION 1.** Article 1 of Chapter 25 of the General Statutes is rewritten to
21 read:

"Article 1.

"General Provisions.

"PART 1.

"GENERAL PROVISIONS.

26 **"§ 25-1-101. Short titles.**

27 (a) This Chapter may be cited as the Uniform Commercial Code.

28 (b) This Article may be cited as Uniform Commercial Code – General
29 Provisions.

1 **"§ 25-1-102. Scope of Article.**

2 Except as provided in G.S. 25-1-301, this Article applies to a transaction to the
3 extent that it is governed by another Article of this Chapter.

4 **"§ 25-1-103. Construction of this Chapter to promote its purposes and policies;
5 applicability of supplemental principles of law.**

6 (a) This Chapter must be liberally construed and applied to promote its
7 underlying purposes and policies, which are:

8 (1) To simplify, clarify, and modernize the law governing commercial
9 transactions;

10 (2) To permit the continued expansion of commercial practices through
11 custom, usage, and agreement of the parties; and

12 (3) To make uniform the law among the various jurisdictions.

13 (b) Unless displaced by the particular provisions of this Chapter, the principles of
14 law and equity, including the law merchant and the law relative to capacity to contract,
15 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,
16 bankruptcy, and other validating or invalidating cause supplement its provisions.

17 **"§ 25-1-104. Construction against implied repeal.**

18 This Chapter being a general act intended as a unified coverage of its subject matter,
19 no part of it shall be deemed to be impliedly repealed by subsequent legislation if such
20 construction can reasonably be avoided.

21 **"§ 25-1-105. Severability.**

22 If any provision or clause of this Chapter or its application to any person or
23 circumstance is held invalid, the invalidity does not affect other provisions or
24 applications of this Chapter that can be given effect without the invalid provision or
25 application, and to this end the provisions of this Chapter are severable.

26 **"§ 25-1-106. Use of singular and plural; gender.**

27 In this Chapter, unless the statutory context otherwise requires:

28 (1) Words in the singular number include the plural, and those in the
29 plural include the singular; and

30 (2) Words of any gender also refer to any other gender.

31 **"§ 25-1-107. Section captions.**

32 Section captions are part of this Chapter. The subsection headings in Article 9 of this
33 Chapter are not parts of this Chapter.

34 **"§ 25-1-108. Relation to Electronic Signatures in Global and National Commerce
35 Act.**

36 This Article modifies, limits, and supersedes the federal Electronic Signatures in
37 Global and National Commerce Act, 15 U.S.C. § 7001, et seq., except that nothing in
38 this Article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes
39 electronic delivery of any of the notices described in Section 7003(b) of that Act.

40 "PART 2.

41 "GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

42 **"§ 25-1-201. General definitions.**

1 (a) Unless the context otherwise requires, words or phrases defined in this
2 section, or in the additional definitions contained in other Articles of this Chapter that
3 apply to particular Articles or Parts thereof, have the meanings stated.

4 (b) Subject to definitions contained in other articles of this Chapter that apply to
5 particular Articles or Parts thereof:

6 (1) "Action," in the sense of a judicial proceeding, includes recoupment,
7 counterclaim, setoff, suit in equity, and any other proceeding in which
8 rights are determined.

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

10 (3) "Agreement," as distinguished from "contract," means the bargain of
11 the parties in fact, as found in their language or inferred from other
12 circumstances, including course of performance, course of dealing, or
13 usage of trade as provided in G.S. 25-1-303.

14 (4) "Bank" means a person engaged in the business of banking and
15 includes a savings bank, savings and loan association, credit union,
16 and trust company.

17 (5) "Bearer" means a person in possession of a negotiable instrument,
18 document of title, or certificated security that is payable to bearer or
19 indorsed in blank.

20 (6) "Bill of lading" means a document evidencing the receipt of goods for
21 shipment issued by a person engaged in the business of transporting or
22 forwarding goods.

23 (7) "Branch" includes a separately incorporated foreign branch of a bank.

24 (8) "Burden of establishing" a fact means the burden of persuading the
25 trier of fact that the existence of the fact is more probable than its
26 nonexistence.

27 (9) "Buyer in ordinary course of business" means a person that buys goods
28 in good faith, without knowledge that the sale violates the rights of
29 another person in the goods, and in the ordinary course from a person,
30 other than a pawnbroker, in the business of selling goods of that kind.
31 A person buys goods in the ordinary course if the sale to the person
32 comports with the usual or customary practices in the kind of business
33 in which the seller is engaged or with the seller's own usual or
34 customary practices. A person that sells oil, gas, or other minerals at
35 the wellhead or minehead is a person in the business of selling goods
36 of that kind. A buyer in ordinary course of business may buy for cash,
37 by exchange of other property, or on secured or unsecured credit, and
38 may acquire goods or documents of title under a preexisting contract
39 for sale. Only a buyer that takes possession of the goods or has a right
40 to recover the goods from the seller under Article 2 of this Chapter
41 may be a buyer in ordinary course of business. "Buyer in ordinary
42 course of business" does not include a person that acquires goods in a
43 transfer in bulk or as security for or in total or partial satisfaction of a
44 money debt.

- 1 (10) "Conspicuous," with reference to a term, means so written, displayed,
2 or presented that a reasonable person against which it is to operate
3 ought to have noticed it. Whether a term is "conspicuous" or not is a
4 decision for the court. Conspicuous terms include the following:
5 a. A heading in capitals equal to or greater in size than the
6 surrounding text, or in contrasting type, font, or color to the
7 surrounding text of the same or lesser size; and
8 b. Language in the body of a record or display in larger type than
9 the surrounding text, or in contrasting type, font, or color to the
10 surrounding text of the same size, or set off from surrounding
11 text of the same size by symbols or other marks that call
12 attention to the language.
- 13 (11) "Consumer" means an individual who enters into a transaction
14 primarily for personal, family, or household purposes.
- 15 (12) "Contract," as distinguished from "agreement," means the total legal
16 obligation that results from the parties' agreement as determined by
17 this Chapter as supplemented by any other applicable laws.
- 18 (13) "Creditor" includes a general creditor, a secured creditor, a lien
19 creditor, and any representative of creditors, including an assignee for
20 the benefit of creditors, a trustee in bankruptcy, a receiver in equity,
21 and an executor or administrator of an insolvent debtor's or assignor's
22 estate.
- 23 (14) "Defendant" includes a person in the position of defendant in a
24 counterclaim, cross-claim, or third-party claim.
- 25 (15) "Delivery," with respect to an instrument, document of title, or chattel
26 paper, means voluntary transfer of possession.
- 27 (16) "Document of title" includes bill of lading, dock warrant, dock receipt,
28 warehouse receipt or order for the delivery of goods, and also any
29 other document which in the regular course of business or financing is
30 treated as adequately evidencing that the person in possession of it is
31 entitled to receive, hold, and dispose of the document and the goods it
32 covers. To be a document of title, a document must purport to be
33 issued by or addressed to a bailee and purport to cover goods in the
34 bailee's possession which are either identified or are fungible portions
35 of an identified mass.
- 36 (17) "Fault" means a default, breach, or wrongful act or omission.
- 37 (18) "Fungible goods" means:
38 a. Goods of which any unit, by nature or usage of trade, are the
39 equivalent of any other like unit; or
40 b. Goods that by agreement are treated as equivalent.
- 41 (19) "Genuine" means free of forgery or counterfeiting.
- 42 (20) "Good faith," except as otherwise provided in Article 5 of this Chapter,
43 means honesty in fact and the observance of reasonable commercial
44 standards of fair dealing.

- 1 (21) "Holder" means:
2 a. The person in possession of a negotiable instrument that is
3 payable either to bearer or to an identified person that is the
4 person in possession; or
5 b. The person in possession of a document of title if the goods are
6 deliverable either to bearer or to the order of the person in
7 possession.
- 8 (22) "Insolvency proceeding" includes an assignment for the benefit of
9 creditors or other proceeding intended to liquidate or rehabilitate the
10 estate of the person involved.
- 11 (23) "Insolvent" means:
12 a. Having generally ceased to pay debts in the ordinary course of
13 business other than as a result of bona fide dispute;
14 b. Being unable to pay debts as they become due; or
15 c. Being insolvent within the meaning of federal bankruptcy law.
- 16 (24) "Money" means a medium of exchange currently authorized or
17 adopted by a domestic or foreign government. The term includes a
18 monetary unit of account established by an intergovernmental
19 organization or by agreement between two or more countries.
- 20 (25) "Organization" means a person other than an individual.
- 21 (26) "Party," as distinguished from "third party," means a person that has
22 engaged in a transaction or made an agreement subject to this Chapter.
- 23 (27) "Person" means an individual, corporation, business trust, estate, trust,
24 partnership, limited liability company, association, joint venture,
25 government, governmental subdivision, agency, or instrumentality,
26 public corporation, or any other legal or commercial entity.
- 27 (28) "Present value" means the amount as of a date certain of one or more
28 sums payable in the future, discounted to the date certain by use of
29 either an interest rate specified by the parties if that rate is not
30 manifestly unreasonable at the time the transaction is entered into or, if
31 an interest rate is not so specified, a commercially reasonable rate that
32 takes into account the facts and circumstances at the time the
33 transaction is entered into.
- 34 (29) "Purchase" means taking by sale, lease, discount, negotiation,
35 mortgage, pledge, lien, security interest, issue or reissue, gift, or any
36 other voluntary transaction creating an interest in property.
- 37 (30) "Purchaser" means a person that takes by purchase.
- 38 (31) "Record" means information that is inscribed on a tangible medium or
39 that is stored in an electronic or other medium and is retrievable in
40 perceivable form.
- 41 (32) "Remedy" means any remedial right to which an aggrieved party is
42 entitled with or without resort to a tribunal.

- 1 (33) "Representative" means a person empowered to act for another,
2 including an agent, an officer of a corporation or association, and a
3 trustee, executor, or administrator of an estate.
- 4 (34) "Right" includes remedy.
- 5 (35) "Security interest" means an interest in personal property or fixtures
6 which secures payment or performance of an obligation. "Security
7 interest" includes any interest of a consignor and a buyer of accounts,
8 chattel paper, a payment intangible, or a promissory note in a
9 transaction that is subject to Article 9 of this Chapter. "Security
10 interest" does not include the special property interest of a buyer of
11 goods on identification of those goods to a contract for sale under
12 G.S. 25-2-401, but a buyer may also acquire a "security interest" by
13 complying with Article 9 of this Chapter. Except as otherwise
14 provided in G.S. 25-2-505, the right of a seller or lessor of goods under
15 Article 2 or 2A of this Chapter to retain or acquire possession of the
16 goods is not a "security interest," but a seller or lessor may also
17 acquire a "security interest" by complying with Article 9 of this
18 Chapter. The retention or reservation of title by a seller of goods
19 notwithstanding shipment or delivery to the buyer under G.S. 25-2-401
20 is limited in effect to a reservation of a "security interest." Whether a
21 transaction in the form of a lease creates a "security interest" is
22 determined pursuant to G.S. 25-1-203.
- 23 (36) "Send" in connection with a writing, record, or notice means:
24 a. To deposit in the mail or deliver for transmission by any other
25 usual means of communication with postage or cost of
26 transmission provided for and properly addressed and, in the
27 case of an instrument, to an address specified thereon or
28 otherwise agreed, or if there be none to any address reasonable
29 under the circumstances; or
30 b. In any other way to cause to be received any record or notice
31 within the time it would have arrived if properly sent.
- 32 (37) "Signed" includes using any symbol executed or adopted with present
33 intention to adopt or accept a writing.
- 34 (38) "State" means a State of the United States, the District of Columbia,
35 Puerto Rico, the United States Virgin Islands, or any territory or
36 insular possession subject to the jurisdiction of the United States.
- 37 (39) "Surety" includes a guarantor or other secondary obligor.
- 38 (40) "Term" means a portion of an agreement that relates to a particular
39 matter.
- 40 (41) "Unauthorized signature" means a signature made without actual,
41 implied, or apparent authority. The term includes a forgery.
- 42 (42) "Warehouse receipt" means a receipt issued by a person engaged in the
43 business of storing goods for hire.

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

"§ 25-1-202. Notice; knowledge.

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

- (1) It comes to that person's attention; or
- (2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

"§ 25-1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

- (1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

- 1 (2) The lessee is bound to renew the lease for the remaining economic life
2 of the goods or is bound to become the owner of the goods;
- 3 (3) The lessee has an option to renew the lease for the remaining
4 economic life of the goods for no additional consideration or for
5 nominal additional consideration upon compliance with the lease
6 agreement; or
- 7 (4) The lessee has an option to become the owner of the goods for no
8 additional consideration or for nominal additional consideration upon
9 compliance with the lease agreement.
- 10 (c) A transaction in the form of a lease does not create a security interest merely
11 because:
- 12 (1) The present value of the consideration the lessee is obligated to pay the
13 lessor for the right to possession and use of the goods is substantially
14 equal to or is greater than the fair market value of the goods at the time
15 the lease is entered into;
- 16 (2) The lessee assumes risk of loss of the goods;
- 17 (3) The lessee agrees to pay, with respect to the goods, taxes, insurance,
18 filing, recording, or registration fees, or service or maintenance costs;
- 19 (4) The lessee has an option to renew the lease or to become the owner of
20 the goods;
- 21 (5) The lessee has an option to renew the lease for a fixed rent that is equal
22 to or greater than the reasonably predictable fair market rent for the
23 use of the goods for the term of the renewal at the time the option is to
24 be performed; or
- 25 (6) The lessee has an option to become the owner of the goods for a fixed
26 price that is equal to or greater than the reasonably predictable fair
27 market value of the goods at the time the option is to be performed.
- 28 (d) Additional consideration is nominal if it is less than the lessee's reasonably
29 predictable cost of performing under the lease agreement if the option is not exercised.
30 Additional consideration is not nominal if:
- 31 (1) When the option to renew the lease is granted to the lessee, the rent is
32 stated to be the fair market rent for the use of the goods for the term of
33 the renewal determined at the time the option is to be performed; or
- 34 (2) When the option to become the owner of the goods is granted to the
35 lessee, the price is stated to be the fair market value of the goods
36 determined at the time the option is to be performed.
- 37 (e) The "remaining economic life of the goods" and "reasonably predictable" fair
38 market rent, fair market value, or cost of performing under the lease agreement must be
39 determined with reference to the facts and circumstances at the time the transaction is
40 entered into.

41 **"§ 25-1-204. Value.**

42 Except as otherwise provided in Articles 3, 4, and 5 of this Chapter, a person gives
43 value for rights if the person acquires them:

- 1 (1) In return for a binding commitment to extend credit or for the
2 extension of immediately available credit, whether or not drawn upon
3 and whether or not a charge-back is provided for in the event of
4 difficulties in collection;
- 5 (2) As security for, or in total or partial satisfaction of, a preexisting claim;
6 (3) By accepting delivery under a preexisting contract for purchase; or
7 (4) In return for any consideration sufficient to support a simple contract.

8 **"§ 25-1-205. Reasonable time; seasonableness.**

9 (a) Whether a time for taking an action required by this Chapter is reasonable
10 depends on the nature, purpose, and circumstances of the action.

11 (b) An action is taken seasonably if it is taken at or within the time agreed or, if
12 no time is agreed, at or within a reasonable time.

13 **"§ 25-1-206. Presumptions.**

14 Whenever this Chapter creates a "presumption" with respect to a fact, or provides
15 that a fact is "presumed," the trier of fact must find the existence of the fact unless and
16 until evidence is introduced that supports a finding of its nonexistence.

17 "PART 3.

18 "TERRITORIAL APPLICABILITY AND GENERAL RULES.

19 **"§ 25-1-301. Territorial applicability; parties' power to choose applicable law.**

20 (a) Except as otherwise provided in this section, when a transaction bears a
21 reasonable relation to this State and also to another state or nation the parties may agree
22 that the law either of this State or of such other state or nation shall govern their rights
23 and duties.

24 (b) In the absence of an agreement effective under subsection (a) of this section,
25 and except as provided in subsection (c) of this section, this Chapter applies to
26 transactions bearing an appropriate relation to this State.

27 (c) If one of the following provisions of this Chapter specifies the applicable law,
28 that provision governs and a contrary agreement is effective only to the extent permitted
29 by the law so specified:

- 30 (1) G.S. 25-2-402;
31 (2) G.S. 25-2A-105 and G.S. 25-2A-106;
32 (3) G.S. 25-4-102;
33 (4) G.S. 25-4A-507;
34 (5) G.S. 25-5-116;
35 (6) G.S. 25-8-110;
36 (7) G.S. 25-9-301 through G.S. 25-9-307.

37 **"§ 25-1-302. Variation by agreement.**

38 (a) Except as otherwise provided in subsection (b) of this section or elsewhere in
39 this Chapter, the effect of provisions of this Chapter may be varied by agreement.

40 (b) The obligations of good faith, diligence, reasonableness, and care prescribed
41 by this Chapter may not be disclaimed by agreement. The parties, by agreement, may
42 determine the standards by which the performance of those obligations is to be
43 measured if those standards are not manifestly unreasonable. Whenever this Chapter

1 requires an action to be taken within a reasonable time, a time that is not manifestly
2 unreasonable may be fixed by agreement.

3 (c) The presence in certain provisions of this Chapter of the phrase "unless
4 otherwise agreed," or words of similar import, does not imply that the effect of other
5 provisions may not be varied by agreement under this section.

6 **"§ 25-1-303. Course of performance, course of dealing, and usage of trade.**

7 (a) A "course of performance" is a sequence of conduct between the parties to a
8 particular transaction that exists if:

9 (1) The agreement of the parties with respect to the transaction involves
10 repeated occasions for performance by a party; and

11 (2) The other party, with knowledge of the nature of the performance and
12 opportunity for objection to it, accepts the performance or acquiesces
13 in it without objection.

14 (b) A "course of dealing" is a sequence of conduct concerning previous
15 transactions between the parties to a particular transaction that is fairly to be regarded as
16 establishing a common basis of understanding for interpreting their expressions and
17 other conduct.

18 (c) A "usage of trade" is any practice or method of dealing having such regularity
19 of observance in a place, vocation, or trade as to justify an expectation that it will be
20 observed with respect to the transaction in question. The existence and scope of such a
21 usage must be proved as facts. If it is established that such a usage is embodied in a
22 trade code or similar record, the interpretation of the record is a question of law.

23 (d) A course of performance or course of dealing between the parties or usage of
24 trade in the vocation or trade in which they are engaged or of which they are or should
25 be aware is relevant in ascertaining the meaning of the parties' agreement, may give
26 particular meaning to specific terms of the agreement, and may supplement or qualify
27 the terms of the agreement. A usage of trade applicable in the place in which part of the
28 performance under the agreement is to occur may be so utilized as to that part of the
29 performance.

30 (e) Except as otherwise provided in subsection (f) of this section, the express
31 terms of an agreement and any applicable course of performance, course of dealing, or
32 usage of trade must be construed whenever reasonable as consistent with each other. If
33 such a construction is unreasonable:

34 (1) Express terms prevail over course of performance, course of dealing,
35 and usage of trade;

36 (2) Course of performance prevails over course of dealing and usage of
37 trade; and

38 (3) Course of dealing prevails over usage of trade.

39 (f) Subject to G.S. 25-2-209, a course of performance is relevant to show a
40 waiver or modification of any term inconsistent with the course of performance.

41 (g) Evidence of a relevant usage of trade offered by one party is not admissible
42 unless that party has given the other party notice that the court finds sufficient to
43 prevent unfair surprise to the other party.

44 **"§ 25-1-304. Obligation of good faith.**

1 Every contract or duty within this Chapter imposes an obligation of good faith in its
2 performance and enforcement.

3 **"§ 25-1-305. Remedies to be liberally administered.**

4 (a) The remedies provided by this Chapter must be liberally administered to the
5 end that the aggrieved party may be put in as good a position as if the other party had
6 fully performed, but neither consequential or special damages nor penal damages may
7 be had except as specifically provided in this Chapter or by other rule of law.

8 (b) Any right or obligation declared by this Chapter is enforceable by action
9 unless the provision declaring it specifies a different and limited effect.

10 **"§ 25-1-306. Waiver or renunciation of claim or right after breach.**

11 A claim or right arising out of an alleged breach may be discharged in whole or in
12 part without consideration by agreement of the aggrieved party in an authenticated
13 record.

14 **"§ 25-1-307. Prima facie evidence by third-party documents.**

15 A document in due form purporting to be a bill of lading, policy or certificate of
16 insurance, official weigher's or inspector's certificate, consular invoice, or any other
17 document authorized or required by the contract to be issued by a third party is prima
18 facie evidence of its own authenticity and genuineness and of the facts stated in the
19 document by the third party.

20 **"§ 25-1-308. Performance or acceptance under reservation of rights.**

21 (a) A party that with explicit reservation of rights performs or promises
22 performance or assents to performance in a manner demanded or offered by the other
23 party does not thereby prejudice the rights reserved. Such words as "without prejudice,"
24 "under protest," or the like are sufficient.

25 (b) Subsection (a) of this section does not apply to an accord and satisfaction.

26 **"§ 25-1-309. Option to accelerate at will.**

27 A term providing that one party or that party's successor in interest may accelerate
28 payment or performance or require collateral or additional collateral "at will" or when
29 the party "deems itself insecure," or words of similar import, means that the party has
30 power to do so only if that party in good faith believes that the prospect of payment or
31 performance is impaired. The burden of establishing lack of good faith is on the party
32 against which the power has been exercised.

33 **"§ 25-1-310. Subordinated obligations.**

34 An obligation may be issued as subordinated to performance of another obligation of
35 the person obligated, or a creditor may subordinate its right to performance of an
36 obligation by agreement with either the person obligated or another creditor of the
37 person obligated. Subordination does not create a security interest as against either the
38 common debtor or a subordinated creditor."

39 **SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF**
40 **THE UNIFORM COMMERCIAL CODE.**

41 **SECTION 2.** G.S. 25-2-103(1) reads as rewritten:

42 "(1) In this article unless the context otherwise requires

43 (a) "Buyer" means a person who buys or contracts to buy goods.

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

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

5 (d) "Seller" means a person who sells or contracts to sell goods. Any
6 manufacturer of self-propelled motor vehicles, as defined in
7 G.S. 20-4.01, is also a "seller" with respect to buyers of its product to
8 whom it makes an express warranty, notwithstanding any lack of
9 privity between them, for purposes of all rights and remedies available
10 to buyers under this Article."

11 **SECTION 3.** G.S. 25-2-202 reads as rewritten:

12 **"§ 25-2-202. Final written expression; parol or extrinsic evidence.**

13 Terms with respect to which the confirmatory memoranda of the parties agree or
14 which are otherwise set forth in a writing intended by the parties as a final expression of
15 their agreement with respect to such terms as are included therein may not be
16 contradicted by evidence of any prior agreement or of a contemporaneous oral
17 agreement but may be explained or supplemented

18 (a) by course of performance, course of ~~dealing~~ ~~dealing~~, or usage of trade
19 (~~G.S. 25-1-205~~) or by ~~course of performance~~ (~~G.S. 25-2-208~~);
20 (G.S. 25-1-303); and

21 (b) by evidence of consistent additional terms unless the court finds the
22 writing to have been intended also as a complete and exclusive
23 statement of the terms of the agreement."

24 **SECTION 4.** G.S. 25-2-208 is repealed.

25 **SECTION 5.** G.S. 25-2A-103(3) reads as rewritten:

26 "(3) The following definitions in other Articles apply to this Article:

27 "Account". G.S. 25-9-102(a)(2).

28 "Between merchants". G.S. 25-2-104(3).

29 "Buyer". G.S. 25-2-103(1)(a).

30 "Chattel paper". G.S. 25-9-102(a)(11).

31 "Consumer goods". G.S. 25-9-102(a)(23).

32 "Document". G.S. 25-9-102(a)(30).

33 "Entrusting". G.S. 25-2-403(3).

34 "General intangible". G.S. 25-9-102(a)(42).

35 ~~"Good faith". G.S. 25-2-103(1)(b).~~

36 "Instrument". G.S. 25-9-102(a)(47).

37 "Merchant". G.S. 25-2-104(1).

38 "Mortgage". G.S. 25-9-102(a)(55).

39 "Pursuant to commitment". G.S. 25-9-102(a)(68).

40 "Receipt". G.S. 25-2-103(1)(c).

41 "Sale". G.S. 25-2-106(1).

42 "Sale on approval". G.S. 25-2-326.

43 "Sale or return". G.S. 25-2-326.

44 "Seller". G.S. 25-2-103(1)(d)."

1 **SECTION 6.** G.S. 25-2A-207 is repealed.

2 **SECTION 7.** G.S. 25-2A-501(4) reads as rewritten:

3 "(4) Except as otherwise provided in ~~G.S. 25-1-106(1)~~ G.S. 25-1-305(a) or this
4 Article or the lease agreement, the rights and remedies referred to in subsections (2) and
5 (3) of this section are cumulative."

6 **SECTION 8.** G.S. 25-2A-518(2) reads as rewritten:

7 "(2) Except as otherwise provided with respect to damages liquidated in the lease
8 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
9 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee's cover is by a
10 lease agreement substantially similar to the original lease agreement and the new lease
11 agreement is made in good faith and in a commercially reasonable manner, the lessee
12 may recover from the lessor as damages (i) the present value, as of the date of the
13 commencement of the term of the new lease agreement, of the rent under the new lease
14 agreement applicable to that period of the new lease term which is comparable to the
15 then remaining term of the original lease agreement minus the present value as of the
16 same date of the total rent for the then remaining lease term of the original lease
17 agreement, and (ii) any incidental or consequential damages, less expenses saved in
18 consequence of the lessor's default."

19 **SECTION 9.** G.S. 25-2A-519(1) reads as rewritten:

20 "(1) Except as otherwise provided with respect to damages liquidated in the lease
21 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
22 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee elects not to
23 cover or a lessee elects to cover and the cover is by lease agreement that for any reason
24 does not qualify for treatment under G.S. 25-2A-518(2), or is by purchase or otherwise,
25 the measure of damages for nondelivery or repudiation by the lessor or for rejection or
26 revocation of acceptance by the lessee is the present value, as of the date of the default,
27 of the then market rent minus the present value as of the same date of the original rent,
28 computed for the remaining lease term of the original lease agreement, together with
29 incidental and consequential damages, less expenses saved in consequence of the
30 lessor's default."

31 **SECTION 10.** G.S. 25-2A-527(2) reads as rewritten:

32 "(2) Except as otherwise provided with respect to damages liquidated in the lease
33 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
34 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if the disposition is by
35 lease agreement substantially similar to the original lease agreement and the new lease
36 agreement is made in good faith and in a commercially reasonable manner, the lessor
37 may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the
38 commencement of the term of the new lease agreement, (ii) the present value, as of the
39 same date, of the total rent for the then remaining lease term of the original lease
40 agreement minus the present value, as of the same date, of the rent under the new lease
41 agreement applicable to that period of the new lease term which is comparable to the
42 then remaining term of the original lease agreement, and (iii) any incidental damages
43 allowed under G.S. 25-2A-530, less expenses saved in consequence of the lessee's
44 default."

1 **SECTION 11.** G.S. 25-2A-528(1) reads as rewritten:

2 "(1) Except as otherwise provided with respect to damages liquidated in the lease
3 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
4 parties (~~G.S. 25-1-102(3)~~G.S. 25-1-302 and G.S. 25-2A-503), if a lessor elects to retain
5 the goods or a lessor elects to dispose of the goods and the disposition is by lease
6 agreement that for any reason does not qualify for treatment under G.S. 25-2A-527(2),
7 or is by sale or otherwise, the lessor may recover from the lessee as damages for a
8 default of the type described in G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a), or if
9 agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of
10 default if the lessee has never taken possession of the goods, or, if the lessee has taken
11 possession of the goods, as of the date the lessor repossesses the goods or an earlier date
12 on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of
13 the date determined under clause (i) of the total rent for the then remaining lease term of
14 the original lease agreement minus the present value as of the same date of the market
15 rent at the place where the goods are located computed for the same lease term, and (iii)
16 any incidental damages allowed under ~~2A-530~~G.S. 25-2A-530, less expenses saved in
17 consequence of the lessee's default."

18 **SECTION 12.** G.S. 25-3-103(a)(4) is repealed.

19 **SECTION 13.** G.S. 25-3-103(a)(10) reads as rewritten:

20 "(10) "Prove" with respect to a fact means to meet the burden of establishing
21 the fact (~~G.S. 25-1-201(8)~~). (G.S. 25-1-201(b)(8))."

22 **SECTION 14.** G.S. 25-4-104(c) reads as rewritten:

23 "(c) The following definitions in other Articles apply to this Article:

| | |
|---|---------------------------|
| 24 "Acceptance" | G.S. 25-3-409. |
| 25 "Alteration" | G.S. 25-3-407. |
| 26 "Cashier's check" | G.S. 25-3-104. |
| 27 "Certificate of deposit" | G.S. 25-3-104. |
| 28 "Certified check" | G.S. 25-3-409. |
| 29 "Check" | G.S. 25-3-104. |
| 30 " Good faith " | G.S. 25-3-103. |
| 31 "Draft" | G.S. 25-3-104. |
| 32 "Holder in due course" | G.S. 25-3-302. |
| 33 "Instrument" | G.S. 25-3-104. |
| 34 "Notice of dishonor" | G.S. 25-3-503. |
| 35 "Order" | G.S. 25-3-103. |
| 36 "Ordinary care" | G.S. 25-3-103. |
| 37 "Person entitled to enforce" | G.S. 25-3-301. |
| 38 "Presentment" | G.S. 25-3-501. |
| 39 "Promise" | G.S. 25-3-103. |
| 40 "Prove" | G.S. 25-3-103. |
| 41 "Teller's check" | G.S. 25-3-104. |
| 42 "Unauthorized signature" | G.S. 25-3-403." |

43 **SECTION 15.** G.S. 25-4A-105(a)(6) is repealed.

44 **SECTION 16.** G.S. 25-4A-105(a)(7) reads as rewritten:

1 "(7) "Prove" with respect to a fact means to meet the burden of establishing
2 the fact (~~G.S. 25-1-201(8)~~). (G.S. 25-1-201(b)(8))."

3 **SECTION 17.** G.S. 25-4A-106(a) reads as rewritten:

4 "(a) The time of receipt of a payment order or communication cancelling or
5 amending a payment order is determined by the rules applicable to receipt of a notice
6 stated in ~~G.S. 25-1-201(27)~~. G.S. 25-1-202. A receiving bank may fix a cutoff time or
7 times on a funds-transfer business day for the receipt and processing of payment orders
8 and communications cancelling or amending payment orders. Different cutoff times
9 may apply to payment orders, cancellations, or amendments, or to different categories
10 of payment orders, cancellations, or amendments. A cutoff time may apply to senders
11 generally or different cutoff times may apply to different senders or categories of
12 payment orders. If a payment order or communication cancelling or amending a
13 payment order is received after the close of a funds-transfer business day or after the
14 appropriate cutoff time on a funds-transfer business day, the receiving bank may treat
15 the payment order or communication as received at the opening of the next
16 funds-transfer business day."

17 **SECTION 18.** G.S. 25-4A-204(b) reads as rewritten:

18 "(b) Reasonable time under subsection (a) may be fixed by agreement as stated in
19 ~~G.S. 25-1-204(1)~~, G.S. 25-1-302(b), but the obligation of a receiving bank to refund
20 payment as stated in subsection (a) may not otherwise be varied by agreement."

21 **SECTION 19.** G.S. 25-5-103(c) reads as rewritten:

22 "(c) With the exception of this subsection, subsections (a) and (d) of this section,
23 G.S. 25-5-102(a)(9) and (10), 25-5-106(d), and 25-5-114(d), and except to the extent
24 prohibited in ~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-5-117(d), the effect of this
25 Article may be varied by agreement or by a provision stated or incorporated by
26 reference in an undertaking. A term in an agreement or undertaking generally excusing
27 liability or generally limiting remedies for failure to perform obligations is not sufficient
28 to vary obligations prescribed by this Article."

29 **SECTION 20.** G.S. 25-8-102(a)(10) is repealed.

30 **SECTION 21.** G.S. 25-9-102(a)(43) is repealed.

31 **SUBPART C. CONFORMING AMENDMENTS TO OTHER SECTIONS OF**
32 **THE GENERAL STATUTES.**

33 **SECTION 22.** G.S. 66-181 reads as rewritten:

34 "**§ 66-181. Usage of trade.**

35 The terms "utility" and "industrial," when used to refer to equipment, implements,
36 machinery, attachments, or repair parts, shall have the meaning commonly used and
37 understood among dealers and suppliers of farm equipment as a usage of trade in
38 accordance with ~~G.S. 25-1-205(2)~~. G.S. 25-1-303(c)."

39 **SECTION 23.** G.S. 66-313(b) reads as rewritten:

40 "(b) This Article does not apply to a transaction to the extent it is governed by:

- 41 (1) A law governing the creation and execution of wills, codicils, or
42 testamentary trusts.
- 43 (2) Chapter 25 of the General Statutes other than ~~G.S. 25-1-107~~
44 G.S. 25-1-306, and ~~G.S. 25-1-206~~, Article 2, and Article 2A.

1 (3) Article 11A of Chapter 66 of the General Statutes."

2 **SECTION 24.** G.S. 66-326(d) reads as rewritten:

3 "(d) Except as otherwise agreed, a person having control of a transferable record
4 is the holder, as defined in ~~G.S. 25-1-201(20)~~, G.S. 25-1-201(21), of the transferable
5 record and has the same rights and defenses as a holder of an equivalent record or
6 writing under Chapter 25 of the General Statutes, including, if the applicable statutory
7 requirements under G.S. 25-3-302(a), 25-7-501, or 25-9-330 are satisfied, the rights and
8 defenses of a holder in due course, a holder to which a negotiable document of title has
9 been duly negotiated, or a purchaser, respectively. Delivery, possession, and
10 endorsement are not required to obtain or exercise any of the rights under this
11 subsection."

12 **PART II. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE**
13 **AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.**

14 **SUBPART A. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL**
15 **CODE.**

16 **SECTION 25.** Article 7 of Chapter 25 of the General Statutes is rewritten to
17 read:

18 "Article 7.

19 "Documents of Title.

20 "PART 1.

21 "GENERAL.

22 **"§ 25-7-101. Short title.**

23 This Article may be cited as Uniform Commercial Code – Documents of Title.

24 **"§ 25-7-102. Definitions and index of definitions.**

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

- 26 (1) "Bailee" means a person that by a warehouse receipt, bill of lading, or
27 other document of title acknowledges possession of goods and
28 contracts to deliver them.
- 29 (2) "Carrier" means a person that issues a bill of lading.
- 30 (3) "Consignee" means a person named in a bill of lading to whom or to
31 whose order the bill promises delivery.
- 32 (4) "Consignor" means a person named in a bill of lading as the person
33 from whom the goods have been received for shipment.
- 34 (5) "Delivery order" means a record that contains an order to deliver
35 goods directed to a warehouse, carrier, or other person that in the
36 ordinary course of business issues warehouse receipts or bills of
37 lading.
- 38 (6) Reserved for future codification purposes.
- 39 (7) "Goods" means all things that are treated as movable for the purposes
40 of a contract for storage or transportation.
- 41 (8) "Issuer" means a bailee that issues a document of title or, in the case of
42 an unaccepted delivery order, the person that orders the possessor of
43 goods to deliver. The term includes a person for whom an agent or
44 employee purports to act in issuing a document if the agent or

1 employee has real or apparent authority to issue documents, even if the
2 issuer did not receive any goods, the goods were misdescribed, or in
3 any other respect the agent or employee violated the issuer's
4 instructions.

5 (9) "Person entitled under the document" means the holder, in the case of
6 a negotiable document of title, or the person to whom delivery of the
7 goods is to be made by the terms of, or pursuant to instructions in a
8 record under, a nonnegotiable document of title.

9 (10) Reserved for future codification purposes.

10 (11) "Sign" means, with present intent to authenticate or adopt a record:

11 a. To execute or adopt a tangible symbol; or

12 b. To attach to or logically associate with the record an electronic
13 sound, symbol, or process.

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

16 (13) "Warehouse" means a person engaged in the business of storing goods
17 for hire.

18 (b) Definitions in other Articles applying to this Article and the sections in which
19 they appear are:

20 (1) "Contract for sale," G.S. 25-2-106.

21 (2) "Lessee in the ordinary course of business," G.S. 25-2A-103.

22 (3) "Receipt" of goods, G.S. 25-2-103.

23 (c) In addition, Article 1 of this Chapter contains general definitions and
24 principles of construction and interpretation applicable throughout this Article.

25 **"§ 25-7-103. Relation of Article to treaty or statute.**

26 (a) This Article is subject to any treaty or statute of the United States or
27 regulatory statute of this State to the extent the treaty, statute, or regulatory statute is
28 applicable.

29 (b) This Article does not modify or repeal any law prescribing the form or
30 content of a document of title or the services or facilities to be afforded by a bailee or
31 otherwise regulating a bailee's business in respects not specifically treated in this
32 Article. However, violation of such a law does not affect the status of a document of
33 title that otherwise is within the definition of a document of title.

34 (c) This Article modifies, limits, and supersedes the federal Electronic Signatures
35 in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify,
36 limit, or supersede 101(c) of that Act (15 U.S.C. § 7001(c)) or authorize electronic
37 delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. §
38 7003(b)).

39 (d) To the extent there is a conflict between Article 40 of Chapter 66 of the
40 General Statutes (the Uniform Electronic Transactions Act) and this Article, this Article
41 governs.

42 **"§ 25-7-104. Negotiable and nonnegotiable document of title.**

1 (a) Except as otherwise provided in subsection (c) of this section, a document of
2 title is negotiable if by its terms the goods are to be delivered to bearer or to the order of
3 a named person.

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

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

10 **"§ 25-7-105. Reissuance in alternative medium.**

11 (a) Upon request of a person entitled under an electronic document of title, the
12 issuer of the electronic document may issue a tangible document of title as a substitute
13 for the electronic document if:

- 14 (1) The person entitled under the electronic document surrenders control
15 of the document to the issuer; and
16 (2) The tangible document when issued contains a statement that it is
17 issued in substitution for the electronic document.

18 (b) Upon issuance of a tangible document of title in substitution for an electronic
19 document of title in accordance with subsection (a) of this section:

- 20 (1) The electronic document ceases to have any effect or validity; and
21 (2) The person that procured issuance of the tangible document warrants
22 to all subsequent persons entitled under the tangible document that the
23 warrantor was a person entitled under the electronic document when
24 the warrantor surrendered control of the electronic document to the
25 issuer.

26 (c) Upon request of a person entitled under a tangible document of title, the
27 issuer of the tangible document may issue an electronic document of title as a substitute
28 for the tangible document if:

- 29 (1) The person entitled under the tangible document surrenders possession
30 of the document to the issuer; and
31 (2) The electronic document when issued contains a statement that it is
32 issued in substitution for the tangible document.

33 (d) Upon issuance of an electronic document of title in substitution for a tangible
34 document of title in accordance with subsection (c) of this section:

- 35 (1) The tangible document ceases to have any effect or validity; and
36 (2) The person that procured issuance of the electronic document warrants
37 to all subsequent persons entitled under the electronic document that
38 the warrantor was a person entitled under the tangible document when
39 the warrantor surrendered possession of the tangible document to the
40 issuer.

41 **"§ 25-7-106. Control of electronic document of title.**

42 (a) A person has control of an electronic document of title if a system employed
43 for evidencing the transfer of interests in the electronic document reliably establishes
44 that person as the person to which the electronic document was issued or transferred.

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

- 4 (1) A single authoritative copy of the document exists which is unique,
5 identifiable, and, except as otherwise provided in subdivisions (4), (5),
6 and (6) of this subsection, unalterable;
- 7 (2) The authoritative copy identifies the person asserting control as:
 - 8 a. The person to whom the document was issued; or
 - 9 b. If the authoritative copy indicates that the document has been
10 transferred, the person to whom the document was most
11 recently transferred;
- 12 (3) The authoritative copy is communicated to and maintained by the
13 person asserting control or its designated custodian;
- 14 (4) Copies or amendments that add or change an identified assignee of the
15 authoritative copy can be made only with the consent of the person
16 asserting control;
- 17 (5) Each copy of the authoritative copy and any copy of a copy is readily
18 identifiable as a copy that is not the authoritative copy; and
- 19 (6) Any amendment of the authoritative copy is readily identifiable as
20 authorized or unauthorized.

21 "PART 2.

22 "WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

23 "**§ 25-7-201. Person that may issue a warehouse receipt; storage under bond.**

24 (a) A warehouse receipt may be issued by any warehouse.

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

30 "**§ 25-7-202. Form of warehouse receipt; effect of omission.**

31 (a) A warehouse receipt need not be in any particular form.

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

- 34 (1) A statement of the location of the warehouse facility where the goods
35 are stored;
- 36 (2) The date of issue of the receipt;
- 37 (3) The unique identification code of the receipt;
- 38 (4) A statement whether the goods received will be delivered to the bearer,
39 to a named person, or to a named person or its order;
- 40 (5) The rate of storage and handling charges, unless goods are stored
41 under a field warehousing arrangement, in which case a statement of
42 that fact is sufficient on a nonnegotiable receipt;
- 43 (6) A description of the goods or the packages containing them;
- 44 (7) The signature of the warehouse or its agent;

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

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

11 (c) A warehouse may insert in its receipt any terms that are not contrary to this
12 Chapter and do not impair its obligation of delivery under G.S. 25-7-403 or its duty of
13 care under G.S. 25-7-204. Any contrary provision is ineffective.

14 **"§ 25-7-203. Liability for nonreceipt or misdescription.**

15 A party to or purchaser for value in good faith of a document of title, other than a
16 bill of lading, that relies upon the description of the goods in the document may recover
17 from the issuer damages caused by the nonreceipt or misdescription of the goods, except
18 to the extent that:

19 (1) The document conspicuously indicates that the issuer does not know
20 whether all or part of the goods in fact were received or conform to the
21 description, such as a case in which the description is in terms of
22 marks or labels or kind, quantity, or condition, or the receipt or
23 description is qualified by "contents, condition, and quality unknown,"
24 "said to contain," or words of similar import, if the indication is true;
25 or

26 (2) The party or purchaser otherwise has notice of the nonreceipt or
27 misdescription.

28 **"§ 25-7-204. Duty of care; contractual limitation of warehouse's liability.**

29 (a) A warehouse is liable for damages for loss of or injury to the goods caused by
30 its failure to exercise care with regard to the goods that a reasonably careful person
31 would exercise under similar circumstances. Unless otherwise agreed, the warehouse is
32 not liable for damages that could not have been avoided by the exercise of that care.

33 (b) Damages may be limited by a term in the warehouse receipt or storage
34 agreement limiting the amount of liability in case of loss or damage beyond which the
35 warehouse is not liable. Such a limitation is not effective with respect to the warehouse's
36 liability for conversion to its own use. On request of the bailor in a record at the time of
37 signing the storage agreement or within a reasonable time after receipt of the warehouse
38 receipt, the warehouse's liability may be increased on part or all of the goods covered by
39 the storage agreement or the warehouse receipt. In this event, increased rates may be
40 charged based on an increased valuation of the goods.

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

1 (d) This section does not modify or repeal any statute that imposes a higher
2 responsibility upon the warehouse or invalidates a contractual limitation that would be
3 permissible under this Article.

4 **"§ 25-7-205. Title under warehouse receipt defeated in certain cases.**

5 A buyer in ordinary course of business of fungible goods sold and delivered by a
6 warehouse that is also in the business of buying and selling such goods takes the goods
7 free of any claim under a warehouse receipt even if the receipt is negotiable and has
8 been duly negotiated.

9 **"§ 25-7-206. Termination of storage at warehouse's option.**

10 (a) A warehouse, by giving notice to the person on whose account the goods are
11 held and any other person known to claim an interest in the goods, may require payment
12 of any charges and removal of the goods from the warehouse at the termination of the
13 period of storage fixed by the document of title or, if a period is not fixed, within a
14 stated period not less than 30 days after the warehouse gives notice. If the goods are not
15 removed before the date specified in the notice, the warehouse may sell them pursuant
16 to G.S. 25-7-210.

17 (b) If a warehouse in good faith believes that goods are about to deteriorate or
18 decline in value to less than the amount of its lien within the time provided in subsection
19 (a) of this section and G.S. 25-7-210, the warehouse may specify in the notice given
20 under subsection (a) of this section any reasonable shorter time for removal of the goods
21 and, if the goods are not removed, may sell them at public sale held not less than one
22 week after a single advertisement or posting.

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

30 (d) A warehouse shall deliver the goods to any person entitled to them under this
31 Article upon due demand made at any time before sale or other disposition under this
32 section.

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

36 **"§ 25-7-207. Goods must be kept separate; fungible goods.**

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

40 (b) If different lots of fungible goods are commingled, the goods are owned in
41 common by the persons entitled thereto and the warehouse is severally liable to each
42 owner for that owner's share. If, because of overissue, a mass of fungible goods is
43 insufficient to meet all the receipts the warehouse has issued against it, the persons
44 entitled include all holders to whom overissued receipts have been duly negotiated.

1 **"§ 25-7-208. Altered warehouse receipts.**

2 If a blank in a negotiable tangible warehouse receipt has been filled in without
3 authority, a good-faith purchaser for value and without notice of the lack of authority
4 may treat the insertion as authorized. Any other unauthorized alteration leaves any
5 tangible or electronic warehouse receipt enforceable against the issuer according to its
6 original tenor.

7 **"§ 25-7-209. Lien of warehouse.**

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

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

28 (c) A warehouse's lien for charges and expenses under subsection (a) of this
29 section or a security interest under subsection (b) of this section is also effective against
30 any person that so entrusted the bailor with possession of the goods that a pledge of
31 them by the bailor to a good-faith purchaser for value would have been valid. However,
32 the lien or security interest is not effective against a person that before issuance of a
33 document of title had a legal interest or a perfected security interest in the goods and
34 that did not:

- 35 (1) Deliver or entrust the goods or any document of title covering the
36 goods to the bailor or the bailor's nominee with:
37 a. Actual or apparent authority to ship, store, or sell;
38 b. Power to obtain delivery under G.S. 25-7-403; or
39 c. Power of disposition under G.S. 25-2-403, 25-2A-304(2),
40 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule
41 of law; or
42 (2) Acquiesce in the procurement by the bailor or its nominee of any
43 document.

1 (d) A warehouse's lien on household goods for charges and expenses in relation
2 to the goods under subsection (a) of this section is also effective against all persons if
3 the depositor was the legal possessor of the goods at the time of deposit. In this
4 subsection, "household goods" means furniture, furnishings, or personal effects used by
5 the depositor in a dwelling.

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

8 **"§ 25-7-210. Enforcement of warehouse's lien.**

9 (a) Except as otherwise provided in subsection (b) of this section, a warehouse's
10 lien may be enforced by public or private sale of the goods, in bulk or in packages, at
11 any time or place and on any terms that are commercially reasonable, after notifying all
12 persons known to claim an interest in the goods. The notification must include a
13 statement of the amount due, the nature of the proposed sale, and the time and place of
14 any public sale. The fact that a better price could have been obtained by a sale at a
15 different time or in a method different from that selected by the warehouse is not of
16 itself sufficient to establish that the sale was not made in a commercially reasonable
17 manner. The warehouse sells in a commercially reasonable manner if the warehouse
18 sells the goods in the usual manner in any recognized market therefore, sells at the price
19 current in that market at the time of the sale, or otherwise sells in conformity with
20 commercially reasonable practices among dealers in the type of goods sold. A sale of
21 more goods than apparently necessary to be offered to ensure satisfaction of the
22 obligation is not commercially reasonable, except in cases covered by the preceding
23 sentence.

24 (b) A warehouse may enforce its lien on goods, other than goods stored by a
25 merchant in the course of its business, only if the following requirements are satisfied:

- 26 (1) All persons known to claim an interest in the goods must be notified.
- 27 (2) The notification must include an itemized statement of the claim, a
28 description of the goods subject to the lien, a demand for payment
29 within a specified time not less than 10 days after receipt of the
30 notification, and a conspicuous statement that unless the claim is paid
31 within that time the goods will be advertised for sale and sold by
32 auction at a specified time and place.
- 33 (3) The sale must conform to the terms of the notification.
- 34 (4) The sale must be held at the nearest suitable place to where the goods
35 are held or stored.
- 36 (5) After the expiration of the time given in the notification, an
37 advertisement of the sale must be published once a week for two
38 weeks consecutively in a newspaper of general circulation where the
39 sale is to be held. The advertisement must include a description of the
40 goods, the name of the person on whose account the goods are being
41 held, and the time and place of the sale. The sale must take place at
42 least 15 days after the first publication. If there is no newspaper of
43 general circulation where the sale is to be held, the advertisement must

1 be posted at least 10 days before the sale in not fewer than six
2 conspicuous places in the neighborhood of the proposed sale.

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

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

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

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

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

16 (h) If a lien is on goods stored by a merchant in the course of its business, the lien
17 may be enforced in accordance with subsection (a) or (b) of this section.

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

21 "PART 3.

22 "BILLS OF LADING: SPECIAL PROVISIONS.

23 **"§ 25-7-301. Liability for nonreceipt or misdescription; "said to contain";**
24 **"shipper's weight, load, and count"; improper handling.**

25 (a) A consignee of a nonnegotiable bill of lading which has given value in good
26 faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the
27 description of the goods in the bill or upon the date shown in the bill, may recover from
28 the issuer damages caused by the misdating of the bill or the nonreceipt or
29 misdescription of the goods, except to the extent that the bill indicates that the issuer
30 does not know whether any part or all of the goods in fact were received or conform to
31 the description, such as in a case in which the description is in terms of marks or labels
32 or kind, quantity, or condition or the receipt or description is qualified by "contents or
33 condition of contents of packages unknown," "said to contain," "shipper's weight, load,
34 and count," or words of similar import, if that indication is true.

35 (b) If goods are loaded by the issuer of a bill of lading;

36 (1) The issuer shall count the packages of goods if shipped in packages
37 and ascertain the kind and quantity if shipped in bulk; and

38 (2) Words such as "shipper's weight, load, and count," or words of similar
39 import indicating that the description was made by the shipper are
40 ineffective except as to goods concealed in packages.

41 (c) If bulk goods are loaded by a shipper that makes available to the issuer of a
42 bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the
43 kind and quantity within a reasonable time after receiving the shipper's request in a

1 record to do so. In that case, "shipper's weight" or words of similar import are
2 ineffective.

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

8 (e) A shipper guarantees to an issuer the accuracy at the time of shipment of the
9 description, marks, labels, number, kind, quantity, condition, and weight, as furnished
10 by the shipper, and the shipper shall indemnify the issuer against damage caused by
11 inaccuracies in those particulars. This right of indemnity does not limit the issuer's
12 responsibility or liability under the contract of carriage to any person other than the
13 shipper.

14 **"§ 25-7-302. Through bills of lading and similar documents of title.**

15 (a) The issuer of a through bill of lading, or other document of title embodying
16 an undertaking to be performed in part by a person acting as its agent or by a
17 performing carrier, is liable to any person entitled to recover on the bill or other
18 document for any breach by the other person or the performing carrier of its obligation
19 under the bill or other document. However, to the extent that the bill or other document
20 covers an undertaking to be performed overseas or in territory not contiguous to the
21 continental United States or an undertaking including matters other than transportation,
22 this liability for breach by the other person or the performing carrier may be varied by
23 agreement of the parties.

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

30 (c) The issuer of a through bill of lading or other document of title described in
31 subsection (a) of this section is entitled to recover from the performing carrier, or other
32 person in possession of the goods when the breach of the obligation under the bill or
33 other document occurred:

- 34 (1) The amount it may be required to pay to any person entitled to recover
35 on the bill or other document for the breach, as may be evidenced by
36 any receipt, judgment, or transcript of judgment; and
37 (2) The amount of any expense reasonably incurred by the issuer in
38 defending any action commenced by any person entitled to recover on
39 the bill or other document for the breach.

40 **"§ 25-7-303. Diversion; reconsignment; change of instructions.**

41 (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods
42 to a person or destination other than that stated in the bill or may otherwise dispose of
43 the goods, without liability for misdelivery, on instructions from:

- 44 (1) The holder of a negotiable bill;

- 1 (2) The consignor on a nonnegotiable bill, even if the consignee has given
2 contrary instructions;
- 3 (3) The consignee on a nonnegotiable bill in the absence of contrary
4 instructions from the consignor, if the goods have arrived at the billed
5 destination or if the consignee is in possession of the tangible bill or in
6 control of the electronic bill; or
- 7 (4) The consignee on a nonnegotiable bill, if the consignee is entitled as
8 against the consignor to dispose of the goods.

9 (b) Unless instructions described in subsection (a) of this section are included in
10 a negotiable bill of lading, a person to whom the bill is duly negotiated may hold the
11 bailee according to the original terms.

12 **"§ 25-7-304. Tangible bills of lading in a set.**

13 (a) Except as customary in international transportation, a tangible bill of lading
14 may not be issued in a set of parts. The issuer is liable for damages caused by violation
15 of this subsection.

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

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

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

26 (e) The bailee shall deliver in accordance with Part 4 of this Article against the
27 first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this
28 manner discharges the bailee's obligation on the whole bill.

29 **"§ 25-7-305. Destination bills.**

30 (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a
31 carrier, at the request of the consignor, may procure the bill to be issued at destination or
32 at any other place designated in the request.

33 (b) Upon request of any person entitled as against a carrier to control the goods
34 while in transit and on surrender of possession or control of any outstanding bill of
35 lading or other receipt covering the goods, the issuer, subject to G.S. 25-7-105, may
36 procure a substitute bill to be issued at any place designated in the request.

37 **"§ 25-7-306. Altered bills of lading.**

38 An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill
39 enforceable according to its original tenor.

40 **"§ 25-7-307. Lien of carrier.**

41 (a) A carrier has a lien on the goods covered by a bill of lading or on the
42 proceeds thereof in its possession for charges after the date of the carrier's receipt of the
43 goods for storage or transportation, including demurrage and terminal charges, and for
44 expenses necessary for preservation of the goods incident to their transportation or

1 reasonably incurred in their sale pursuant to law. However, against a purchaser for value
2 of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the
3 applicable tariffs or, if no charges are stated, a reasonable charge.

4 (b) A lien for charges and expenses under subsection (a) of this section on goods
5 that the carrier was required by law to receive for transportation is effective against the
6 consignor or any person entitled to the goods unless the carrier had notice that the
7 consignor lacked authority to subject the goods to those charges and expenses. Any
8 other lien under subsection (a) of this section is effective against the consignor and any
9 person that permitted the bailor to have control or possession of the goods unless the
10 carrier had notice that the bailor lacked authority.

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

13 **"§ 25-7-308. Enforcement of carrier's lien.**

14 (a) A carrier's lien on goods may be enforced by public or private sale of the
15 goods, in bulk or in packages, at any time or place and on any terms that are
16 commercially reasonable, after notifying all persons known to claim an interest in the
17 goods. The notification must include a statement of the amount due, the nature of the
18 proposed sale, and the time and place of any public sale. The fact that a better price
19 could have been obtained by a sale at a different time or in a method different from that
20 selected by the carrier is not of itself sufficient to establish that the sale was not made in
21 a commercially reasonable manner. The carrier sells goods in a commercially
22 reasonable manner if the carrier sells the goods in the usual manner in any recognized
23 market therefor, sells at the price current in that market at the time of the sale, or
24 otherwise sells in conformity with commercially reasonable practices among dealers in
25 the type of goods sold. A sale of more goods than apparently necessary to be offered to
26 ensure satisfaction of the obligation is not commercially reasonable, except in cases
27 covered by the preceding sentence.

28 (b) Before any sale pursuant to this section, any person claiming a right in the
29 goods may pay the amount necessary to satisfy the lien and the reasonable expenses
30 incurred in complying with this section. In that event, the goods may not be sold but
31 must be retained by the carrier, subject to the terms of the bill of lading and this Article.

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

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

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

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

41 (g) A carrier's lien may be enforced pursuant to either subsection (a) of this
42 section or the procedure set forth in G.S. 25-7-210(b).

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

4 **"§ 25-7-309. Duty of care; contractual limitation of carrier's liability.**

5 (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable,
6 shall exercise the degree of care in relation to the goods which a reasonably careful
7 person would exercise under similar circumstances. This subsection does not affect any
8 statute, regulation, or rule of law that imposes liability upon a common carrier for
9 damages not caused by its negligence.

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

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

19 "PART 4.

20 "WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.

21 **"§ 25-7-401. Irregularities in issue of receipt or bill or conduct of issuer.**

22 The obligations imposed by this Article on an issuer apply to a document of title
23 even if:

- 24 (1) The document does not comply with the requirements of this Article or
25 of any other statute, rule, or regulation regarding its issuance, form, or
26 content;
- 27 (2) The issuer violated laws regulating the conduct of its business;
- 28 (3) The goods covered by the document were owned by the bailee when
29 the document was issued; or
- 30 (4) The person issuing the document is not a warehouse but the document
31 purports to be a warehouse receipt.

32 **"§ 25-7-402. Duplicate document of title; overissue.**

33 A duplicate or any other document of title purporting to cover goods already
34 represented by an outstanding document of the same issuer does not confer any right in
35 the goods, except as provided in the case of tangible bills of lading in a set of parts,
36 overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed
37 documents, or substitute documents issued pursuant to G.S. 25-7-105. The issuer is
38 liable for damages caused by its overissue or failure to identify a duplicate document by
39 a conspicuous notation.

40 **"§ 25-7-403. Obligation of bailee to deliver; excuse.**

41 (a) A bailee shall deliver the goods to a person entitled under a document of title
42 if the person complies with subsections (b) and (c) of this section, unless and to the
43 extent that the bailee establishes any of the following:

- 1 (1) Delivery of the goods to a person whose receipt was rightful as against
2 the claimant;
- 3 (2) Damage to or delay, loss, or destruction of the goods for which the
4 bailee is not liable;
- 5 (3) Previous sale or other disposition of the goods in lawful enforcement
6 of a lien or on a warehouse's lawful termination of storage;
- 7 (4) The exercise by a seller of its right to stop delivery pursuant to
8 G.S. 25-2-705 or by a lessor of its right to stop delivery pursuant to
9 G.S. 25-2A-526;
- 10 (5) A diversion, reconignment, or other disposition pursuant to
11 G.S. 25-7-303;
- 12 (6) Release, satisfaction, or any other personal defense against the
13 claimant; or
- 14 (7) Any other lawful excuse.

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

18 (c) Unless a person claiming the goods is a person against whom the document
19 of title does not confer a right under G.S. 25-7-503(a):

- 20 (1) The person claiming under a document shall surrender possession or
21 control of any outstanding negotiable document covering the goods for
22 cancellation or indication of partial deliveries; and
- 23 (2) The bailee shall cancel the document or conspicuously indicate in the
24 document the partial delivery or the bailee is liable to any person to
25 whom the document is duly negotiated.

26 **"§ 25-7-404. No liability for good-faith delivery pursuant to document of title.**

27 A bailee that in good faith has received goods and delivered or otherwise disposed of
28 the goods according to the terms of a document of title or pursuant to this Article is not
29 liable for the goods even if:

- 30 (1) The person from whom the bailee received the goods did not have
31 authority to procure the document or to dispose of the goods; or
- 32 (2) The person to whom the bailee delivered the goods did not have
33 authority to receive the goods.

34 "PART 5.

35 "WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND
36 TRANSFER.

37 **"§ 25-7-501. Form of negotiation and requirements of due negotiation.**

- 38 (a) The following rules apply to a negotiable tangible document of title:
 - 39 (1) If the document's original terms run to the order of a named person, the
40 document is negotiated by the named person's indorsement and
41 delivery. After the named person's indorsement in blank or to bearer,
42 any person may negotiate the document by delivery alone.
 - 43 (2) If the document's original terms run to bearer, it is negotiated by
44 delivery alone.

- 1 (3) If the document's original terms run to the order of a named person and
2 it is delivered to the named person, the effect is the same as if the
3 document had been negotiated.
- 4 (4) Negotiation of the document after it has been indorsed to a named
5 person requires indorsement by the named person and delivery.
- 6 (5) A document is duly negotiated if it is negotiated in the manner stated
7 in this subsection to a holder that purchases it in good faith, without
8 notice of any defense against or claim to it on the part of any person,
9 and for value, unless it is established that the negotiation is not in the
10 regular course of business or financing or involves receiving the
11 document in settlement or payment of a monetary obligation.
- 12 (b) The following rules apply to a negotiable electronic document of title:
- 13 (1) If the document's original terms run to the order of a named person or
14 to bearer, the document is negotiated by delivery of the document to
15 another person. Indorsement by the named person is not required to
16 negotiate the document.
- 17 (2) If the document's original terms run to the order of a named person and
18 the named person has control of the document, the effect is the same as
19 if the document had been negotiated.
- 20 (3) A document is duly negotiated if it is negotiated in the manner stated
21 in this subsection to a holder that purchases it in good faith, without
22 notice of any defense against or claim to it on the part of any person,
23 and for value, unless it is established that the negotiation is not in the
24 regular course of business or financing or involves taking delivery of
25 the document in settlement or payment of a monetary obligation.
- 26 (c) Indorsement of a nonnegotiable document of title neither makes it negotiable
27 nor adds to the transferee's rights.
- 28 (d) The naming in a negotiable bill of lading of a person to be notified of the
29 arrival of the goods does not limit the negotiability of the bill or constitute notice to a
30 purchaser of the bill of any interest of that person in the goods.
- 31 **"§ 25-7-502. Rights acquired by due negotiation.**
- 32 (a) Subject to G.S. 25-7-205 and G.S. 25-7-503, a holder to which a negotiable
33 document of title has been duly negotiated acquires thereby:
- 34 (1) Title to the document;
- 35 (2) Title to the goods;
- 36 (3) All rights accruing under the law of agency or estoppel, including
37 rights to goods delivered to the bailee after the document was issued;
38 and
- 39 (4) The direct obligation of the issuer to hold or deliver the goods
40 according to the terms of the document free of any defense or claim by
41 the issuer except those arising under the terms of the document or
42 under this Article, but in the case of a delivery order, the bailee's
43 obligation accrues only upon the bailee's acceptance of the delivery

1 order, and the obligation acquired by the holder is that the issuer and
2 any indorser will procure the acceptance of the bailee.

3 (b) Subject to G.S. 25-7-503, title and rights acquired by due negotiation are not
4 defeated by any stoppage of the goods represented by the document of title or by
5 surrender of the goods by the bailee and are not impaired even if:

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

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

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

14 **"§ 25-7-503. Document of title to goods defeated in certain cases.**

15 (a) A document of title confers no right in goods against a person that before
16 issuance of the document had a legal interest or a perfected security interest in the goods
17 and that did not:

18 (1) Deliver or entrust the goods or any document of title covering the
19 goods to the bailor or the bailor's nominee with:

20 a. Actual or apparent authority to ship, store, or sell;

21 b. Power to obtain delivery under G.S. 25-7-403; or

22 c. Power of disposition under G.S. 25-2-403, 25-2A-304(2),
23 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule
24 of law; or

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

27 (b) Title to goods based upon an unaccepted delivery order is subject to the rights
28 of any person to whom a negotiable warehouse receipt or bill of lading covering the
29 goods has been duly negotiated. That title may be defeated under G.S. 25-7-504 to the
30 same extent as the rights of the issuer or a transferee from the issuer.

31 (c) Title to goods based upon a bill of lading issued to a freight forwarder is
32 subject to the rights of any person to which a bill issued by the freight forwarder is duly
33 negotiated. However, delivery by the carrier in accordance with Part 4 of this Article
34 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

35 **"§ 25-7-504. Rights acquired in absence of due negotiation; effect of diversion;
36 stoppage of delivery.**

37 (a) A transferee of a document of title, whether negotiable or nonnegotiable, to
38 which the document has been delivered but not duly negotiated, acquires the title and
39 rights that its transferor had or had actual authority to convey.

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

43 (1) By those creditors of the transferor which could treat the transfer as
44 void under G.S. 25-2-402 or G.S. 25-2A-308;

- 1 (2) By a buyer from the transferor in ordinary course of business if the
2 bailee has delivered the goods to the buyer or received notification of
3 the buyer's rights;
- 4 (3) By a lessee from the transferor in ordinary course of business if the
5 bailee has delivered the goods to the lessee or received notification of
6 the lessee's rights; or
- 7 (4) As against the bailee, by good-faith dealings of the bailee with the
8 transferor.

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

14 (d) Delivery of the goods pursuant to a nonnegotiable document of title may be
15 stopped by a seller under G.S. 25-2-705 or a lessor under G.S. 25-2A-526, subject to the
16 requirements of due notification in those sections. A bailee that honors the seller's or
17 lessor's instructions is entitled to be indemnified by the seller or lessor against any
18 resulting loss or expense.

19 **"§ 25-7-505. Indorser not guarantor for other parties.**

20 The indorsement of a tangible document of title issued by a bailee does not make the
21 indorser liable for any default by the bailee or previous indorsers.

22 **"§ 25-7-506. Delivery without indorsement; right to compel indorsement.**

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

26 **"§ 25-7-507. Warranties on negotiation or delivery of document of title.**

27 If a person negotiates or delivers a document of title for value, otherwise than as a
28 mere intermediary under G.S. 25-7-508, unless otherwise agreed, the transferor, in
29 addition to any warranty made in selling or leasing the goods, warrants to its immediate
30 purchaser only that:

- 31 (1) The document is genuine;
- 32 (2) The transferor does not have knowledge of any fact that would impair
33 the document's validity or worth; and
- 34 (3) The negotiation or delivery is rightful and fully effective with respect
35 to the title to the document and the goods it represents.

36 **"§ 25-7-508. Warranties of collecting bank as to documents of title.**

37 A collecting bank or other intermediary known to be entrusted with documents of
38 title on behalf of another or with collection of a draft or other claim against delivery of
39 documents warrants by the delivery of the documents only its own good faith and
40 authority even if the collecting bank or other intermediary has purchased or made
41 advances against the claim or draft to be collected.

42 **"§ 25-7-509. Adequate compliance with commercial contract.**

1 Whether a document of title is adequate to fulfill the obligations of a contract for
2 sale, a contract for lease, or the conditions of a letter of credit is determined by Article
3 2, 2A, or 5 of this Chapter.

4 "PART 6.

5 "WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS
6 PROVISIONS.

7 "**§ 25-7-601. Lost, stolen, or destroyed documents of title.**

8 (a) If a document of title is lost, stolen, or destroyed, a court may order delivery
9 of the goods or issuance of a substitute document, and the bailee may without liability to
10 any person comply with the order. If the document was negotiable, a court may not
11 order delivery of the goods or issuance of a substitute document without the claimant's
12 posting security unless it finds that any person that may suffer loss as a result of
13 nonsurrender of possession or control of the document is adequately protected against
14 the loss. If the document was nonnegotiable, the court may require security. The court
15 may also order payment of the bailee's reasonable costs and attorneys' fees in any action
16 under this subsection.

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

23 "**§ 25-7-602. Judicial process against goods covered by negotiable document of
24 title.**

25 Unless a document of title was originally issued upon delivery of the goods by a
26 person that did not have power to dispose of them, a lien does not attach by virtue of
27 any judicial process to goods in the possession of a bailee for which a negotiable
28 document of title is outstanding unless possession or control of the document is first
29 surrendered to the bailee or the document's negotiation is enjoined. The bailee may not
30 be compelled to deliver the goods pursuant to process until possession or control of the
31 document is surrendered to the bailee or to the court. A purchaser of the document for
32 value without notice of the process or injunction takes free of the lien imposed by
33 judicial process.

34 "**§ 25-7-603. Conflicting claims; interpleader.**

35 If more than one person claims title to or possession of the goods, the bailee is
36 excused from delivery until the bailee has a reasonable time to ascertain the validity of
37 the adverse claims or to commence an action for interpleader. The bailee may assert an
38 interpleader either in defending an action for nondelivery of the goods or by original
39 action."

40 **SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF
41 THE UNIFORM COMMERCIAL CODE.**

42 **SECTION 26.** G.S. 25-1-201(b), as enacted by Part I of this act, reads as
43 rewritten:

1 (b) Subject to definitions contained in other articles of this Chapter that apply to
2 particular articles or parts thereof:

3 ...

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

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

12 ...

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

17 (16) "~~Document of title" includes bill of lading, dock warrant, dock receipt,~~
18 ~~warehouse receipt or order for the delivery of goods, and also any~~
19 ~~other document which means a record (i) that in the regular course of~~
20 ~~business or financing is treated as adequately evidencing that the~~
21 ~~person in possession or control of it—the record is entitled to receive,~~
22 ~~control, hold, and dispose of the record document—and the goods it~~
23 ~~covers—the record covers and (ii) that purports to be issued by or~~
24 ~~addressed to a bailee and to cover goods in the bailee's possession~~
25 ~~which are either identified or are fungible portions of an identified~~
26 ~~mass. The term includes a bill of lading, transport document, dock~~
27 ~~warrant, dock receipt, warehouse receipt, and order for delivery of~~
28 ~~goods. To be a document of title, a document must purport to be issued~~
29 ~~by or addressed to a bailee and purport to cover goods in the bailee's~~
30 ~~possession which are either identified or are fungible portions of an~~
31 ~~identified mass. An electronic document of title means a document of~~
32 title evidenced by a record consisting of information stored in an
33 electronic medium. A tangible document of title means a document of
34 title evidenced by a record consisting of information that is inscribed
35 on a tangible medium.

36 ...

37 (21) "Holder" means:

38 a. The person in possession of a negotiable instrument that is
39 payable either to bearer or to an identified person that is the
40 person in possession; ~~or~~

41 b. The person in possession of a negotiable tangible document of
42 title if the goods are deliverable either to bearer or to the order
43 of the person in ~~possession.~~ possession; or

1 c. The person in control of a negotiable electronic document of
2 title.

3 ...

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

6 **SECTION 27.** G.S. 25-2-103(3) reads as rewritten:

7 "(3) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in
8 other articles apply to this article:

9 "Check." G.S. 25-3-104.

10 "Consignee." G.S. 25-7-102.

11 "Consignor." G.S. 25-7-102.

12 "Consumer Goods." G.S. 25-9-102.

13 "Dishonor." G.S. 25-3-502.

14 "Draft." G.S. 25-3-104."

15 **SECTION 28.** G.S. 25-2-104(2) reads as rewritten:

16 "(2) "Financing agency" means a bank, finance company or other person who in
17 the ordinary course of business makes advances against goods or documents of title or
18 who by arrangement with either the seller or the buyer intervenes in ordinary course to
19 make or collect payment due or claimed under the contract for sale, as by purchasing or
20 paying the seller's draft or making advances against it or by merely taking it for
21 collection whether or not documents of title accompany or are associated with the draft.
22 "Financing agency" includes also a bank or other person who similarly intervenes
23 between persons who are in the position of seller and buyer in respect to the goods
24 (G.S. 25-2-707)."

25 **SECTION 29.** G.S. 25-2-310 reads as rewritten:

26 "**§ 25-2-310. Open time for payment or running of credit; authority to ship under**
27 **reservation.**

28 Unless otherwise agreed

29 (a) payment is due at the time and place at which the buyer is to receive the
30 goods even though the place of shipment is the place of delivery; and

31 (b) if the seller is authorized to send the goods he may ship them under
32 reservation, and may tender the documents of title, but the buyer may inspect the goods
33 after their arrival before payment is due unless such inspection is inconsistent with the
34 terms of the contract (G.S. 25-2-513); and

35 (c) if delivery is authorized and made by way of documents of title otherwise
36 than by subsection (b) then payment is due regardless of where the goods are to be
37 received (i) at the time and place at which the buyer is to receive delivery of the tangible
38 documents or (ii) at the time the buyer is to receive delivery of the electronic documents
39 and at the seller's place of business or if none, the seller's residence; ~~regardless of where~~
40 the goods are to be received; and

41 (d) where the seller is required or authorized to ship the goods on credit the credit
42 period runs from the time of shipment but postdating the invoice or delaying its dispatch
43 will correspondingly delay the starting of the credit period."

44 **SECTION 30.** G.S. 25-2-323(2) reads as rewritten:

1 "(2) Where in a case within subsection (1) a tangible bill of lading has been issued
2 in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad
3 the buyer may demand tender of the full set; otherwise only one part of the bill of lading
4 need be tendered. Even if the agreement expressly requires a full set

5 (a) due tender of a single part is acceptable within the provisions of this
6 article on cure of improper delivery (subsection (1) of G.S.25-2-508);
7 and

8 (b) even though the full set is demanded, if the documents are sent from
9 abroad the person tendering an incomplete set may nevertheless
10 require payment upon furnishing an indemnity which the buyer in
11 good faith deems adequate."

12 **SECTION 31.** G.S. 25-2-401(3) reads as rewritten:

13 "(3) Unless otherwise explicitly agreed where delivery is to be made without
14 moving the goods,

15 (a) if the seller is to deliver a tangible document of title, title passes at the
16 time when and the place where he delivers such ~~documents;~~
17 documents and if the seller is to deliver an electronic document of title,
18 title passes when the seller delivers the document; or

19 (b) if the goods are at the time of contracting already identified and no
20 documents of title are to be delivered, title passes at the time and place
21 of contracting."

22 **SECTION 32.** G.S. 25-2-503(4) and (5) read as rewritten:

23 "(4) Where goods are in the possession of a bailee and are to be delivered without
24 being moved

25 (a) tender requires that the seller either tender a negotiable document of
26 title covering such goods or procure acknowledgment by the bailee of
27 the buyer's right to possession of the goods; but

28 (b) tender to the buyer of a non-negotiable document of title or of a
29 ~~written direction to record directing~~ the bailee to deliver is sufficient
30 tender unless the buyer seasonably objects, ~~and~~ and, except as
31 otherwise provided in Article 9 of this Chapter, receipt by the bailee of
32 notification of the buyer's rights fixes those rights as against the bailee
33 and all third persons; but risk of loss of the goods and of any failure by
34 the bailee to honor the nonnegotiable document of title or to obey the
35 direction remains on the seller until the buyer has had a reasonable
36 time to present the document or direction, and a refusal by the bailee to
37 honor the document or to obey the direction defeats the tender.

38 (5) Where the contract requires the seller to deliver documents

39 (a) he must tender all such documents in correct form, except as provided
40 in this article with respect to bills of lading in a set (subsection (2) of
41 G.S. 25-2-323); and

42 (b) tender through customary banking channels is sufficient and dishonor
43 of a draft accompanying or associated with the documents constitutes
44 non-acceptance or rejection."

1 **SECTION 33.** G.S. 25-2-505 reads as rewritten:

2 "**§ 25-2-505. Seller's shipment under reservation.**

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

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

9 (b) a nonnegotiable bill of lading to himself or his nominee reserves
10 possession of the goods as security but except in a case of conditional
11 delivery (subsection (2) of G.S. 25-2-507) a nonnegotiable bill of
12 lading naming the buyer as consignee reserves no security interest
13 even though the seller retains possession or control of the bill of
14 lading.

15 (2) When shipment by the seller with reservation of a security interest is in
16 violation of the contract for sale it constitutes an improper contract for transportation
17 within ~~the preceding section~~ G.S. 25-2-504 but impairs neither the rights given to the
18 buyer by shipment and identification of the goods to the contract nor the seller's powers
19 as a holder of a negotiable ~~document~~ document of title."

20 **SECTION 34.** G.S. 25-2-506(2) reads as rewritten:

21 "(2) The right to reimbursement of a financing agency which has in good faith
22 honored or purchased the draft under commitment to or authority from the buyer is not
23 impaired by subsequent discovery of defects with reference to any relevant document
24 which was apparently ~~regular on its face~~ regular."

25 **SECTION 35.** G.S. 25-2-509(2) reads as rewritten:

26 "(2) Where the goods are held by a bailee to be delivered without being moved,
27 the risk of loss passes to the buyer

28 (a) on his receipt of possession or control of a negotiable document of title
29 covering the goods; or

30 (b) on acknowledgment by the bailee of the buyer's right to possession of
31 the goods; or

32 (c) after his receipt of possession or control of a nonnegotiable document
33 of title or other ~~written direction to deliver~~ deliver in a record, as
34 provided in subsection (4)(b) of G.S. 25-2-503."

35 **SECTION 36.** G.S. 25-2-605(2) reads as rewritten:

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

38 **SECTION 37.** G.S. 25-2-705(2) and (3) read as rewritten:

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

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

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

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

- 1 (d) negotiation to the buyer of any negotiable document of title covering
2 the goods.
- 3 (3) (a) To stop delivery the seller must so notify as to enable the bailee by
4 reasonable diligence to prevent delivery of the goods.
- 5 (b) After such notification the bailee must hold and deliver the goods
6 according to the directions of the seller but the seller is liable to the
7 bailee for any ensuing charges or damages.
- 8 (c) If a negotiable document of title has been issued for goods the bailee is
9 not obliged to obey a notification to stop until surrender of possession
10 or control of the document.
- 11 (d) A carrier who has issued a nonnegotiable bill of lading is not obliged
12 to obey a notification to stop received from a person other than the
13 consignor."

14 **SECTION 38.** G.S. 25-2A-103 reads as rewritten:

15 **"§ 25-2A-103. Definitions and index of definitions.**

- 16 (1) In this Article unless the context otherwise requires:
- 17 (a) "Buyer in ordinary course of ~~{business,}~~business" means a person
18 ~~who~~ who, in good faith and without knowledge that the sale to him is
19 in violation of the ownership rights or security interest or leasehold
20 interest of a third party in the ~~{goods,}~~goods, buys in ordinary course
21 from a person in the business of selling goods of that kind but does not
22 include a pawnbroker. "Buying" may be for cash or by exchange of
23 other property or on secured or unsecured credit and includes ~~receiving~~
24 acquiring goods or documents of title under a preexisting contract for
25 sale but does not include a transfer in bulk or as security for or in total
26 or partial satisfaction of a money debt.
- 27 ...
- 28 (o) "Lessee in ordinary course of business" means a person ~~who~~who, in
29 good faith and without knowledge that the lease to him is in violation
30 of the ownership rights or security interest or leasehold interest of a
31 third party in the ~~{goods,}~~goods, leases in ordinary course from a
32 person in the business of selling or leasing goods of that kind but does
33 not include a pawnbroker. "Leasing" may be for cash or by exchange
34 of other property or on secured or unsecured credit and includes
35 ~~receiving~~acquiring goods or documents of title under a preexisting
36 lease contract but does not include a transfer in bulk or as security for
37 or in total or partial satisfaction of a money debt.

38 ..."

39 **SECTION 39.** G.S. 25-2A-514(2) reads as rewritten:

40 "(2) A lessee's failure to reserve rights when paying rent or other consideration
41 against documents precludes recovery of the payment for defects apparent ~~on the face of~~
42 in the documents."

43 **SECTION 40.** G.S. 25-2A-526(2) reads as rewritten:

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

- 3 (a) receipt of the goods by the lessee;
4 (b) acknowledgment to the lessee by any bailee of the goods, except a
5 carrier, that the bailee holds the goods for the lessee; or
6 (c) such an acknowledgment to the lessee by a carrier via reshipment or as
7 ~~warehouseman~~ a warehouse."

8 **SECTION 41.** G.S. 25-4-104(c) reads as rewritten:

9 "(c) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in
10 other Articles apply to this Article:

| | | |
|----|------------------------------|-----------------|
| 11 | "Acceptance" | G.S. 25-3-409. |
| 12 | "Alteration" | G.S. 25-3-407. |
| 13 | "Cashier's check" | G.S. 25-3-104. |
| 14 | "Certificate of deposit" | G.S. 25-3-104. |
| 15 | "Certified check" | G.S. 25-3-409. |
| 16 | "Check" | G.S. 25-3-104. |
| 17 | "Good faith" | G.S. 25-3-103. |
| 18 | "Draft" | G.S. 25-3-104. |
| 19 | "Holder in due course" | G.S. 25-3-302. |
| 20 | "Instrument" | G.S. 25-3-104. |
| 21 | "Notice of dishonor" | G.S. 25-3-503. |
| 22 | "Order" | G.S. 25-3-103. |
| 23 | "Ordinary care" | G.S. 25-3-103. |
| 24 | "Person entitled to enforce" | G.S. 25-3-301. |
| 25 | "Presentment" | G.S. 25-3-501. |
| 26 | "Promise" | G.S. 25-3-103. |
| 27 | "Prove" | G.S. 25-3-103. |
| 28 | "Teller's check" | G.S. 25-3-104. |
| 29 | "Unauthorized signature" | G.S. 25-3-403." |

30 **SECTION 42.** G.S. 25-4-208(c) reads as rewritten:

31 "(c) Receipt by a collecting bank of a final settlement for an item is a realization
32 on its security interest in the item, accompanying documents, and proceeds. So long as
33 the bank does not receive final settlement for the item or give up possession of the item
34 or possession or control of the accompanying documents for purposes other than
35 collection, the security interest continues to that extent and is subject to Article 9, but:

- 36 (1) No security agreement is necessary to make the security interest
37 enforceable (G.S. 25-9-203(b)(3)(a.);
38 (2) No filing is required to perfect the security interest; and
39 (3) The security interest has priority over conflicting perfected security
40 interests in the item, accompanying ~~documents~~ documents, or
41 proceeds."

42 **SECTION 43.** G.S. 25-8-103 reads as rewritten:

43 "**§ 25-8-103. Rules for determining whether certain obligations and interests are**
44 **securities or financial assets.**"

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

3 ...

4 (f) A commodity contract, as defined in G.S. 25-9-102(a)(15), is not a security or
5 financial asset.

6 (g) A document of title is not a financial asset unless G.S. 25-8-102(a)(9)(iii)
7 applies."

8 **SECTION 44.** G.S. 25-9-102 reads as rewritten:

9 **"§ 25-9-102. Definitions and index of definitions.**

10 (a) Article 9 definitions. – In this Article:

11 ...

12 (30) "Document" means a document of title or a receipt of the type
13 described in ~~G.S. 25-7-201(2)~~. G.S. 25-7-201(b).

14 ...

15 (b) Definitions in other articles. – "Control" as provided in G.S. 25-7-106 and the
16 the following definitions in other Articles of this Chapter apply to this Article:

| | | |
|----|--|-----------------------|
| 17 | "Applicant" | G.S. 25-5-102. |
| 18 | "Beneficiary" | G.S. 25-5-102. |
| 19 | "Broker" | G.S. 25-8-102. |
| 20 | "Certificated security" | G.S. 25-8-102. |
| 21 | "Check" | G.S. 25-3-104. |
| 22 | "Clearing corporation" | G.S. 25-8-102. |
| 23 | "Contract for sale" | G.S. 25-2-106. |
| 24 | "Customer" | G.S. 25-4-104. |
| 25 | "Entitlement holder" | G.S. 25-8-102. |
| 26 | "Financial asset" | G.S. 25-8-102. |
| 27 | "Holder in due course" | G.S. 25-3-302. |
| 28 | "Issuer" (with respect to a letter of credit | |
| 29 | or letter-of-credit right) | G.S. 25-5-102. |
| 30 | "Issuer" (with respect to a security) | G.S. 25-8-201. |
| 31 | <u>"Issuer" (with respect to documents of title)</u> | <u>G.S. 25-7-102.</u> |
| 32 | "Lease" | G.S. 25-2A-103. |
| 33 | "Lease agreement" | G.S. 25-2A-103. |
| 34 | "Lease contract" | G.S. 25-2A-103. |
| 35 | "Leasehold interest" | G.S. 25-2A-103. |
| 36 | "Lessee" | G.S. 25-2A-103. |
| 37 | "Lessee in ordinary course of business" | G.S. 25-2A-103. |
| 38 | "Lessor" | G.S. 25-2A-103. |
| 39 | "Lessor's residual interest" | G.S. 25-2A-103. |
| 40 | "Letter of credit" | G.S. 25-5-102. |
| 41 | "Merchant" | G.S. 25-2-104. |
| 42 | "Negotiable instrument" | G.S. 25-3-104. |
| 43 | "Nominated person" | G.S. 25-5-102. |
| 44 | "Note" | G.S. 25-3-104. |

| | | |
|---|----------------------------------|-----------------|
| 1 | "Proceeds of a letter of credit" | G.S. 25-5-114. |
| 2 | "Prove" | G.S. 25-3-103. |
| 3 | "Sale" | G.S. 25-2-106. |
| 4 | "Securities account" | G.S. 25-8-501. |
| 5 | "Securities intermediary" | G.S. 25-8-102. |
| 6 | "Security" | G.S. 25-8-102. |
| 7 | "Security certificate" | G.S. 25-8-102. |
| 8 | "Security entitlement" | G.S. 25-8-102. |
| 9 | "Uncertificated security" | G.S. 25-8-102." |

10 **SECTION 45.** G.S. 25-9-203 (b) reads as rewritten:

11 "(b) Enforceability. – Except as otherwise provided in subsections (c) through (i)
12 of this section, a security interest is enforceable against the debtor and third parties with
13 respect to the collateral only if:

- 14 (1) Value has been given;
- 15 (2) The debtor has rights in the collateral or the power to transfer rights in
16 the collateral to a secured party; and
- 17 (3) One of the following conditions is met:
 - 18 a. The debtor has authenticated a security agreement that provides
19 a description of the collateral and, if the security interest covers
20 timber to be cut, a description of the land concerned;
 - 21 b. The collateral is not a certificated security and is in the
22 possession of the secured party under G.S. 25-9-313 pursuant to
23 the debtor's security agreement;
 - 24 c. The collateral is a certificated security in registered form and
25 the security certificate has been delivered to the secured party
26 under G.S. 25-8-301 pursuant to the debtor's security
27 agreement; or
 - 28 d. The collateral is deposit accounts, electronic chattel paper,
29 investment property, ~~or~~ letter-of-credit rights, or electronic
30 documents, and the secured party has control under
31 G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107
32 pursuant to the debtor's security agreement."

33 **SECTION 46.** G.S. 25-9-207(c) reads as rewritten:

34 "(c) Rights and duties when secured party in possession or control. – Except as
35 otherwise provided in subsection (d) of this section, a secured party having possession
36 of collateral or control of collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106,
37 or 25-9-107:

- 38 (1) May hold as additional security any proceeds, except money or funds,
39 received from the collateral;
- 40 (2) Shall apply money or funds received from the collateral to reduce the
41 secured obligation, unless remitted to the debtor; and
- 42 (3) May create a security interest in the collateral."

43 **SECTION 47.** G.S. 25-9-208(b) reads as rewritten:

1 "(b) Duties of secured party after receiving demand from debtor. – Within 10 days
2 after receiving an authenticated demand by the debtor:

3 (1) A secured party having control of a deposit account under
4 25-9-104(a)(2) shall send to the bank with which the deposit account is
5 maintained an authenticated statement that releases the bank from any
6 further obligation to comply with instructions originated by the
7 secured party;

8 (2) A secured party having control of a deposit account under
9 G.S. 25-9-104(a)(3) shall:

- 10 a. Pay the debtor the balance on deposit in the deposit account; or
11 b. Transfer the balance on deposit into a deposit account in the
12 debtor's name;

13 (3) A secured party, other than a buyer, having control of electronic
14 chattel paper under G.S. 25-9-105 shall:

- 15 a. Communicate the authoritative copy of the electronic chattel
16 paper to the debtor or its designated custodian;
17 b. If the debtor designates a custodian that is the designated
18 custodian with which the authoritative copy of the electronic
19 chattel paper is maintained for the secured party, communicate
20 to the custodian an authenticated record releasing the
21 designated custodian from any further obligation to comply
22 with instructions originated by the secured party and instructing
23 the custodian to comply with instructions originated by the
24 debtor; and
25 c. Take appropriate action to enable the debtor or its designated
26 custodian to make copies of or revisions to the authoritative
27 copy which add or change an identified assignee of the
28 authoritative copy without the consent of the secured party;

29 (4) A secured party having control of investment property under
30 G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities
31 intermediary or commodity intermediary with which the security
32 entitlement or commodity contract is maintained an authenticated
33 record that releases the securities intermediary or commodity
34 intermediary from any further obligation to comply with entitlement
35 orders or directions originated by the secured party; ~~and~~

36 (5) A secured party having control of a letter-of-credit right under
37 G.S. 25-9-107 shall send to each person having an unfulfilled
38 obligation to pay or deliver proceeds of the letter of credit to the
39 secured party an authenticated release from any further obligation to
40 pay or deliver proceeds of the letter of credit to the secured ~~party-~~
41 party; and

42 (6) A secured party having control of an electronic document shall:

- 43 a. Give control of the electronic document to the debtor or its
44 designated custodian;

- 1 **b.** If the debtor designates a custodian that is the designated
2 custodian with which the authoritative copy of the electronic
3 document is maintained for the secured party, communicate to
4 the custodian an authenticated record releasing the designated
5 custodian from any further obligation to comply with
6 instructions originated by the secured party and instructing the
7 custodian to comply with instructions originated by the debtor;
8 and
9 **c.** Take appropriate action to enable the debtor or its designated
10 custodian to make copies of or revisions to the authoritative
11 copy which add or change an identified assignee of the
12 authoritative copy without the consent of the secured party."

13 **SECTION 48.** G.S. 25-9-301(3) reads as rewritten:

- 14 "(3) Except as otherwise provided in paragraph (4) of this section, while
15 tangible negotiable documents, goods, instruments, money, or tangible
16 chattel paper is located in a jurisdiction, the local law of that
17 jurisdiction governs:
18 a. Perfection of a security interest in the goods by filing a fixture
19 filing;
20 b. Perfection of a security interest in timber to be cut; and
21 c. The effect of perfection or nonperfection and the priority of a
22 nonpossessory security interest in the collateral."

23 **SECTION 49.** G.S. 25-9-310(b) reads as rewritten:

- 24 "(b) Exceptions: filing not necessary. – The filing of a financing statement is not
25 necessary to perfect a security interest:
26 (1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);
27 (2) That is perfected under G.S. 25-9-309 when it attaches;
28 (3) In property subject to a statute, regulation, or treaty described in
29 G.S. 25-9-311(a);
30 (4) In goods in possession of a bailee which is perfected under
31 G.S. 25-9-312(d)(1) or (2);
32 (5) In certificated securities, documents, goods, or instruments which is
33 perfected without ~~filing~~ filing, control, or possession under
34 G.S. 25-9-312(e), (f), or (g);
35 (6) In collateral in the secured party's possession under G.S. 25-9-313;
36 (7) In a certificated security which is perfected by delivery of the security
37 certificate to the secured party under G.S. 25-9-313;
38 (8) In deposit accounts, electronic chattel paper, electronic documents,
39 investment property, or letter-of-credit rights which is perfected by
40 control under G.S. 25-9-314;
41 (9) In proceeds which is perfected under G.S. 25-9-315; or
42 (10) That is perfected under G.S. 25-9-316."

43 **SECTION 50.** G.S. 25-9-312(e) reads as rewritten:

1 "(e) Temporary perfection: new value. – A security interest in certificated
2 securities, negotiable documents, or instruments is perfected without filing or the taking
3 of possession or control for a period of 20 days from the time it attaches to the extent
4 that it arises for new value given under an authenticated security agreement."

5 **SECTION 51.** G.S. 25-9-313(a) reads as rewritten:

6 "(a) Perfection by possession or delivery. – Except as otherwise provided in
7 subsection (b) of this section, a secured party may perfect a security interest in tangible
8 negotiable documents, goods, instruments, money, or tangible chattel paper by taking
9 possession of the collateral. A secured party may perfect a security interest in
10 certificated securities by taking delivery of the certificated securities under
11 G.S. 25-8-301."

12 **SECTION 52.** G.S. 25-9-314(a) and (b) read as rewritten:

13 "(a) Perfection by control. – A security interest in investment property, deposit
14 accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may
15 be perfected by control of the collateral under G.S. 25-7-106, 25-9-104, 25-9-105,
16 25-9-106, or 25-9-107.

17 (b) Specified collateral: time of perfection by control; continuation of perfection.
18 – A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit
19 ~~rights– rights, or electronic documents~~ is perfected by control under G.S. 25-7-106,
20 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains
21 perfected by control only while the secured party retains control."

22 **SECTION 53.** G.S. 25-9-317(b) and (d) read as rewritten:

23 "(b) Buyers that receive delivery. – Except as otherwise provided in subsection (e)
24 of this section, a buyer, other than a secured party, of tangible chattel paper, tangible
25 documents, goods, instruments, or a security certificate takes free of a security interest
26 or agricultural lien if the buyer gives value and receives delivery of the collateral
27 without knowledge of the security interest or agricultural lien and before it is perfected.

28 ...

29 (d) Licensees and buyers of certain collateral. – A licensee of a general intangible
30 or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic
31 documents, general intangibles, or investment property other than a certificated security
32 takes free of a security interest if the licensee or buyer gives value without knowledge
33 of the security interest and before it is perfected."

34 **SECTION 54.** G.S. 25-9-338 reads as rewritten:

35 "**§ 25-9-338. Priority of security interest or agricultural lien perfected by filed**
36 **financing statement providing certain incorrect information.**

37 If a security interest or agricultural lien is perfected by a filed financing statement
38 providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time
39 the financing statement is filed:

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

1 (2) A purchaser, other than a secured party, of the collateral takes free of
2 the security interest or agricultural lien to the extent that, in reasonable
3 reliance upon the incorrect information, the purchaser gives value and,
4 in the case of tangible chattel paper, tangible documents, goods,
5 instruments, or a security certificate, receives delivery of the
6 collateral."

7 **SECTION 55.** G.S. 25-9-601(b) reads as rewritten:

8 "(b) Rights and duties of secured party in possession or control. – A secured party
9 in possession of collateral or control of collateral under G.S. 25-7-106, 25-9-104,
10 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207."

11 **SECTION 56.** G.S. 25-10-104 is repealed.

12 **SUBPART C. OTHER CONFORMING AMENDMENTS AND REPEALS.**

13 **SECTION 57.** G.S. 106-451.19 reads as rewritten:

14 **"§ 106-451.19. Contents of receipts.**

15 Every receipt issued for cotton stored in a warehouse licensed under this Article
16 shall contain the information required under the United States Warehouse Act, 7 U.S.C.
17 § 214, et seq., and the regulations promulgated thereunder. ~~embody within its written or~~
18 ~~printed terms:~~

- 19 (1) ~~The location of the warehouse in which the cotton is stored;~~
- 20 (2) ~~The date of issue of the receipt;~~
- 21 (3) ~~The consecutive number of the receipt;~~
- 22 (4) ~~A statement whether the cotton received will be delivered to the~~
23 ~~bearer, to a specified person, or to a specified person or his order;~~
- 24 (5) ~~The rate of storage charges;~~
- 25 (6) ~~A description of the cotton received, showing the quantity thereof and~~
26 ~~a description of each bale by mark, number, or other means of~~
27 ~~identification and the weight of each bale;~~
- 28 (7) ~~The grade or other classification of the cotton received and the~~
29 ~~standard or description in accordance with which such classification~~
30 ~~has been made;~~
- 31 (8) ~~A statement that the receipt is issued subject to this Article and the~~
32 ~~rules and regulations prescribed hereunder;~~
- 33 (9) ~~If the receipt be issued for cotton of which the warehouseman is~~
34 ~~owner, either solely or jointly or in common with others, the fact of~~
35 ~~such ownership;~~
- 36 (10) ~~A statement of the amount of advances made and of liabilities incurred~~
37 ~~for which the warehouseman claims a lien; and~~
- 38 (11) ~~Signature of the warehouseman, which may be made by his authorized~~
39 ~~agent."~~

40 **SECTION 58.(a)** Article 5 of Chapter 27 of the General Statutes is repealed.

41 **SECTION 58.(b)** Prosecutions for offenses committed before the effective
42 date of this act are not abated or affected by this act, and the statutes that would be
43 applicable but for this act remain applicable to those prosecutions.

1 **PART III. MISCELLANEOUS PROVISIONS, DIRECTIONS, AND EFFECTIVE**
2 **DATE.**

3 **SECTION 59.** Subparts A and B of Part II of this act apply to a document of
4 title that is issued or a bailment that arises on or after the effective date of this act.
5 Subparts A and B of Part II of this act do not apply to a document of title that is issued
6 or a bailment that arises before the effective date of this act even if the document of title
7 or bailment would be subject to this act if the document of title had been issued or
8 bailment had arisen on or after the effective date of this act. Subparts A and B of Part II
9 of this act do not apply to a right of action that has accrued before the effective date of
10 this act.

11 **SECTION 60.** A document of title issued or a bailment that arises before the
12 effective date of this act and the rights, obligations, and interests flowing from that
13 document or bailment are governed by any statute amended or repealed by this act as if
14 amendment or repeal had not occurred and may be terminated, completed,
15 consummated, or enforced under that statute.

16 **SECTION 61.** The Revisor of Statutes shall cause to be printed along with
17 this act all relevant portions of the official comments to Uniform Commercial Code
18 Revised Article 1 and Uniform Commercial Code Revised Article 7 and all explanatory
19 comments of the drafters of this act as the Revisor deems appropriate.

20 **SECTION 62.** This act becomes effective October 1, 2006.