

SENATE BILL No. 308

AN ACT concerning the uniform commercial code; relating to documents of title; amending K.S.A. 21-3736, 21-3737, 84-2-104, 84-2-310, 84-2-323, 84-2-401, 84-2-503, 84-2-505, 84-2-506, 84-2-509, 84-2-605, 84-2-705, 84-2a-514, 84-2a-526 and 84-4-104 and K.S.A. 2006 Supp. 16-1616, 84-1-201, 84-2-103, 84-2a-103, 84-4-210, 84-8-103, 84-9-102, 84-9-201, 84-9-203, 84-9-207, 84-9-208, 84-9-301, 84-9-310, 84-9-312, 84-9-313, 84-9-314, 84-9-317, 84-9-338 and 84-9-601 and repealing the existing sections; also repealing K.S.A. 84-7-101 through 84-7-105, 84-7-201 through 84-7-210, 84-7-301 through 84-7-309, 84-7-401 through 84-7-404, 84-7-501, 84-7-502, 84-7-504 through 84-7-509, 84-7-601, 84-7-602 and 84-7-603 and K.S.A. 2006 Supp. 84-7-503.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (UCC 7-101.) Short title. This article may be cited as uniform commercial code-documents of title.

New Sec. 2. (UCC 7-102.) Definitions and index of definitions.

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

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

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

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

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

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

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

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

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

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(A) To execute or adopt a tangible symbol; or

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

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) “Contract for sale”, K.S.A. 84-2-106, and amendments thereto.

(2) “Lessee in the ordinary course of business”, K.S.A. 84-2a-103, and amendments thereto.

(3) “Receipt” of goods, K.S.A. 84-2-103, and amendments thereto.

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

New Sec. 3. (UCC 7-103.) Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this article. However, violation of such a law

does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. section 7001, et seq.) but does not modify, limit or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

(d) To the extent there is a conflict between the uniform electronic transactions act, K.S.A. 2006 Supp. 16-1601 et seq., and amendments thereto, and this article, this article governs.

New Sec. 4. (UCC 7-104.) Negotiable and nonnegotiable document of title. (a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

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

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

New Sec. 5. (UCC 7-105.) Reissuance in alternative medium.

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

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

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

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

(1) The electronic document ceases to have any effect or validity; and

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

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

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

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

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

(1) The tangible document ceases to have any effect or validity; and

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

New Sec. 6. (UCC 7-106.) Control of electronic document of title.

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

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

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

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

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

(B) if the authoritative copy indicates that the document has been

transferred, the person to which the document was most recently transferred;

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

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

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

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

New Sec. 7. (UCC 7-201.) Person that may issue a warehouse receipt; storage under bond. (a) A warehouse receipt may be issued by any warehouse.

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

New Sec. 8. (UCC 7-202.) Form of warehouse receipt; effect of omission. (a) A warehouse receipt need not be in any particular form.

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

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

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

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

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

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

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

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

(c) A warehouse may insert in its receipt any terms that are not contrary to the uniform commercial code and do not impair its obligation of delivery under section 28, and amendments thereto, or its duty of care under section 10, and amendments thereto. Any contrary provision is ineffective.

New Sec. 9. (UCC 7-203.) Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

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

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

New Sec. 10. (UCC 7-204.) Duty of care; contractual limitation of warehouse’s liability. (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar

circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

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

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

(d) This section does not modify or repeal any part of chapter 82 of the Kansas Statutes Annotated, and amendments thereto, not specifically repealed by this act.

New Sec. 11. (UCC 7-205.) Title under warehouse receipt defeated in certain cases. A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

New Sec. 12. (UCC 7-206.) Termination of storage at warehouse's option. (a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 16, and amendments thereto.

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

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

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

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

New Sec. 13. (UCC 7-207.) Goods must be kept separate; fungible goods. (a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

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

New Sec. 14. (UCC 7-208.) Altered warehouse receipts. If a blank

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

New Sec. 15. (UCC 7-209.) Lien of warehouse. (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by article 9.

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

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

(A) Actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 28, and amendments thereto; or

(C) power of disposition under sections 28, K.S.A. 84-2a-304(2), 84-2a-305(2), 84-9-320, or 84-9-321(c), and amendments thereto, or other statute or rule of law; or

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

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

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

New Sec. 16. (UCC 7-210.) Enforcement of warehouse's lien. (a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods

sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

(2) the notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place;

(3) the sale must conform to the terms of the notification;

(4) the sale must be held at the nearest suitable place to where the goods are held or stored; and

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

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

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

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

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

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

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

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

New Sec. 17. (UCC 7-301.) Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load and count"; improper handling. (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count," or words of similar import, if that indication is true.

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

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

(2) words such as "shipper's weight, load, and count," or words of

similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

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

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

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

New Sec. 18. (UCC 7-302.) Through bills of lading and similar documents of title. (a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

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

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

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

New Sec. 19. (UCC 7-303.) Diversion; reconsignment; change of instructions. (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

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

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

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

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

New Sec. 20. (UCC 7-304.) Tangible bills of lading in a set.

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

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

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

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

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

New Sec. 21. (UCC 7-305.) Destination bills. (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 5, and amendments thereto, may procure a substitute bill to be issued at any place designated in the request.

New Sec. 22. (UCC 7-306.) Altered bills of lading.

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

New Sec. 23. (UCC 7-307.) Lien of carrier. (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

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

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

New Sec. 24. (UCC 7-308.) Enforcement of carrier's lien. (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to



ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

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

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

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

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

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

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in section 16(b), and amendments thereto.

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

New Sec. 25. (UCC 7-309.) Duty of care; contractual limitation of carrier's liability. (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

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

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

New Sec. 26. (UCC 7-401.) Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this article on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

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

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

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

New Sec. 27. (UCC 7-402.) Duplicate document of title; overissue. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 5, and amendments thereto. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

New Sec. 28. (UCC 7-403.) Obligation of bailee to deliver; excuse.

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

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

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

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

(4) the exercise by a seller of its right to stop delivery pursuant to K.S.A. 84-2-705, and amendments thereto, or by a lessor of its right to stop delivery pursuant to K.S.A. 84-2a-526, and amendments thereto;

(5) a diversion, reconsignment, or other disposition pursuant to section 19, and amendments thereto;

(6) release, satisfaction, or any other personal defense against the claimant; or

(7) any other lawful excuse.

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

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 32(a), and amendments thereto:

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

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

New Sec. 29. (UCC 7-404.) No liability for good-faith delivery pursuant to document of title. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

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

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

New Sec. 30. (UCC 7-501.) Form of negotiation and requirements of due negotiation. (a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

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

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

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

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

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

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

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

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

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

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

New Sec. 31. (UCC 7-502.) Rights acquired by due negotiation.

(a) Subject to sections 11 and 32, and amendments thereto, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document;
- (2) title to the goods;
- (3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 32, and amendments thereto, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

- (1) The due negotiation or any prior due negotiation constituted a breach of duty;
- (2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
- (3) a previous sale or other transfer of the goods or document has been made to a third person.

New Sec. 32. (UCC 7-503.) Document of title to goods defeated in certain cases. (a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

- (1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
  - (A) Actual or apparent authority to ship, store, or sell;
  - (B) power to obtain delivery under section 28, and amendments thereto; or
  - (C) power of disposition under K.S.A. 84-2-403, 84-2a-304(2), 84-2a-305(2), 84-9-320 or 84-9-321(c), and amendments thereto, or other statute or rule of law; or
- (2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 33, and amendments thereto, to the same extent as the rights of the issuer or a transferee from the issuer.

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

New Sec. 33. (UCC 7-504.) Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery. (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

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

- (1) By those creditors of the transferor which could treat the transfer as void under K.S.A. 84-2-404 or 84-2a-308, and amendments thereto;

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

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

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

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

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under K.S.A. 84-2-705, and amendments thereto, or a lessor under K.S.A. 84-2a-526, and amendments thereto, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

New Sec. 34. (UCC 7-505.) Indorser not guarantor for other parties. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

New Sec. 35. (UCC 7-506.) Delivery without indorsement; right to compel indorsement. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

New Sec. 36. (UCC 7-507.) Warranties on negotiation or delivery of document of title. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 37, and amendments thereto, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

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

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

New Sec. 37. (UCC 7-508.) Warranties of collecting bank as to documents of title. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

New Sec. 38. (UCC 7-509.) Adequate compliance with commercial contract. Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 39. (UCC 7-601.) Lost, stolen or destroyed documents of title. (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of non-surrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is

liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

New Sec. 40. (UCC 7-602.) Judicial process against goods covered by negotiable document of title. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

New Sec. 41. (UCC 7-603.) Conflicting claims; interpleader. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

New Sec. 42. (UCC 7-703.) Applicability. This act applies to a document of title that is issued or a bailment that arises on or after the effective date of this act. This act does not apply to a document of title that is issued or a bailment that arises before the effective date of this act even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after the effective date of this act. This act does not apply to a right of action that has accrued before the effective date of this act.

New Sec. 43. (UCC 7-704.) Savings clause. A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

Sec. 44. K.S.A. 2006 Supp. 16-1616 is hereby amended to read as follows: 16-1616. (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under article 3 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto or a document under article 7 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5) and (6), unalterable;

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

(A) The person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

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

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

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

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

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in K.S.A. 84-1-201(20), and amendments thereto, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the uniform commercial code, including, if the applicable statutory requirements under K.S.A. 84-3-302(a), ~~84-7-501~~, or 84-9-308, and amendments thereto, *or section 30, and amendments thereto*, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the uniform commercial code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Sec. 45. K.S.A. 21-3736 is hereby amended to read as follows: 21-3736. (a) Warehouse receipt fraud is making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering by a warehouseman, or any officer, agent or employee of a warehouseman, of:

(1) A negotiable receipt for goods with knowledge that the goods for which the receipt is issued have not actually been received by the warehouseman, or are not under the warehouseman's actual control at the time of issuing the receipt; or

(2) a negotiable receipt for goods with knowledge that the receipt contains a false statement; or

(3) a duplicate or additional negotiable receipt for goods with knowledge that a former negotiable receipt for the same goods or any part thereof is outstanding and uncanceled, without plainly placing on the face thereof the word "duplicate," except in the case of a lost, stolen or destroyed receipt after proceedings as provided in K.S.A. 34-257 or subsection ~~(1) of K.S.A. 84-7-601~~ *(a) of section 39*, and amendments thereto.

(b) Warehouse receipt fraud is a severity level 10, nonperson felony.

Sec. 46. K.S.A. 21-3737 is hereby amended to read as follows: 21-3737. (a) Unauthorized delivery of stored goods is delivery of goods out of the possession of a warehouseman by such warehouseman, or any officer, agent or employee of such warehouseman, with knowledge that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery except:

(1) In the case of a lost, stolen or destroyed receipt, after proceedings as provided in subsection ~~(1) of K.S.A. 84-7-601~~ *(a) of section 39*, and amendments thereto;

(2) in the case of delivery in good faith as provided in subsection ~~(2) of K.S.A. 84-7-601~~ *(b) of section 39*, and amendments thereto;

(3) in the case of optional termination of storage as provided in ~~K.S.A. 84-7-206~~ *section 12*, and amendments thereto;

(4) in the case of a lost or destroyed receipt, after proceedings as provided in K.S.A. 34-257 and amendments thereto; or

(5) in the case of sale as provided in K.S.A. 34-276 and amendments thereto.

(b) Unauthorized delivery of stored goods is a class A nonperson misdemeanor.

Sec. 47. K.S.A. 2006 Supp. 84-1-201 is hereby amended to read as follows: 84-1-201. Subject to additional definitions contained in the subsequent articles of this act which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoup-

ment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (K.S.A. 84-1-205 and 84-2-208, and amendments thereto). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (K.S.A. 84-1-103 and amendments thereto). (Compare “Contract.”)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means ~~the~~ *a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title or a certificated security payable to bearer or indorsed in blank.*

(6) “Bill of lading” means a document of *title* evidencing the receipt of goods for shipment issued by a person engaged in the business of *directly or indirectly* transporting or forwarding goods, ~~and includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill. The term does not include a warehouse receipt.~~

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

~~(10) “Conspicuous”: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or other contrasting type or color. But in a telegram any stated term is “conspicuous.” Whether a term or clause is “conspicuous” or not is for decision by the court.~~

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) “Contract” means the total legal obligation which results from the parties’ agreement as affected by this act and any other applicable rules of law. (Compare “Agreement.”)

(12) “Creditor” includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the

benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which~~ means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession of it or control of the record is entitled to receive, control, hold and dispose of the ~~document~~ record and the goods it covers. ~~To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass~~ the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

~~(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.~~

(20) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

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

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

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) Subject to subsection (27), a person has "notice" of a fact ~~when~~ if the person:

(a) ~~The person~~ Has actual knowledge of it; or

(b) ~~the person~~ has received a notice or notification of it; or

(c) from all the facts and circumstances known to the person at the



time in question ~~the person~~ has reason to know that it exists. A person “knows” or has “knowledge” of a fact when the person has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) 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 ~~such other~~ *the other person* actually comes to know of it. *Subject to subsection (27)*, a person “receives” a notice or notification when:

(a) It comes to the person’s attention; or

(b) it is duly delivered *in a form reasonable under the circumstances* at the place of business through which the contract was made or at ~~any other place~~ *another location* held out by ~~the~~ *that* person as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when 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 such communication is part of the individual’s regular duties or ~~unless~~ the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) “Organization” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity.

(29) “Party,” as distinct from “third party,” means a person who has engaged in a transaction or made an agreement within this act.

(30) “Person” includes an individual or an organization. (See K.S.A. 84-1-102 and amendments thereto.)

(31) “Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. The introduction of such evidence shall have the effect specified in K.S.A. 60-414 and amendments thereto on the burden of establishing the existence or nonexistence of such fact.

(32) “Purchase” includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) “Purchaser” means a person who takes by purchase.

(34) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) “Representative” includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate or any other person empowered to act for another.

(36) “Rights” includes remedies.

(37) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under K.S.A. 84-2-401 and amendments thereto is not a “security interest,” but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in K.S.A. 84-2-505 and amendments thereto, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest,” but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (K.S.A. 84-2-401 and amendments thereto) is limited in effect to a reservation of a “security interest.”

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration 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 not subject to termination by the lessee, and

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods,
- (b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,
- (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or
- (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,
- (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,
- (c) the lessee has an option to renew the lease or to become the owner of the goods,
- (d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or
- (e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

- (a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;
- (b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and
- (c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

~~(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.~~

(38) "Send" in connection with a writing, record or notice means:

- (A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) *in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.*

(39) “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) “Surety” includes guarantor.

(41) “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission or the like.

(42) “Term” means that portion of an agreement which relates to a particular matter.

(43) “Unauthorized” signature means one made without actual, implied or apparent authority and includes a forgery.

(44) “Value.” Except as otherwise provided with respect to negotiable instruments and bank collections (K.S.A. 84-3-303, 84-4-208 and 84-4-209, and amendments thereto) a person gives “value” for rights if the person acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) “Warehouse receipt” means a ~~receipt~~ *document of title* issued by a person engaged in the business of storing goods for hire.

(46) “Written” or “writing” includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 48. K.S.A. 2006 Supp. 84-2-103 is hereby amended to read as follows: 84-2-103. (1) In this article unless the context otherwise requires:

(a) “Buyer” means a person who buys or contracts to buy goods.

(b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) “Receipt” of goods means taking physical possession of them.

(d) “Seller” means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

“Acceptance.” K.S.A. 84-2-606, *and amendments thereto.*

“Banker’s credit.” K.S.A. 84-2-325, *and amendments thereto.*

“Between merchants.” K.S.A. 84-2-104, *and amendments thereto.*

“Cancellation.” K.S.A. 84-2-106(4), *and amendments thereto.*

“Commercial unit.” K.S.A. 84-2-105, *and amendments thereto.*

“Confirmed credit.” K.S.A. 84-2-325, *and amendments thereto.*

“Conforming to contract.” K.S.A. 84-2-106, *and amendments thereto.*

“Contract for sale.” K.S.A. 84-2-106, *and amendments thereto.*

“Cover.” K.S.A. 84-2-712, *and amendments thereto.*

“Entrusting.” K.S.A. 84-2-403, *and amendments thereto.*

“Financing agency.” K.S.A. 84-2-104, *and amendments thereto.*

“Future goods.” K.S.A. 84-2-105, *and amendments thereto.*

“Goods.” K.S.A. 84-2-105, *and amendments thereto.*

“Identification.” K.S.A. 84-2-501, *and amendments thereto.*

“Installment contract.” K.S.A. 84-2-612, *and amendments thereto.*

“Letter of credit.” K.S.A. 84-2-325, *and amendments thereto.*

“Lot.” K.S.A. 84-2-105, *and amendments thereto.*

“Merchant.” K.S.A. 84-2-104, *and amendments thereto.*

“Overseas.” K.S.A. 84-2-323, *and amendments thereto.*

“Person in position of seller.” K.S.A. 84-2-707, *and amendments thereto.*

“Present sale.” K.S.A. 84-2-106, *and amendments thereto.*

“Sale.” K.S.A. 84-2-106, *and amendments thereto.*

“Sale on approval.” K.S.A. 84-2-326, *and amendments thereto.*

“Sale or return.” K.S.A. 84-2-326, *and amendments thereto.*

“Termination.” K.S.A. 84-2-106, *and amendments thereto.*

(3) “Control” *as provided in section 6, and amendments thereto, and the following definitions in other articles apply to this article:*

“Check.” K.S.A. 84-3-104, *and amendments thereto*.

“Consignee.” ~~K.S.A. 84-7-102 section 2,~~ *and amendments thereto*.

“Consignor.” ~~K.S.A. 84-7-102 section 2,~~ *and amendments thereto*.

“Consumer goods.” K.S.A. 2006 Supp. 84-9-102, *and amendments thereto*.

“Dishonor.” K.S.A. 84-3-502, *and amendments thereto*.

“Draft.” K.S.A. 84-3-104, *and amendments thereto*.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 49. K.S.A. 84-2-104 is hereby amended to read as follows: 84-2-104. (1) “Merchant” means a person who deals in goods of the kind or otherwise by ~~his~~ *the person’s* occupation holds ~~himself~~ *oneself* out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by ~~his~~ *such person’s* employment of an agent or broker or other intermediary who by ~~his~~ *such person’s* occupation holds ~~himself~~ *oneself* out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany *or are associated with* the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (~~section 84-2-707~~) (K.S.A. 84-2-707, *and amendments thereto*).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Sec. 50. K.S.A. 84-2-310 is hereby amended to read as follows: 84-2-310. Unless otherwise agreed

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

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (~~section 84-2-513~~) (K.S.A. 84-2-513, *and amendments thereto*); and

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

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

Sec. 51. K.S.A. 84-2-323 is hereby amended to read as follows: 84-2-323. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

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

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of ~~section~~ K.S.A. 84-2-508, *and amendments thereto*); and

(b) even though the full set is demanded, if the documents are sent

from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is “overseas” insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Sec. 52. K.S.A. 84-2-401 is hereby amended to read as follows: 84-2-401. Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (~~section~~ K.S.A. 84-2-501, *and amendments thereto*), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

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

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

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

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

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

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

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a “sale.”

Sec. 53. K.S.A. 84-2-503 is hereby amended to read as follows: 84-2-503. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer’s disposition and give the buyer any notification reasonably necessary to enable ~~him~~ *the buyer* to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular:

(a) Tender must be made at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

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

(a) Tender requires that the seller either tender a negotiable docu-

ment of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to record directing~~ the bailee to deliver is sufficient tender unless the buyer seasonably objects, and *except as otherwise provided in article 9 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto*, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

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

(a) ~~he~~ *The seller* must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of ~~section~~ K.S.A. 84-2-323, *and amendments thereto*); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying *or associated with* the documents constitutes nonacceptance or rejection.

Sec. 54. K.S.A. 84-2-505 is hereby amended to read as follows: 84-2-505. (1) Where the seller has identified goods to the contract by or before shipment:

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

(b) A nonnegotiable bill of lading to ~~himself~~ *the seller* or ~~his~~ *the seller's* nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of ~~section~~ K.S.A. 84-2-507, *and amendments thereto*) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession *or control* of the bill of lading.

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

Sec. 55. K.S.A. 84-2-506 is hereby amended to read as follows: 84-2-506. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

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

Sec. 56. K.S.A. 84-2-509 is hereby amended to read as follows: 84-2-509. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require ~~him~~ *the seller* to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (~~section~~ K.S.A. 84-2-505, *and amendments thereto*); but

(b) if it does require ~~him~~ *the seller* to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

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

(a) On ~~his~~ *the buyer's* receipt of *possession or control of* a negotiable document of title covering the goods; or

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

(c) after ~~his~~ *the buyer's* receipt of *possession or control* of a nonnegotiable document of title or other ~~written~~ direction to deliver *in a record*, as provided in subsection (4)(b) of ~~section~~ K.S.A. 84-2-503, *and amendments thereto*.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on ~~his~~ *the buyer's* receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (~~section~~ K.S.A. 84-2-327, *and amendments thereto*) and on effect of breach on risk of loss (~~section~~ K.S.A. 84-2-510, *and amendments thereto*).

Sec. 57. K.S.A. 84-2-605 is hereby amended to read as follows: 84-2-605. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes ~~him~~ *the buyer* from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

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

Sec. 58. K.S.A. 84-2-705 is hereby amended to read as follows: 84-2-705. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when ~~he~~ *the seller* discovers the buyer to be insolvent (~~section~~ K.S.A. 84-2-702, *and amendments thereto*) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

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

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

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

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

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

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

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

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consigner.

Sec. 59. K.S.A. 2006 Supp. 84-2a-103 is hereby amended to read as follows: 84-2a-103. (1) In this article unless the context otherwise requires:

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

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial

usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(f) “Fault” means wrongful act, omission, breach or default.

(g) “Finance lease” means a lease with respect to which:

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

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

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

(B) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

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

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (K.S.A. 84-2a-309, *and amendments thereto*), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) “Lease contract” means the total legal obligation that results from



the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ *acquiring* goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination or cancellation of the lease contract.

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

(z) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

“Accessions,” K.S.A. 84-2a-310(1), *and amendments thereto*;

“Construction mortgage,” K.S.A. 84-2a-309(1)(d), *and amendments thereto*;

“Encumbrance,” K.S.A. 84-2a-309(1)(e), *and amendments thereto*;

“Fixtures,” K.S.A. 84-2a-309(1)(a), *and amendments thereto*;

“Fixture filing,” K.S.A. 84-2a-309(1)(b), *and amendments thereto*; and

“Purchase money lease,” K.S.A. 84-2a-309(1)(c), *and amendments thereto*.

(3) The following definitions in other articles apply to this article:

“Account,” K.S.A. 2006 Supp. 84-9-102, *and amendments thereto*;

“Between merchants,” K.S.A. 84-2-104(3), *and amendments thereto*;

“Buyer,” K.S.A. 84-2-103(1)(a), *and amendments thereto*;

“Chattel paper,” K.S.A. 2006 Supp. 84-9-102(a)(11), *and amendments thereto*;

“Consumer goods,” K.S.A. 2006 Supp. 84-9-102(a)(23), *and amendments thereto*;

“Document,” K.S.A. 2006 Supp. 84-9-102(a)(30), and amendments thereto;  
 “Entrusting,” K.S.A. 84-2-403(3), and amendments thereto;  
 “General intangible,” K.S.A. 2006 Supp. 84-9-102(a)(42), and amendments thereto;  
 “Good faith,” K.S.A. 84-2-103(1)(b), and amendments thereto;  
 “Instrument,” K.S.A. 2006 Supp. 84-9-102(a)(47), and amendments thereto;  
 “Merchant,” K.S.A. 84-2-104(1), and amendments thereto;  
 “Mortgage,” K.S.A. 2006 Supp. 84-9-102(a)(55), and amendments thereto;  
 “Pursuant to commitment,” K.S.A. 2006 Supp. 84-9-102(a)(68), and amendments thereto;  
 “Receipt,” K.S.A. 84-2-103(1)(c), and amendments thereto;  
 “Sale,” K.S.A. 84-2-106(1), and amendments thereto;  
 “Sale on approval,” K.S.A. 84-2-326, and amendments thereto;  
 “Sale or return,” K.S.A. 84-2-326, and amendments thereto; and  
 “Seller,” K.S.A. 84-2-103(1)(d), and amendments thereto.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 60. K.S.A. 84-2a-514 is hereby amended to read as follows: 84-2a-514. (1) In rejecting goods, a lessee’s failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

- (a) If, stated seasonably, the lessor or the supplier could have cured it (K.S.A. 84-2a-513, *and amendments thereto*); or
- (b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

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

Sec. 61. K.S.A. 84-2a-526 is hereby amended to read as follows: 84-2a-526. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

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

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

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Sec. 62. K.S.A. 84-4-104 is hereby amended to read as follows: 84-4-104. (a) In this article, unless the context otherwise requires:

- (1) “Account” means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
- (2) “Afternoon” means the period of a day between noon and midnight;
- (3) “Banking day” means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;
- (4) “Clearing house” means an association of banks or other payors regularly clearing items;
- (5) “Customer” means a person having an account with a bank or for

whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) “Documentary draft” means a draft to be presented for acceptance or payment if specified documents, certificated securities K.S.A. 84-8-102, *and amendments thereto*, or instructions for uncertificated securities (K.S.A. 84-8-308 and amendments thereto), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) “Draft” means a draft as defined in K.S.A. 84-3-104 and amendments thereto, or an item, other than an instrument, that is an order.

(8) “Drawee” means a person ordered in a draft to make payment;

(9) “Item” means an instrument or a promise in order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article 4a or a credit or debit card slip;

(10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) “Settle” means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

“Agreement for electronic presentment.” K.S.A. 84-4-110, *and amendments thereto*.

“Bank.” K.S.A. 84-4-105, *and amendments thereto*.

“Collecting bank.” K.S.A. 84-4-105, *and amendments thereto*.

“Depository bank.” K.S.A. 84-4-105, *and amendments thereto*.

“Intermediary bank.” K.S.A. 84-4-105, *and amendments thereto*.

“Payor bank.” K.S.A. 84-4-105, *and amendments thereto*.

“Presenting bank.” K.S.A. 84-4-105, *and amendments thereto*.

“Presentment notice.” K.S.A. 84-4-110, *and amendments thereto*.

(c) “Control” as provided in section 6, *and amendments thereto* and the following definitions in other articles apply to this article:

“Acceptance.” K.S.A. 84-3-410, *and amendments thereto*.

“Alteration.” K.S.A. 84-3-407, *and amendments thereto*.

“Cashier’s check.” K.S.A. 84-3-104, *and amendments thereto*.

“Certificate of deposit.” K.S.A. 84-3-104, *and amendments thereto*.

“Certified check.” K.S.A. 84-3-409, *and amendments thereto*.

“Check.” K.S.A. 84-3-104, *and amendments thereto*.

“Good Faith.” K.S.A. 84-3-103, *and amendments thereto*.

“Draft.” K.S.A. 84-3-104, *and amendments thereto*.

“Holder in due course.” K.S.A. 84-3-302, *and amendments thereto*.

“Instrument.” K.S.A. 84-3-104, *and amendments thereto*.

“Notice of dishonor.” K.S.A. 84-3-503, *and amendments thereto*.

“Order.” K.S.A. 84-3-103, *and amendments thereto*.

“Ordinary care.” K.S.A. 84-3-103, *and amendments thereto*.

“Person entitled to enforce.” K.S.A. 84-3-301, *and amendments thereto*.

“Presentment.” K.S.A. 84-3-504, *and amendments thereto*.

“Promise.” K.S.A. 84-3-103, *and amendments thereto*.

“Prove.” K.S.A. 84-3-103, *and amendments thereto*.

“Teller’s check.” K.S.A. 84-3-104, *and amendments thereto*.

“Unauthorized signature.” K.S.A. 84-3-403, *and amendments thereto*.

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 63. K.S.A. 2006 Supp. 84-4-210 is hereby amended to read as follows: 84-4-210. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for with-

drawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

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

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

(1) No security agreement is necessary to make the security interest enforceable (K.S.A. 2006 Supp. 84-9-203(b)(3)(A) and amendments thereto);

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

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Sec. 64. K.S.A. 2006 Supp. 84-8-103 is hereby amended to read as follows: 84-8-103. (a) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in K.S.A. 2006 Supp. 84-9-102(a)(15) and amendments thereto, is not a security or a financial asset.

(g) *A document of title is not a financial asset unless K.S.A. 84-8-102(a)(9)(iii), and amendments thereto, applies.*

Sec. 65. K.S.A. 2006 Supp. 84-9-102 is hereby amended to read as follows: 84-9-102. (a) **Definitions.** In this article:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (B) for services rendered or to be rendered, (C) for a policy of insurance issued or to be issued, (D) for a secondary obligation incurred or to be incurred, (E) for energy provided or to be provided, (F) for the use or hire of a vessel under a charter or other contract, (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or (H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (A) rights to payment evidenced by chattel paper or an instrument, (B) commercial tort claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit rights or letters of credit, or (F) rights to payment for money or funds

advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting,” except as used in “accounting for,” means a record:

(A) Authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, other than a security interest, in farm products: (A) Which secures payment or performance of an obligation for:

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

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

(B) which is created by statute in favor of a person that:

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

(ii) leased real property to a debtor in connection with the debtor’s farming operation; and

(C) whose effectiveness does not depend on the person’s possession of the personal property. Agricultural lien shall not include statutory liens.

(6) “As-extracted collateral” means: (A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) “Authenticate” means:

(A) To sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

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

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

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

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

(18) “Communicate” means:

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

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

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

(ii) is not an auctioneer; and

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

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

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

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the col-

lateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

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

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

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

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in subsection ~~(2)~~ (b) of K.S.A. 84-7-201 and amendments thereto.

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

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

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to subsection (a) of K.S.A. 2006 Supp. 84-9-519 and amendments thereto.

(37) “Filing office” means an office designated in K.S.A. 2006 Supp. 84-9-501 and amendments thereto as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to K.S.A. 2006 Supp. 84-9-526 and amendments thereto.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of K.S.A. 2006 Supp. 84-9-502 and amendments thereto. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the

unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (A) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) “Instrument” means a negotiable instrument, a writing that would otherwise qualify as a certificate of deposit (defined in subsection (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the writing contains a limitation on transfer, or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

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

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition;

or

(D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the



manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

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

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as a debtor under subsection (d) of K.S.A. 2006 Supp. 84-9-203 and amendments thereto by a security agreement previously entered into by another person.

(57) “New value” means (A) money, (B) money’s worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor” except as used in K.S.A. 2006 Supp. 84-9-310(c), and amendments thereto means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (d) of K.S.A. 2006 Supp. 84-9-203 and amendments thereto.

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to,” with respect to an individual, means:

(A) The spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual’s spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to,” with respect to an organization, means:

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

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) “Proceeds” except as used in K.S.A. 2006 Supp. 84-9-609(b), and amendments thereto means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

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

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to K.S.A. 2006 Supp. 84-9-620, 84-9-621 and 84-9-622 and amendments thereto.

(67) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(68) “Record,” except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(69) “Registered organization” means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(70) “Secondary obligor” means an obligor to the extent that:

(A) The obligor’s obligation is secondary; or

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

(71) “Secured party” means:

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

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under K.S.A. 84-2-401, 84-2-505, subsection (3) of 84-2-711, subsection (5) of 84-2a-508, 84-4-210 and 84-5-118 and amendments thereto.

(72) “Security agreement” means an agreement that creates or provides for a security interest.

(73) “Send,” in connection with a record or notification, means:

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

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(74) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(75) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(76) “Statutory lien” means liens created by K.S.A. 2-1319, 2-2608, 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220, 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and ~~84-7-209~~ section 15, and amendments thereto.

(77) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) “Termination statement” means an amendment of a financing statement which:

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

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) “Transmitting utility” means a person primarily engaged in the business of:

- (A) Operating a railroad, subway, street railway, or trolley bus;
- (B) transmitting communications electrically, electromagnetically, or by light;
- (C) transmitting goods by pipeline or sewer; or
- (D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** “Control” as provided in section 6, and amendments thereto and the following definitions in other articles apply to this article:

- “Applicant” K.S.A. 84-5-102, and amendments thereto.
- “Beneficiary” K.S.A. 84-5-102, and amendments thereto.
- “Broker” K.S.A. 84-8-102, and amendments thereto.
- “Certificated security” K.S.A. 84-8-102, and amendments thereto.
- “Check” K.S.A. 84-3-104, and amendments thereto.
- “Clearing corporation” K.S.A. 84-8-102, and amendments thereto.
- “Contract for sale” K.S.A. 84-2-106, and amendments thereto.
- “Customer” K.S.A. 84-4-104, and amendments thereto.
- “Entitlement holder” K.S.A. 84-8-102, and amendments thereto.
- “Financial asset” K.S.A. 84-8-102, and amendments thereto.
- “Holder in due course” K.S.A. 84-3-302, and amendments thereto.
- “Issuer” (with respect to a letter of credit or letter-of-credit right) K.S.A. 84-5-102, and amendments thereto.
- “Issuer” (with respect to a security) K.S.A. 84-8-102, and amendments thereto.
- “Issuer” (with respect to documents of title) section 2, and amendments thereto.
- “Lease” K.S.A. 84-2a-103, and amendments thereto.
- “Lease agreement” K.S.A. 84-2a-103, and amendments thereto.
- “Lease contract” K.S.A. 84-2a-103, and amendments thereto.
- “Leasehold interest” K.S.A. 84-2a-103, and amendments thereto
- “Lessee” K.S.A. 84-2a-103, and amendments thereto.
- “Lessee in ordinary course of business” K.S.A. 84-2a-103, and amendments thereto.
- “Lessor” K.S.A. 84-2a-103, and amendments thereto.
- “Lessor’s residual interest” K.S.A. 84-2a-103, and amendments thereto.
- “Letter of credit” K.S.A. 84-5-102, and amendments thereto.
- “Merchant” K.S.A. 84-2-104, and amendments thereto.
- “Negotiable instrument” K.S.A. 84-3-104, and amendments thereto.
- “Nominated person” K.S.A. 84-5-102, and amendments thereto.
- “Note” K.S.A. 84-3-104, and amendments thereto.
- “Proceeds of a letter of credit” K.S.A. 84-5-114, and amendments thereto.
- “Prove” K.S.A. 84-3-103, and amendments thereto.
- “Sale” K.S.A. 84-2-106, and amendments thereto.
- “Securities account” K.S.A. 84-8-501, and amendments thereto.
- “Securities intermediary” K.S.A. 84-8-102, and amendments thereto.
- “Security” K.S.A. 84-8-102, and amendments thereto.
- “Security certificate” K.S.A. 84-8-102, and amendments thereto.
- “Security entitlement” K.S.A. 84-8-102, and amendments thereto.
- “Uncertificated security” K.S.A. 84-8-102, and amendments thereto.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 66. K.S.A. 2006 Supp. 84-9-201 is hereby amended to read as follows: 84-9-201. (a) **General effectiveness.** Except as otherwise provided in the uniform commercial code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) **Applicable consumer laws and other law.** A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute or rule and regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer

protection statute or rule and regulation of this state and, including, but not limited to, K.S.A. 2-1319, 2-2608, 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220, 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and ~~84-7-209~~ *section 15, and amendments thereto.*

(c) **Other applicable law controls.** In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) **Further deference to other applicable law.** This article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or

(2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Sec. 67. K.S.A. 2006 Supp. 84-9-203 is hereby amended to read as follows: 84-9-203. (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

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

(B) the collateral is not a certificated security and is in the possession of the secured party under K.S.A. 2006 Supp. 84-9-313 and amendments thereto pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under K.S.A. 84-8-301 and amendments thereto pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, *or electronic documents* and the secured party has control under *section 6, and amendments thereto, and* K.S.A. 2006 Supp. 84-9-104, 84-9-105, 84-9-106 or 84-9-107 and amendments thereto pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) is subject to K.S.A. 84-4-210 and amendments thereto on the security interest of a collecting bank, K.S.A. 84-5-118 and amendments thereto on the security interest of a letter-of-credit issuer or nominated person, K.S.A. 2006 Supp. 84-9-110 and amendments thereto on a security interest arising under Article 2 or 2a, and K.S.A. 2006 Supp. 84-9-206 and amendments thereto on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by K.S.A. 2006 Supp. 84-9-315 and amendments thereto and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Sec. 68. K.S.A. 2006 Supp. 84-9-207 is hereby amended to read as follows: 84-9-207. (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction;

or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under *section 6, and amendments thereto* and K.S.A. 2006 Supp. 84-9-104, 84-9-105, 84-9-106 or 84-9-107 and amendments thereto:

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

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

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

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

Sec. 69. K.S.A. 2006 Supp. 84-9-208 is hereby amended to read as follows: 84-9-208. (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured

party is not committed to make advances, incur obligations, or otherwise give value.

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

(1) A secured party having control of a deposit account under K.S.A. 2006 Supp. 84-9-104(a)(2) and amendments thereto shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under K.S.A. 2006 Supp. 84-9-104(a)(3) and amendments thereto shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

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

(3) a secured party, other than a buyer, having control of electronic chattel paper under K.S.A. 2006 Supp. 84-9-105 and amendments thereto shall:

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

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

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

(4) a secured party having control of investment property under K.S.A. 84-8-106(d)(2) or K.S.A. 2006 Supp. 84-9-106(b) and amendments thereto shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) a secured party having control of a letter-of-credit right under K.S.A. 2006 Supp. 84-9-107 and amendments thereto shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~

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

(A) *Give control of the electronic document to the debtor or its designated custodian;*

(B) *if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and*

(C) *take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.*

Sec. 70. K.S.A. 2006 Supp. 84-9-301 is hereby amended to read as follows: 84-9-301. Except as otherwise provided in K.S.A. 2006 Supp. 84-9-303 through 84-9-306 and amendments thereto, the following rules determine the law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:

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

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

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

(A) Perfection of a security interest in the goods by filing a fixture filing;

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

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

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

Sec. 71. K.S.A. 2006 Supp. 84-9-310 is hereby amended to read as follows: 84-9-310. (a) **General rule: perfection by filing.** Except as otherwise provided in subsection (b) and K.S.A. 2006 Supp. 84-9-312(b) and amendments thereto, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under K.S.A. 2006 Supp. 84-9-308(d), (e), (f), or (g) and amendments thereto;

(2) that is perfected under K.S.A. 2006 Supp. 84-9-309 and amendments thereto when it attaches;

(3) in property subject to a statute, regulation, or treaty described in K.S.A. 2006 Supp. 84-9-311(a) and amendments thereto;

(4) in goods in possession of a bailee which is perfected under K.S.A. 2006 Supp. 84-9-312(d)(1) or (2) and amendments thereto;

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, *control*, or possession under K.S.A. 2006 Supp. 84-9-312(e), (f), or (g) and amendments thereto;

(6) in collateral in the secured party's possession under K.S.A. 2006 Supp. 84-9-313 and amendments thereto;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under K.S.A. 2006 Supp. 84-9-313 and amendments thereto;

(8) in deposit accounts, electronic chattel paper, *electronic documents*, investment property, or letter-of-credit rights which is perfected by control under K.S.A. 2006 Supp. 84-9-314 and amendments thereto;

(9) in proceeds which is perfected under K.S.A. 2006 Supp. 84-9-315 and amendments thereto; or

(10) that is perfected under K.S.A. 2006 Supp. 84-9-316 and amendments thereto.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Sec. 72. K.S.A. 2006 Supp. 84-9-312 is hereby amended to read as follows: 84-9-312. (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in K.S.A. 2006 Supp. 84-9-315(c) and (d) and amendments thereto for proceeds:

(1) A security interest in a deposit account may be perfected only by control under K.S.A. 2006 Supp. 84-9-314 and amendments thereto;

(2) except as otherwise provided in K.S.A. 2006 Supp. 84-9-308(d) and amendments thereto, a security interest in a letter-of-credit right may be perfected only by control under K.S.A. 2006 Supp. 84-9-314 and amendments thereto; and

(3) a security interest in money may be perfected only by the secured party's taking possession under K.S.A. 2006 Supp. 84-9-313 and amendments thereto.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest;

or

(3) filing as to the goods.

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

(f) **Temporary perfection: goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

Sec. 73. K.S.A. 2006 Supp. 84-9-313 is hereby amended to read as follows: 84-9-313. (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b), a secured party may perfect a security interest in *tangible* negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under K.S.A. 84-8-301 and amendments thereto.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in K.S.A. 2006 Supp. 84-9-316(d) and amendments thereto.

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time



the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under K.S.A. 84-8-301 and amendments thereto and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or (a) of K.S.A. 84-8-301 and amendments thereto, even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or a law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h); no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or a law other than this article otherwise provides.

Sec. 74. K.S.A. 2006 Supp. 84-9-314 is hereby amended to read as follows: 84-9-314. (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, *or electronic documents* may be perfected by control of the collateral under *section 6, and amendments thereto, and* K.S.A. 2006 Supp. 84-9-104, 84-9-105, 84-9-106, or 84-9-107 and amendments thereto.

(b) **Specified collateral: time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, *or electronic documents* is perfected by control under *section 6, and amendments thereto, and* K.S.A. 2006 Supp. 84-9-104, 84-9-105 or 84-9-107 and amendments thereto when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **Investment property: time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under K.S.A. 2006 Supp. 84-9-106 and amendments thereto from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) one of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Sec. 75. K.S.A. 2006 Supp. 84-9-317 is hereby amended to read as follows: 84-9-317. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under K.S.A. 2006 Supp. 84-9-322 and amendments thereto; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) on the conditions specified in K.S.A. 2006 Supp. 84-9-203 (b)(3) and amendments thereto, is met and a financing statement covering the collateral is filed.

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

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

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

(e) **Purchase-money security interest.** Except as otherwise provided in K.S.A. 2006 Supp. 84-9-320 and 84-9-321 and amendments thereto, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 76. K.S.A. 2006 Supp. 84-9-338 is hereby amended to read as follows: 84-9-338. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in K.S.A. 2006 Supp. 84-9-516(b)(5) and amendments thereto which is incorrect at the time the financing statement is filed:

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

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

Sec. 77. K.S.A. 2006 Supp. 84-9-601 is hereby amended to read as follows: 84-9-601. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in K.S.A. 2006 Supp. 84-9-602 and amendments thereto, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under *section 6, and amendments thereto*, and K.S.A. 2006 Supp. 84-9-104, 84-9-105, 84-9-106 or 84-9-107 and amendments thereto has the rights and duties provided in K.S.A. 2006 Supp. 84-9-207 and amendments thereto.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) and K.S.A. 2006 Supp. 84-9-605 and amendments thereto,

after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) The date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in K.S.A. 2006 Supp. 84-9-607(c) and amendments thereto, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Sec. 78. K.S.A. 21-3736, 21-3737, 84-2-104, 84-2-310, 84-2-323, 84-2-401, 84-2-503, 84-2-505, 84-2-506, 84-2-509, 84-2-605, 84-2-705, 84-2a-514, 84-4-104, 84-2a-526, 84-7-101 through 84-7-105, 84-7-201 through 84-7-210, 84-7-301 through 84-7-309, 84-7-401 through 84-7-404, 84-7-501, 84-7-502, 84-7-504 through 84-7-509, 84-7-601, 84-7-602 and 84-7-603 and K.S.A. 2006 Supp. 16-1616, 84-1-201, 84-2-103, 84-2a-103, 84-4-210, 84-7-503, 84-8-103, 84-9-102, 84-9-201, 84-9-203, 84-9-207, 84-9-208, 84-9-301, 84-9-310, 84-9-312, 84-9-313, 84-9-314, 84-9-317, 84-9-338 and 84-9-601 are hereby repealed.

Sec. 79. This act shall take effect and be in force from and after July 1, 2008, and its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*