

[First Reprint]

**SENATE, No. 2144**

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**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

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INTRODUCED JULY 26, 2012

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

Repeals and replaces Chapters 1 and 7 of the Uniform Commercial Code and revises various additional provisions of the code.

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on September 20, 2012, with amendments.



1 AN ACT concerning certain commercial transactions, replacing  
2 Chapters 1 and 7 of Title 12A of the New Jersey Statutes and  
3 revising parts of the statutory law.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. Chapter 1 of Title 12A of the New Jersey Statutes  
9 (N.J.S.12A:1-101 through 12A:1-209, including any amendments or  
10 supplements thereto) is repealed and replaced as follows:

11  
12 CHAPTER 1 – GENERAL PROVISIONS

13  
14 12A:1-101. Short Titles.

15 a. This act may be cited as the Uniform Commercial Code.

16 b. This Chapter may be cited as the Uniform Commercial Code  
17 – General Provisions.

18  
19 12A:1-102. Scope of Chapter.

20 This Chapter applies to a transaction to the extent that it is  
21 governed by another Chapter of the Uniform Commercial Code.

22  
23 12A:1-103. Construction of the Uniform Commercial Code to  
24 Promote Its Purposes and Policies; Applicability of Supplemental  
25 Principles of Law.

26 a. The Uniform Commercial Code shall be liberally construed  
27 and applied to promote its underlying purposes and policies, which  
28 are:

29 (1) to simplify, clarify, and modernize the law governing  
30 commercial transactions;

31 (2) to permit the continued expansion of commercial practices  
32 through custom, usage, and agreement of the parties; and

33 (3) to make uniform the law among the various jurisdictions.

34 b. Unless displaced by the particular provisions of the Uniform  
35 Commercial Code, the principles of law and equity, including the  
36 law merchant and the law relative to capacity to contract, principal  
37 and agent, estoppel, fraud, misrepresentation, duress, coercion,  
38 mistake, bankruptcy, and other validating or invalidating cause  
39 supplement its provisions.

40  
41 12A:1-104. Construction Against Implied Repeal.

42 The Uniform Commercial Code being a general act intended as a  
43 unified coverage of its subject matter, no part of it shall be deemed  
44 to be impliedly repealed by subsequent legislation if such  
45 construction can reasonably be avoided.

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted September 20, 2012.

1 12A:1-105. Severability.

2 If any provision or clause of the Uniform Commercial Code or  
3 its application to any person or circumstance is held invalid, the  
4 invalidity does not affect other provisions or applications of the  
5 Uniform Commercial Code which can be given effect without the  
6 invalid provision or application, and to this end the provisions of  
7 the Uniform Commercial Code are severable.

8

9 12A:1-106. Use of Singular and Plural; Gender.

10 In the Uniform Commercial Code, unless the statutory context  
11 otherwise requires:

12 a. Words in the singular number include the plural, and those  
13 in the plural include the singular; and

14 b. Words of any gender also refer to any other gender.

15

16 12A:1-107. Section Captions.

17 Section captions are part of the Uniform Commercial Code.

18

19 12A:1-108. Relation to Electronic Signatures in Global and  
20 National Commerce Act.

21 This Chapter modifies, limits, and supersedes the federal  
22 Electronic Signatures in Global and National Commerce Act, 15  
23 U.S.C. s.7001 et seq., except that nothing in this Chapter modifies,  
24 limits, or supersedes section 7001(c) of that act or authorizes  
25 electronic delivery of any of the notices described in section  
26 7003(b) of that act.

27

28 12A:1-201. General Definitions.

29 a. Unless the context otherwise requires, words or phrases  
30 defined in this section, or in the additional definitions contained in  
31 other Chapters of the Uniform Commercial Code that apply to  
32 particular Chapters or parts thereof, have the meanings stated.

33 b. Subject to definitions contained in other Chapters of the  
34 Uniform Commercial Code that apply to particular Chapters or  
35 parts thereof:

36 (1) "Action," in the sense of a judicial proceeding, includes  
37 recoupment, counterclaim, set off, suit in equity, and any other  
38 proceeding in which rights are determined.

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

41 (3) "Agreement," as distinguished from "contract," means the  
42 bargain of the parties in fact, as found in their language or inferred  
43 from other circumstances, including course of performance, course  
44 of dealing, or usage of trade.

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

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

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

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

11 (8) "Burden of establishing" a fact means the burden of  
12 persuading the trier of fact that the existence of the fact is more  
13 probable than its nonexistence.

14 (9) "Buyer in ordinary course of business" means a person that  
15 buys goods in good faith, without knowledge that the sale violates  
16 the rights of another person in the goods, and in the ordinary course  
17 from a person, other than a pawnbroker, in the business of selling  
18 goods of that kind. A person buys goods in the ordinary course if  
19 the sale to the person comports with the usual or customary  
20 practices in the kind of business in which the seller is engaged or  
21 with the seller's own usual or customary practices. A person that  
22 sells oil, gas, or other minerals at the wellhead or minehead is a  
23 person in the business of selling goods of that kind. A buyer in  
24 ordinary course of business may buy for cash, by exchange of other  
25 property, or on secured or unsecured credit, and may acquire goods  
26 or documents of title under a preexisting contract for sale. Only a  
27 buyer that takes possession of the goods or has a right to recover the  
28 goods from the seller under Chapter 2 may be a buyer in ordinary  
29 course of business. "Buyer in ordinary course of business" does not  
30 include a person that acquires goods in a transfer in bulk or as  
31 security for or in total or partial satisfaction of a money debt.

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

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

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

45 (11) "Consumer" means an individual who enters into a  
46 transaction primarily for personal, family, or household purposes.

47 (12) "Contract," as distinguished from "agreement," means the  
48 total legal obligation that results from the parties' agreement as

1 determined by the Uniform Commercial Code as supplemented by  
2 any other applicable laws.

3 (13) “Creditor” includes a general creditor, a secured creditor, a  
4 lien creditor, and any representative of creditors, including an  
5 assignee for the benefit of creditors, a trustee in bankruptcy, a  
6 receiver in equity, and an executor or administrator of an insolvent  
7 debtor’s or assignor’s estate.

8 (14) “Defendant” includes a person in the position of defendant  
9 in a counterclaim, cross-claim, or third-party claim.

10 (15) “Delivery,” with respect to an electronic document of title  
11 means voluntary transfer of control and with respect to an  
12 instrument, a tangible document of title, or chattel paper, means  
13 voluntary transfer of possession.

14 (16) “Document of title” means a record:

15 (a) that in the regular course of business or financing is treated  
16 as adequately evidencing that the person in possession or control of  
17 the record is entitled to receive, control, hold, and dispose of the  
18 record and the goods the record covers; and

19 (b) that purports to be issued by or addressed to a bailee and to  
20 cover goods in the bailee’s possession which are either identified or  
21 are fungible portions of an identified mass. The term includes a bill  
22 of lading, transport document, dock warrant, dock receipt,  
23 warehouse receipt, and order for delivery of goods. An electronic  
24 document of title means a document of title evidenced by a record  
25 consisting of information stored in an electronic medium. A  
26 tangible document of title means a document of title evidenced by a  
27 record consisting of information that is inscribed on a tangible  
28 medium.

29 (17) “Fault” means a default, breach, or wrongful act or  
30 omission.

31 (18) “Fungible goods” means:

32 (a) goods of which any unit, by nature or usage of trade, is the  
33 equivalent of any other like unit; or

34 (b) goods that by agreement are treated as equivalent.

35 (19) “Genuine” means free of forgery or counterfeiting.

36 (20) “Good faith,” except as otherwise provided in Chapter 5,  
37 means honesty in fact and the observance of reasonable commercial  
38 standards of fair dealing.

39 (21) “Holder” means:

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

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

46 (c) the person in control of a negotiable electronic document of  
47 title.

1 (22) “Insolvency proceeding” includes an assignment for the  
2 benefit of creditors or other proceeding intended to liquidate or  
3 rehabilitate the estate of the person involved.

4 (23) “Insolvent” means:

5 (a) having generally ceased to pay debts in the ordinary course  
6 of business other than as a result of a bona fide dispute;

7 (b) being unable to pay debts as they become due; or

8 (c) being insolvent within the meaning of federal bankruptcy  
9 law.

10 (24) “Money” means a medium of exchange currently authorized  
11 or adopted by a domestic or foreign government. The term includes  
12 a monetary unit of account established by an intergovernmental  
13 organization or by agreement between two or more countries.

14 (25) “Organization” means a person other than an individual.

15 (26) “Party,” as distinguished from “third party,” means a  
16 person that has engaged in a transaction or made an agreement  
17 subject to the Uniform Commercial Code.

18 (27) “Person” means an individual, corporation, business trust,  
19 estate, trust, partnership, limited liability company, association,  
20 joint venture, government, governmental subdivision, agency, or  
21 instrumentality, public corporation, or any other legal or  
22 commercial entity.

23 (28) “Present value” means the amount as of a date certain of  
24 one or more sums payable in the future, discounted to the date  
25 certain by use of either an interest rate specified by the parties if  
26 that rate is not manifestly unreasonable at the time the transaction is  
27 entered into or, if an interest rate is not so specified, a commercially  
28 reasonable rate that takes into account the facts and circumstances  
29 at the time the transaction is entered into.

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

34 (30) “Purchaser” means a person that takes by purchase.

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

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

40 (33) “Representative” means a person empowered to act for  
41 another, including an agent, an officer of a corporation or  
42 association, and a trustee, executor, or administrator of an estate.

43 (34) “Right” includes remedy.

44 (35) “Security interest” means an interest in personal property or  
45 fixtures which secures payment or performance of an obligation.  
46 “Security interest” includes any interest of a consignor and a buyer  
47 of accounts, chattel paper, a payment intangible, or a promissory  
48 note in a transaction that is subject to Chapter 9. “Security interest”

1 does not include the special property interest of a buyer of goods on  
2 identification of those goods to a contract for sale under 12A:2-401,  
3 but a buyer may also acquire a “security interest” by complying  
4 with Chapter 9. Except as otherwise provided in 12A:2-505, the  
5 right of a seller or lessor of goods under Chapter 2 or 2A to retain  
6 or acquire possession of the goods is not a “security interest,” but a  
7 seller or lessor may also acquire a “security interest” by complying  
8 with Chapter 9. The retention or reservation of title by a seller of  
9 goods notwithstanding shipment or delivery to the buyer under  
10 12A:2-401 is limited in effect to a reservation of a “security  
11 interest.” Whether a transaction in the form of a lease creates a  
12 “security interest” is determined pursuant to 12A:1-203.

13 (36) “Send” in connection with a writing, record, or notice  
14 means:

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

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

23 (37) “Signed” includes using any symbol executed or adopted  
24 with present intention to adopt or accept a writing.

25 (38) “State” means a State of the United States, the District of  
26 Columbia, Puerto Rico, the United States Virgin Islands, or any  
27 territory or insular possession subject to the jurisdiction of the  
28 United States.

29 (39) “Surety” includes a guarantor or other secondary obligor.

30 (40) “Term” means a portion of an agreement that relates to a  
31 particular matter.

32 (41) “Unauthorized signature” means a signature made without  
33 actual, implied, or apparent authority. The term includes a forgery.

34 (42) “Warehouse receipt” means a document of title issued by a  
35 person engaged in the business of storing goods for hire.

36 (43) “Writing” includes printing, typewriting, or any other  
37 intentional reduction to tangible form. “Written” has a  
38 corresponding meaning.

39  
40 12A:1-202. Notice; Knowledge.

41 a. Subject to subsection f. of this section, a person has “notice”  
42 of a fact if the person:

43 (1) has actual knowledge of it;

44 (2) has received a notice or notification of it; or

45 (3) from all the facts and circumstances known to the person at  
46 the time in question, has reason to know that it exists.

47 b. “Knowledge” means actual knowledge. “Knows” has a  
48 corresponding meaning.

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

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

7 e. Subject to subsection f. of this section, a person "receives" a  
8 notice or notification when:

9 (1) it comes to that person's attention; or

10 (2) it is duly delivered in a form reasonable under the  
11 circumstances at the place of business through which the contract  
12 was made or at another location held out by that person as the place  
13 for receipt of such communications.

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

28

29 12A:1-203. Lease Distinguished from Security Interest.

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

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

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

38 (2) the lessee is bound to renew the lease for the remaining  
39 economic life of the goods or is bound to become the owner of the  
40 goods;

41 (3) the lessee has an option to renew the lease for the remaining  
42 economic life of the goods for no additional consideration or for  
43 nominal additional consideration upon compliance with the lease  
44 agreement; or

45 (4) the lessee has an option to become the owner of the goods  
46 for no additional consideration or for nominal additional  
47 consideration upon compliance with the lease agreement.



1 c. A transaction in the form of a lease does not create a security  
2 interest merely because:

3 (1) the present value of the consideration the lessee is obligated  
4 to pay the lessor for the right to possession and use of the goods is  
5 substantially equal to or is greater than the fair market value of the  
6 goods at the time the lease is entered into;

7 (2) the lessee assumes risk of loss of the goods;

8 (3) the lessee agrees to pay, with respect to the goods, taxes,  
9 insurance, filing, recording, or registration fees, or service or  
10 maintenance costs;

11 (4) the lessee has an option to renew the lease or to become the  
12 owner of the goods;

13 (5) the lessee has an option to renew the lease for a fixed rent  
14 that is equal to or greater than the reasonably predictable fair  
15 market rent for the use of the goods for the term of the renewal at  
16 the time the option is to be performed; or

17 (6) the lessee has an option to become the owner of the goods  
18 for a fixed price that is equal to or greater than the reasonably  
19 predictable fair market value of the goods at the time the option is  
20 to be performed.

21 d. Additional consideration is nominal if it is less than the  
22 lessee's reasonably predictable cost of performing under the lease  
23 agreement if the option is not exercised. Additional consideration  
24 is not nominal if:

25 (1) when the option to renew the lease is granted to the lessee,  
26 the rent is stated to be the fair market rent for the use of the goods  
27 for the term of the renewal determined at the time the option is to be  
28 performed; or

29 (2) when the option to become the owner of the goods is granted  
30 to the lessee, the price is stated to be the fair market value of the  
31 goods determined at the time the option is to be performed.

32 e. The "remaining economic life of the goods" and "reasonably  
33 predictable" fair market rent, fair market value, or cost of  
34 performing under the lease agreement shall be determined with  
35 reference to the facts and circumstances at the time the transaction  
36 is entered into.

37

38 12A:1-204. Value.

39 Except as otherwise provided in Chapters 3, 4, 5, and 6, a person  
40 gives value for rights if the person acquires them:

41 a. In return for a binding commitment to extend credit or for  
42 the extension of immediately available credit, whether or not drawn  
43 upon and whether or not a charge back is provided for in the event  
44 of difficulties in collection;

45 b. As security for, or in total or partial satisfaction of, a  
46 preexisting claim;

47 c. By accepting delivery under a preexisting contract for  
48 purchase; or

d. In return for any consideration sufficient to support a simple contract.

12A:1-205. Reasonable Time; Seasonableness

a. Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

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

12A:1-206. Presumptions.

Whenever the Uniform Commercial Code creates a “presumption” with respect to a fact, or provides that a fact is “presumed,” the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

12A:1-301 Territorial Applicability; Parties’ Power to Choose Applicable Law.

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

b. In the absence of an agreement effective under subsection a. of this section, and except as provided in subsection c. of this section, the Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.

c. If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) section 12A:2-402;

(2) sections 12A:2A-105 and 12A:2A-106;

(3) section 12A:4-102;

(4) section 12A:4A-507;

(5) section 12A:5-116;

(6) section 12A:8-110;

(7) sections 12A:9-301 through 12A:9-307.<sup>1</sup>

2. Chapter 7 of Title 12A of the New Jersey Statutes (N.J.S.12A:7-101 through 12A:7-603, including any amendments or supplements thereto) is repealed and replaced as follows:

CHAPTER 7 – DOCUMENTS OF TITLE

12A:7-101. Short title.

- 1       This Chapter may be cited as Uniform Commercial Code –  
2 Documents of Title.
- 3       12A:7-102. Definitions and Index of Definitions.
- 4       a. In this Chapter, unless the context otherwise requires:
- 5       (1) "Bailee" means a person that by a warehouse receipt, bill of  
6 lading, or other document of title acknowledges possession of  
7 goods and contracts to deliver them.
- 8       (2) "Carrier" means a person that issues a bill of lading.
- 9       (3) "Consignee" means a person named in a bill of lading to  
10 which or to whose order the bill promises delivery.
- 11       (4) "Consignor" means a person named in a bill of lading as the  
12 person from which the goods have been received for shipment.
- 13       (5) "Delivery order" means a record that contains an order to  
14 deliver goods directed to a warehouse, carrier, or other person that  
15 in the ordinary course of business issues warehouse receipts or bills  
16 of lading.
- 17       (6) Reserved.
- 18       (7) "Goods" means all things that are treated as movable for the  
19 purposes of a contract for storage or transportation.
- 20       (8) "Issuer" means a bailee that issues a document of title or, in  
21 the case of an unaccepted delivery order, the person that orders the  
22 possessor of goods to deliver. The term includes a person for which  
23 an agent or employee purports to act in issuing a document if the  
24 agent or employee has real or apparent authority to issue  
25 documents, even if the issuer did not receive any goods, the goods  
26 were misdescribed, or in any other respect the agent or employee  
27 violated the issuer's instructions.
- 28       (9) "Person entitled under the document" means the holder, in  
29 the case of a negotiable document of title, or the person to which  
30 delivery of the goods is to be made by the terms of, or pursuant to  
31 instructions in a record under, a nonnegotiable document of title.
- 32       (10) Reserved.
- 33       (11) "Sign" means, with present intent to authenticate or adopt a  
34 record:
- 35       (a) to execute or adopt a tangible symbol; or
- 36       (b) to attach to or logically associate with the record an  
37 electronic sound, symbol, or process.
- 38       (12) "Shipper" means a person that enters into a contract of  
39 transportation with a carrier.
- 40       (13) "Warehouse" means a person engaged in the business of  
41 storing goods for hire.
- 42       b. Definitions in other articles applying to this Chapter and the  
43 sections in which they appear are:
- 44       (1) "Contract for sale," 12A:2-106.
- 45       (2) "Lessee in ordinary course of business," 12A:2A-103.
- 46       (3) "Receipt" of goods, 12A:2-103.

1 c. In addition, Chapter 1 of Title 12A of the New Jersey  
2 Statutes contains general definitions and principles of construction  
3 and interpretation applicable throughout this Chapter.

4  
5 12A:7-103. Relation of Chapter To Treaty or Statute.

6 a. This Chapter is subject to any treaty or statute of the United  
7 States or regulatory statute of this State to the extent the treaty,  
8 statute, or regulatory statute is applicable.

9 b. This Chapter does not modify or repeal any law prescribing  
10 the form or content of a document of title or the services or  
11 facilities to be afforded by a bailee, or otherwise regulating a  
12 bailee's business in respects not specifically treated in this Chapter.  
13 However, violation of such a law does not affect the status of a  
14 document of title that otherwise is within the definition of a  
15 document of title.

16 c. This Chapter modifies, limits, and supersedes the federal  
17 Electronic Signatures in Global and National Commerce Act (15  
18 U.S.C. s.7001, et. seq.) but does not modify, limit, or supersede  
19 section 101(c) of that act (15 U.S.C. s.7001(c)) or authorize  
20 electronic delivery of any of the notices described in section 103(b)  
21 of that act (15U.S.C. s.7003(b)).

22 d. To the extent there is a conflict between the Uniform  
23 Electronic Transactions Act and this Chapter, this Chapter governs.

24  
25 12A:7-104. Negotiable and Nonnegotiable Document of Title

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

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

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

37  
38 12A:7-105. Reissuance in Alternative Medium.

39 a. Upon request of a person entitled under an electronic  
40 document of title, the issuer of the electronic document may issue a  
41 tangible document of title as a substitute for the electronic  
42 document if:

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

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

1       b. Upon issuance of a tangible document of title in substitution  
2 for an electronic document of title in accordance with subsection a.  
3 of this section:

4       (1) the electronic document ceases to have any effect or validity;  
5 and

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

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

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

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

18       d. Upon issuance of an electronic document of title in  
19 substitution for a tangible document of title in accordance with  
20 subsection c. of this section:

21       (1) the tangible document ceases to have any effect or validity;  
22 and

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

28

29       12A:7-106. Control of Electronic Document of Title.

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

34       b. A system satisfies subsection a. of this section, and a person  
35 is deemed to have control of an electronic document of title, if the  
36 document is created, stored, and assigned in such a manner that:

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

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

42       (a) the person to which the document was issued; or

43       (b) if the authoritative copy indicates that the document has  
44 been transferred, the person to which the document was most  
45 recently transferred;

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

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

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

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

9  
10 WAREHOUSE RECEIPTS: SPECIAL PROVISIONS  
11

12 12A:7-201. Person That May Issue a Warehouse Receipt;  
13 Storage Under Bond.

14 a. A warehouse receipt may be issued by any warehouse.

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

21  
22 12A:7-202. Form of Warehouse Receipt; Effect of Omission.

23 a. A warehouse receipt need not be in any particular form.

24 b. Unless a warehouse receipt provides for each of the  
25 following, the warehouse is liable for damages caused to a person  
26 injured by its omission:

27 (1) a statement of the location of the warehouse facility where  
28 the goods are stored;

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

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

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

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

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

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

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

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

1 c. A warehouse may insert in its receipt any terms that are not  
2 contrary to the Uniform Commercial Code and do not impair its  
3 obligation of delivery under 12A:7-403 or its duty of care under  
4 12A:7-204. Any contrary provision is ineffective.

5  
6 12A:7-203. Liability For Nonreceipt or Misdescription.

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

12 a. The document conspicuously indicates that the issuer does  
13 not know whether all or part of the goods in fact were received or  
14 conform to the description, such as a case in which the description  
15 is in terms of marks or labels or kind, quantity, or condition, or the  
16 receipt or description is qualified by "contents, condition, and  
17 quality unknown," "said to contain," or words of similar import, if  
18 the indication is true; or

19 b. The party or purchaser otherwise has notice of the  
20 nonreceipt or misdescription.

21  
22 12A:7-204. Duty of Care; Contractual Limitation of  
23 Warehouse's Liability.

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

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

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

43 d. This section does not modify or repeal any statute that  
44 imposes a higher responsibility upon the warehouse or invalidates a  
45 contractual limitation that would be permissible under this Chapter.

46  
47 12A:7-205. Title Under Warehouse Receipt Defeated in Certain  
48 Cases.

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

6  
7 12A:7-206. Termination of Storage At Warehouse's Option.

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

17 b. If a warehouse in good faith believes that goods are about to  
18 deteriorate or decline in value to less than the amount of its lien  
19 within the time provided in subsection a. of this section and 12A:7-  
20 210, the warehouse may specify in the notice given under  
21 subsection a. of this section any reasonable shorter time for removal  
22 of the goods and, if the goods are not removed, may sell them at  
23 public sale held not less than one week after a single advertisement  
24 or posting.

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

34 d. A warehouse shall deliver the goods to any person entitled to  
35 them under this Chapter upon due demand made at any time before  
36 sale or other disposition under this section.

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

41  
42 12A:7-207. Goods Must Be Kept Separate; Fungible Goods.

43 a. Unless the warehouse receipt provides otherwise, a  
44 warehouse shall keep separate the goods covered by each receipt so  
45 as to permit at all times identification and delivery of those goods.  
46 However, different lots of fungible goods may be commingled.

47 b. If different lots of fungible goods are commingled, the goods  
48 are owned in common by the persons entitled thereto and the



1 warehouse is severally liable to each owner for that owner's share.  
2 If, because of overissue, a mass of fungible goods is insufficient to  
3 meet all the receipts the warehouse has issued against it, the persons  
4 entitled include all holders to which overissued receipts have been  
5 duly negotiated.

6  
7 12A:7-208. Altered Warehouse Receipts.

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

14  
15 12A:7-209. Lien of Warehouse.

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

36 b. A warehouse may also reserve a security interest against the  
37 bailor for the maximum amount specified on the receipt for charges  
38 other than those specified in subsection a. of this section, such as  
39 for money advanced and interest. The security interest is governed  
40 by Chapter 9.

41 c. A warehouse's lien for charges and expenses under  
42 subsection a. of this section or a security interest under subsection  
43 b. of this section is also effective against any person that so  
44 entrusted the bailor with possession of the goods that a pledge of  
45 them by the bailor to a good-faith purchaser for value would have  
46 been valid. However, the lien or security interest is not effective  
47 against a person that before issuance of a document of title had a

1 legal interest or a perfected security interest in the goods and that  
2 did not:

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

5 (a) actual or apparent authority to ship, store, or sell;

6 (b) power to obtain delivery under 12A:7-403; or

7 (c) power of disposition under 12A:2-403, 12A:2A-304(2),  
8 12A:2A-305(2), 12A:9-320, or 12A:9-321(c) or other statute or rule  
9 of law; or

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

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

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

20

21 12A:7-210. Enforcement of Warehouse's Lien

22 a. Except as otherwise provided in subsection b. of this section,  
23 a warehouse's lien may be enforced by public or private sale of the  
24 goods, in bulk or in packages, at any time or place and on any terms  
25 that are commercially reasonable, after notifying all persons known  
26 to claim an interest in the goods. The notification shall include a  
27 statement of the amount due, the nature of the proposed sale, and  
28 the time and place of any public sale. The fact that a better price  
29 could have been obtained by a sale at a different time or in a  
30 method different from that selected by the warehouse is not of itself  
31 sufficient to establish that the sale was not made in a commercially  
32 reasonable manner. The warehouse sells goods in a commercially  
33 reasonable manner if the warehouse sells the goods in the usual  
34 manner in any recognized market therefor, sells at the price current  
35 in that market at the time of the sale, or otherwise sells in  
36 conformity with commercially reasonable practices among dealers  
37 in the type of goods sold. A sale of more goods than apparently  
38 necessary to be offered to ensure satisfaction of the obligation is not  
39 commercially reasonable, except in cases covered by the preceding  
40 sentence.

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

44 (1) All persons known to claim an interest in the goods shall be  
45 notified.

46 (2) The notification shall include an itemized statement of the  
47 claim, a description of the goods subject to the lien, a demand for  
48 payment within a specified time not less than 10 days after receipt

1 of the notification, and a conspicuous statement that unless the  
2 claim is paid within that time the goods will be advertised for sale  
3 and sold by auction at a specified time and place.

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

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

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

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

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

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

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

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

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

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

#### 42 43 BILLS OF LADING: SPECIAL PROVISIONS 44

45 12A:7-301. Liability For Nonreceipt or Misdescription; "Said  
46 To Contain;" "Shipper's Weight, Load, and Count;" Improper  
47 Handling.

1       a. A consignee of a nonnegotiable bill of lading which has  
2 given value in good faith, or a holder to which a negotiable bill has  
3 been duly negotiated, relying upon the description of the goods in  
4 the bill or upon the date shown in the bill, may recover from the  
5 issuer damages caused by the misdating of the bill or the nonreceipt  
6 or misdescription of the goods, except to the extent that the bill  
7 indicates that the issuer does not know whether any part or all of the  
8 goods in fact were received or conform to the description, such as  
9 in a case in which the description is in terms of marks or labels or  
10 kind, quantity, or condition or the receipt or description is qualified  
11 by "contents or condition of contents of packages unknown," "said  
12 to contain," "shipper's weight, load, and count," or words of similar  
13 import, if that indication is true.

14       b. If goods are loaded by the issuer of a bill of lading:

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

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

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

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

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

39

40       12A:7-302. Through Bills of Lading And Similar Documents of  
41 Title.

42       a. The issuer of a through bill of lading, or other document of  
43 title embodying an undertaking to be performed in part by a person  
44 acting as its agent or by a performing carrier, is liable to any person  
45 entitled to recover on the bill or other document for any breach by  
46 the other person or the performing carrier of its obligation under the  
47 bill or other document. However, to the extent that the bill or other  
48 document covers an undertaking to be performed overseas or in

1 territory not contiguous to the continental United States or an  
2 undertaking including matters other than transportation, this  
3 liability for breach by the other person or the performing carrier  
4 may be varied by agreement of the parties.

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

13 c. The issuer of a through bill of lading or other document of  
14 title described in subsection a. of this section is entitled to recover  
15 from the performing carrier, or other person in possession of the  
16 goods when the breach of the obligation under the bill or other  
17 document occurred:

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

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

24

25 12A:7-303. Diversion; Reconsignment; Change of Instructions.

26 a. Unless the bill of lading otherwise provides, a carrier may  
27 deliver the goods to a person or destination other than that stated in  
28 the bill or may otherwise dispose of the goods, without liability for  
29 misdelivery, on instructions from:

30 (1) the holder of a negotiable bill;

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

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

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

39 b. Unless instructions described in subsection a. of this section  
40 are included in a negotiable bill of lading, a person to which the bill  
41 is duly negotiated may hold the bailee according to the original  
42 terms.

43

44 12A: 7-304. Tangible Bills of Lading In A Set.

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

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

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

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

14       e. The bailee shall deliver in accordance with Subchapter 4 of  
15 this Chapter against the first presented part of a tangible bill of  
16 lading lawfully issued in a set. Delivery in this manner discharges  
17 the bailee's obligation on the whole bill.

18

19       12A:7-305. Destination Bills.

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

24       b. Upon request of any person entitled as against a carrier to  
25 control the goods while in transit and on surrender of possession or  
26 control of any outstanding bill of lading or other receipt covering  
27 the goods, the issuer, subject to 12A:7-105, may procure a  
28 substitute bill to be issued at any place designated in the request.

29

30       12A:7-306. Altered Bills of Lading.

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

33

34       12A:7-307. Lien Of Carrier.

35       a. A carrier has a lien on the goods covered by a bill of lading  
36 or on the proceeds thereof in its possession for charges after the  
37 date of the carrier's receipt of the goods for storage or  
38 transportation, including demurrage and terminal charges, and for  
39 expenses necessary for preservation of the goods incident to their  
40 transportation or reasonably incurred in their sale pursuant to law.  
41 However, against a purchaser for value of a negotiable bill of  
42 lading, a carrier's lien is limited to charges stated in the bill or the  
43 applicable tariffs or, if no charges are stated, a reasonable charge.

44       b. A lien for charges and expenses under subsection a. of this  
45 section on goods that the carrier was required by law to receive for  
46 transportation is effective against the consignor or any person  
47 entitled to the goods unless the carrier had notice that the consignor  
48 lacked authority to subject the goods to those charges and expenses.

1 Any other lien under subsection a. of this section is effective  
2 against the consignor and any person that permitted the bailor to  
3 have control or possession of the goods unless the carrier had notice  
4 that the bailor lacked authority.

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

7

8 12A:7-308. Enforcement of Carrier's Lien.

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

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

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

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

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

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

44 g. A carrier's lien may be enforced pursuant to either  
45 subsection a. of this section or the procedure set forth in 12A:7-  
46 210b.

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

4 12A:7-309. Duty of Care; Contractual Limitation of Carrier's  
5 Liability.

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

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

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

22  
23 WAREHOUSE RECEIPTS AND BILLS OF LADING:  
24 GENERAL OBLIGATIONS  
25

26 12A:7-401. Irregularities In Issue of Receipt or Bill or Conduct  
27 of Issuer.

28 The obligations imposed by this Chapter on an issuer apply to a  
29 document of title even if:

30 a. The document does not comply with the requirements of this  
31 Chapter or of any other statute, rule, or regulation regarding its  
32 issuance, form, or content;

33 b. The issuer violated laws regulating the conduct of its  
34 business;

35 c. The goods covered by the document were owned by the  
36 bailee when the document was issued; or

37 d. The person issuing the document is not a warehouse but the  
38 document purports to be a warehouse receipt.

39  
40 12A:7-402. Duplicate Document of Title; Overissue.

41 A duplicate or any other document of title purporting to cover  
42 goods already represented by an outstanding document of the same  
43 issuer does not confer any right in the goods, except as provided in  
44 the case of tangible bills of lading in a set of parts, overissue of  
45 documents for fungible goods, substitutes for lost, stolen, or  
46 destroyed documents, or substitute documents issued pursuant to  
47 12A:7-105. The issuer is liable for damages caused by its overissue



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

3

4 12A:7-403. Obligation of Bailee To Deliver; Excuse.

5 a. A bailee shall deliver the goods to a person entitled under a  
6 document of title if the person complies with subsections b. and c.  
7 of this section, unless and to the extent that the bailee establishes  
8 any of the following:

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

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

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

16 (4) the exercise by a seller of its right to stop delivery pursuant  
17 to 12A:2-705 or by a lessor of its right to stop delivery pursuant to  
18 12A:2A-526;

19 (5) a diversion, reconsignment, or other disposition pursuant to  
20 12A:7-303;

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

23 (7) any other lawful excuse.

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

28 c. Unless a person claiming the goods is a person against which  
29 the document of title does not confer a right under subsection a. of  
30 12A:7-503:

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

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

38

39 12A:7-404. No Liability For Good-Faith Delivery Pursuant To  
40 Document of Title.

41 A bailee that in good faith has received goods and delivered or  
42 otherwise disposed of the goods according to the terms of a  
43 document of title or pursuant to this Chapter is not liable for the  
44 goods even if:

45 a. the person from which the bailee received the goods did not  
46 have authority to procure the document or to dispose of the goods;  
47 or

1       b. the person to which the bailee delivered the goods did not  
2 have authority to receive the goods.

3  
4               WAREHOUSE RECEIPTS AND BILLS OF LADING:  
5               NEGOTIATION AND TRANSFER

6  
7       12A:7-501. Form of Negotiation and Requirements of Due  
8 Negotiation.

9       a. The following rules apply to a negotiable tangible document  
10 of title:

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

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

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

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

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

31       b. The following rules apply to a negotiable electronic  
32 document of title:

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

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

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

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

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

5  
6 12A:7-502. Rights Acquired By Due Negotiation.

7 a. Subject to 12A:7-205 and 12A:7-503, a holder to which a  
8 negotiable document of title has been duly negotiated acquires  
9 thereby:

10 (1) title to the document;

11 (2) title to the goods;

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

15 (4) the direct obligation of the issuer to hold or deliver the  
16 goods according to the terms of the document free of any defense or  
17 claim by the issuer, except those arising under the terms of the  
18 document or under this Chapter, but in the case of a delivery order,  
19 the bailee's obligation accrues only upon the bailee's acceptance of  
20 the delivery order and the obligation acquired by the holder is that  
21 the issuer and any indorser will procure the acceptance of the  
22 bailee.

23 b. Subject to 12A:7-503, title and rights acquired by due  
24 negotiation are not defeated by any stoppage of the goods  
25 represented by the document of title or by surrender of the goods by  
26 the bailee and are not impaired even if:

27 (1) the due negotiation or any prior due negotiation constituted a  
28 breach of duty;

29 (2) any person has been deprived of possession of a negotiable  
30 tangible document or control of a negotiable electronic document  
31 by misrepresentation, fraud, accident, mistake, duress, loss, theft, or  
32 conversion; or

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

35  
36 12A:7-503. Document of Title To Goods Defeated In Certain  
37 Cases.

38 a. A document of title confers no right in goods against a  
39 person that before issuance of the document had a legal interest or a  
40 perfected security interest in the goods and that did not:

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

43 (a) actual or apparent authority to ship, store, or sell;

44 (b) power to obtain delivery under 12A:7-403; or

45 (c) power of disposition under 12A:2-403, 12A:2A-304(2),  
46 12A:2A-305(2), 12A:9-320, or 12A:9-321(c) or other statute or rule  
47 of law; or

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

3 b. Title to goods based upon an unaccepted delivery order is  
4 subject to the rights of any person to which a negotiable warehouse  
5 receipt or bill of lading covering the goods has been duly  
6 negotiated. That title may be defeated under 12A:7-504 to the same  
7 extent as the rights of the issuer or a transferee from the issuer.

8 c. Title to goods based upon a bill of lading issued to a freight  
9 forwarder is subject to the rights of any person to which a bill  
10 issued by the freight forwarder is duly negotiated. However,  
11 delivery by the carrier in accordance with Subchapter 4 of this  
12 Chapter pursuant to its own bill of lading discharges the carrier's  
13 obligation to deliver.

14

15 12A:7-504. Rights Acquired In Absence of Due Negotiation;  
16 Effect of Diversion; Stoppage of Delivery.

17 a. A transferee of a document of title, whether negotiable or  
18 nonnegotiable, to which the document has been delivered but not  
19 duly negotiated, acquires the title and rights that its transferor had  
20 or had actual authority to convey.

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

24 (1) by those creditors of the transferor which could treat the  
25 transfer as void under 12A:2-402 or 12A:2A-308;

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

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

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

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

41 d. Delivery of the goods pursuant to a nonnegotiable document  
42 of title may be stopped by a seller under 12A:2-705 or a lessor  
43 under 12A:2A-526, subject to the requirements of due notification  
44 in those sections. A bailee that honors the seller's or lessor's  
45 instructions is entitled to be indemnified by the seller or lessor  
46 against any resulting loss or expense.

47

48 12A:7-505. Indorser Not Guarantor For Other Parties.

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

4  
5 12A:7-506. Delivery Without Indorsement: Right To Compel  
6 Indorsement.

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

11  
12 12A:7-507. Warranties On Negotiation or Delivery of Document  
13 of Title.

14 If a person negotiates or delivers a document of title for value,  
15 otherwise than as a mere intermediary under 12A:7-508, unless  
16 otherwise agreed, the transferor, in addition to any warranty made  
17 in selling or leasing the goods, warrants to its immediate purchaser  
18 only that:

- 19 (1) the document is genuine;  
20 (2) the transferor does not have knowledge of any fact that  
21 would impair the document's validity or worth; and  
22 (3) the negotiation or delivery is rightful and fully effective with  
23 respect to the title to the document and the goods it represents.

24  
25 12A:7-508. Warranties of Collecting Bank As To Documents of  
26 Title.

27 A collecting bank or other intermediary known to be entrusted  
28 with documents of title on behalf of another or with collection of a  
29 draft or other claim against delivery of documents warrants by the  
30 delivery of the documents only its own good faith and authority  
31 even if the collecting bank or other intermediary has purchased or  
32 made advances against the claim or draft to be collected.

33  
34 12A:7-509. Adequate Compliance With Commercial Contract.

35 Whether a document of title is adequate to fulfill the obligations  
36 of a contract for sale, a contract for lease, or the conditions of a  
37 letter of credit is determined by Chapter 2, 2A, or 5.

38  
39 WAREHOUSE RECEIPTS AND BILLS OF LADING:  
40 MISCELLANEOUS PROVISIONS  
41

42 12A:7-601. Lost, Stolen, or Destroyed Documents of Title.

43 a. If a document of title is lost, stolen, or destroyed, a court  
44 may order delivery of the goods or issuance of a substitute  
45 document and the bailee may without liability to any person comply  
46 with the order. If the document was negotiable, a court may not  
47 order delivery of the goods or issuance of a substitute document  
48 without the claimant's posting security unless it finds that any

1 person that may suffer loss as a result of nonsurrender of possession  
2 or control of the document is adequately protected against the loss.  
3 If the document was nonnegotiable, the court may require security.  
4 The court may also order payment of the bailee's reasonable costs  
5 and attorney's fees in any action under this subsection.

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

14  
15 12A:7-602. Judicial Process Against Goods Covered By  
16 Negotiable Document of Title.

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

28  
29 12A:7-603. Conflicting Claims; Interpleader.

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

36  
37 MISCELLANEOUS PROVISIONS

38  
39 12A:7-701. Applicability.

40 This Chapter applies to a document of title that is issued or a  
41 bailment that arises on or after the effective date of this Chapter.  
42 This Chapter does not apply to a document of title that is issued or a  
43 bailment that arises before the effective date of this Chapter even if  
44 the document of title or bailment would be subject to this Chapter if  
45 the document of title had been issued or bailment had arisen on or  
46 after the effective date of this Chapter. This Chapter does not apply  
47 to a right of action that has accrued before the effective date of this  
48 Chapter.

1       3. N.J.S.12A:9-102 is amended to read as follows:

2       12A:9-102. Definitions and Index of Definitions.

3       (a) Chapter 9 definitions. In this chapter:

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

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

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

31       (4) "Accounting", except as used in "accounting for", means a  
32 record:

33       (A) authenticated by a secured party;

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

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

39       (5) "Agricultural lien" means an interest in farm products:

40       (A) which secures payment or performance of an obligation for:

41       (i) goods or services furnished in connection with a debtor's  
42 farming operation; or

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

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

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

48       or

- 1 (ii) leased real property to a debtor in connection with the  
2 debtor's farming operation; and
- 3 (C) whose effectiveness does not depend on the person's  
4 possession of the personal property.
- 5 (6) "As-extracted collateral" means:
- 6 (A) oil, gas, or other minerals that are subject to a security  
7 interest that:
- 8 (i) is created by a debtor having an interest in the minerals  
9 before extraction; and
- 10 (ii) attaches to the minerals as extracted; or
- 11 (B) accounts arising out of the sale at the wellhead or minehead  
12 of oil, gas, or other minerals in which the debtor had an interest  
13 before extraction.
- 14 (7) "Authenticate" means:
- 15 (A) to sign; or
- 16 (B) **to execute or otherwise adopt a symbol, or encrypt or**  
17 **similarly process a record in whole or in part, with the present**  
18 **intent of the authenticating person to identify the person and**  
19 **adopt or accept a record, to attach to or logically associate with the**  
20 **record an electronic sound, symbol, or process.**
- 21 (8) "Bank" means an organization that is engaged in the  
22 business of banking. The term includes savings banks, savings and  
23 loan associations, credit unions, and trust companies.
- 24 (8.1) "Bondable transition property" shall have the meaning set  
25 forth in section 3 of P.L.1999, c.23 (C.48:3-51).
- 26 (9) "Cash proceeds" means proceeds that are money, checks,  
27 deposit accounts, or the like.
- 28 (10) "Certificate of title" means a certificate of title with respect  
29 to which a statute provides for the security interest in question to be  
30 indicated on the certificate as a condition or result of the security  
31 interest's obtaining priority over the rights of a lien creditor with  
32 respect to the collateral. The term includes another record  
33 maintained as an alternative to a certificate of title by the  
34 governmental unit that issues certificates of title if a statute permits  
35 the security interest in question to be indicated on the record as a  
36 condition or result of the security interest's obtaining priority over  
37 the rights of a lien creditor with respect to the collateral.
- 38 (11) "Chattel paper" means a record or records that evidence  
39 both a monetary obligation and a security interest in specific goods,  
40 a security interest in specific goods and software used in the goods,  
41 a security interest in specific goods and license of software used in  
42 the goods, a lease of specific goods, or a lease of specific goods and  
43 license of software used in the goods. In this paragraph, "monetary  
44 obligation" means a monetary obligation secured by the goods or  
45 owed under a lease of the goods and includes a monetary obligation  
46 with respect to software used in the goods. The term does not  
47 include (i) charters or other contracts involving the use or hire of a  
48 vessel or (ii) records that evidence a right to payment arising out of



1 the use of a credit or charge card or information contained on or for  
2 use with the card. If a transaction is evidenced by records that  
3 include an instrument or series of instruments, the group of records  
4 taken together constitutes chattel paper.

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

7 (A) proceeds to which a security interest attaches;

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

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

11 (13) "Commercial tort claim" means a claim arising in tort with  
12 respect to which:

13 (A) the claimant is an organization; or

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

15 (i) arose in the course of the claimant's business or profession;  
16 and

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

19 (14) "Commodity account" means an account maintained by a  
20 commodity intermediary in which a commodity contract is carried  
21 for a commodity customer.

22 (15) "Commodity contract" means a commodity futures  
23 contract, an option on a commodity futures contract, a commodity  
24 option, or another contract if the contract or option is:

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

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

31 (16) "Commodity customer" means a person for which a  
32 commodity intermediary carries a commodity contract on its books.

33 (17) "Commodity intermediary" means a person that:

34 (A) is registered as a futures commission merchant under federal  
35 commodities law; or

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

39 (18) "Communicate" means:

40 (A) to send a written or other tangible record;

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

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

46 (19) "Consignee" means a merchant to which goods are  
47 delivered in a consignment.

- 1       (20) "Consignment" means a transaction, regardless of its form,  
2 in which a person delivers goods to a merchant for the purpose of  
3 sale and:
- 4       (A) the merchant:
- 5       (i) deals in goods of that kind under a name other than the name  
6 of the person making delivery;
- 7       (ii) is not an auctioneer; and
- 8       (iii) is not generally known by its creditors to be substantially  
9 engaged in selling the goods of others;
- 10       (B) with respect to each delivery, the aggregate value of the  
11 goods is \$1,000 or more at the time of delivery;
- 12       (C) the goods are not consumer goods immediately before  
13 delivery; and
- 14       (D) the transaction does not create a security interest that secures  
15 an obligation.
- 16       (21) "Consignor" means a person that delivers goods to a  
17 consignee in a consignment.
- 18       (22) "Consumer debtor" means a debtor in a consumer  
19 transaction.
- 20       (23) "Consumer goods" means goods that are used or bought for  
21 use primarily for personal, family, or household purposes.
- 22       (24) "Consumer-goods transaction" means a consumer  
23 transaction in which:
- 24       (A) an individual incurs an obligation primarily for personal,  
25 family, or household purposes; and
- 26       (B) a security interest in consumer goods secures the obligation.
- 27       (25) "Consumer obligor" means an obligor who is an individual  
28 and who incurred the obligation as part of a transaction entered into  
29 primarily for personal, family, or household purposes.
- 30       (26) "Consumer transaction" means a transaction in which (i) an  
31 individual incurs an obligation primarily for personal, family, or  
32 household purposes, (ii) a security interest secures the obligation,  
33 and (iii) the collateral is held or acquired primarily for personal,  
34 family, or household purposes. The term includes consumer-goods  
35 transactions.
- 36       (27) "Continuation statement" means an amendment of a  
37 financing statement which:
- 38       (A) identifies, by its file number, the initial financing statement  
39 to which it relates; and
- 40       (B) indicates that it is a continuation statement for, or that it is  
41 filed to continue the effectiveness of, the identified financing  
42 statement.
- 43       (28) "Debtor" means:
- 44       (A) a person having an interest, other than a security interest or  
45 other lien, in the collateral, whether or not the person is an obligor;
- 46       (B) a seller of accounts, chattel paper, payment intangibles, or  
47 promissory notes; or
- 48       (C) a consignee.

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

5 (30) "Document" means a document of title or a receipt of the  
6 type described in **12A:7-201(2)** 12A:7-201b.

7 (31) "Electronic chattel paper" means chattel paper evidenced by  
8 a record or records consisting of information stored in an electronic  
9 medium.

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

13 (33) "Equipment" means goods other than inventory, farm  
14 products, or consumer goods.

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

18 (A) crops grown, growing, or to be grown, including:

19 (i) crops produced on trees, vines, and bushes; and

20 (ii) aquatic goods produced in aquacultural operations;

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

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

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

25 (35) "Farming operation" means raising, cultivating,  
26 propagating, fattening, grazing, or any other farming, livestock, or  
27 aquacultural operation.

28 (36) "File number" means the number assigned to an initial  
29 financing statement pursuant to 12A:9-519 (a).

30 (37) "Filing office" means an office designated in 12A:9-501 as  
31 the place to file a financing statement.

32 (38) "Filing-office rule" means a rule adopted pursuant to 12A:9-  
33 526.

34 (39) "Financing statement" means a record or records composed  
35 of an initial financing statement and any filed record relating to the  
36 initial financing statement.

37 (40) "Fixture filing" means the filing of a financing statement  
38 covering goods that are or are to become fixtures and satisfying  
39 12A:9-502 (a) and (b). The term includes the filing of a financing  
40 statement covering goods of a transmitting utility which are or are  
41 to become fixtures.

42 (41) "Fixtures" means goods that have become so related to  
43 particular real property that an interest in them arises under real  
44 property law.

45 (42) "General intangible" means any personal property, including  
46 things in action, other than accounts, chattel paper, commercial tort  
47 claims, deposit accounts, documents, goods, instruments,  
48 investment property, letter-of-credit rights, letters of credit, money,

1 and oil, gas, or other minerals before extraction. The term includes  
2 payment intangibles and software.

3 (43) "Good faith" means honesty in fact and the observance of  
4 reasonable commercial standards of fair dealing.

5 (44) "Goods" means all things that are movable when a security  
6 interest attaches. The term includes (i) fixtures, (ii) standing timber  
7 that is to be cut and removed under a conveyance or contract for  
8 sale, (iii) the unborn young of animals, (iv) crops grown, growing,  
9 or to be grown, even if the crops are produced on trees, vines, or  
10 bushes, and (v) manufactured homes. The term also includes a  
11 computer program embedded in goods and any supporting  
12 information provided in connection with a transaction relating to  
13 the program if (i) the program is associated with the goods in such a  
14 manner that it customarily is considered part of the goods, or (ii) by  
15 becoming the owner of the goods, a person acquires a right to use  
16 the program in connection with the goods. The term does not  
17 include a computer program embedded in goods that consist solely  
18 of the medium in which the program is embedded. The term also  
19 does not include accounts, chattel paper, commercial tort claims,  
20 deposit accounts, documents, general intangibles, instruments,  
21 investment property, letter-of-credit rights, letters of credit, money,  
22 or oil, gas, or other minerals before extraction.

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

29 (46) "Health-care-insurance receivable" means an interest in or  
30 claim under a policy of insurance which is a right to payment of a  
31 monetary obligation for health-care goods or services provided or to  
32 be provided.

33 (47) "Instrument" means a negotiable instrument or any other  
34 writing that evidences a right to the payment of a monetary  
35 obligation, is not itself a security agreement or lease, and is of a  
36 type that in ordinary course of business is transferred by delivery  
37 with any necessary indorsement or assignment. The term does not  
38 include (i) investment property, (ii) letters of credit, or (iii) writings  
39 that evidence a right to payment arising out of the use of a credit or  
40 charge card or information contained on or for use with the card.

41 (48) "Inventory" means goods, other than farm products, which:

42 (A) are leased by a person as lessor;

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

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

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

1 (49) "Investment property" means a security, whether certificated  
2 or uncertificated, security entitlement, securities account,  
3 commodity contract, or commodity account.

4 (50) "Jurisdiction of organization", with respect to a registered  
5 organization, means the jurisdiction under whose law the  
6 organization is formed or organized.

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

12 (52) "Lien creditor" means:

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

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

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

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

20 (53) "Manufactured home" means a structure, transportable in  
21 one or more sections, which, in the traveling mode, is eight body  
22 feet or more in width or 40 body feet or more in length, or, when  
23 erected on site, is 320 or more square feet, and which is built on a  
24 permanent chassis and designed to be used as a dwelling with or  
25 without a permanent foundation when connected to the required  
26 utilities, and includes the plumbing, heating, air-conditioning, and  
27 electrical systems contained therein. The term includes any  
28 structure that meets all of the requirements of this paragraph except  
29 the size requirements and with respect to which the manufacturer  
30 voluntarily files a certification required by the United States  
31 Secretary of Housing and Urban Development and complies with  
32 the standards established under Title 42 of the United States Code.

33 (54) "Manufactured-home transaction" means a secured  
34 transaction:

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

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

40 (55) "Mortgage" means a consensual interest in real property,  
41 including fixtures, which secures payment or performance of an  
42 obligation.

43 (56) "New debtor" means a person that becomes bound as debtor  
44 under 12A:9-203 (d) by a security agreement previously entered  
45 into by another person.

46 (57) "New value" means (i) money, (ii) money's worth in  
47 property, services, or new credit, or (iii) release by a transferee of  
48 an interest in property previously transferred to the transferee. The

1 term does not include an obligation substituted for another  
2 obligation.

3 (58) "Noncash proceeds" means proceeds other than cash  
4 proceeds.

5 (59) "Obligor" means a person that, with respect to an obligation  
6 secured by a security interest in or an agricultural lien on the  
7 collateral, (i) owes payment or other performance of the obligation,  
8 (ii) has provided property other than the collateral to secure  
9 payment or other performance of the obligation, or (iii) is otherwise  
10 accountable in whole or in part for payment or other performance of  
11 the obligation. The term does not include issuers or nominated  
12 persons under a letter of credit.

13 (60) "Original debtor", except as used in 12A:9-310(c), means a  
14 person that, as debtor, entered into a security agreement to which a  
15 new debtor has become bound under 12A:9-203 (d).

16 (61) "Payment intangible" means a general intangible under  
17 which the account debtor's principal obligation is a monetary  
18 obligation.

19 (62) "Person related to", with respect to an individual, means:

20 (A) the spouse of the individual;

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

23 (C) an ancestor or lineal descendant of the individual or the  
24 individual's spouse; or

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

28 (63) "Person related to", with respect to an organization, means:

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

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

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

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

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

40 (64) "Proceeds", except as used in 12A:9-609(b), means the  
41 following property:

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

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

46 (C) rights arising out of collateral;

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

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

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

12 (66) "Proposal" means a record authenticated by a secured party  
13 which includes the terms on which the secured party is willing to  
14 accept collateral in full or partial satisfaction of the obligation it  
15 secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

16 (67) "Public-finance transaction" means a secured transaction in  
17 connection with which:

18 (A) debt securities are issued;

19 (B) all or a portion of the securities issued have an initial stated  
20 maturity of at least 20 years; and

21 (C) the debtor, obligor, secured party, account debtor or other  
22 person obligated on collateral, assignor or assignee of a secured  
23 obligation, or assignor or assignee of a security interest is a state or  
24 a governmental unit of a state.

25 (67.1) "Public organic record" means a record that is available  
26 to the public for inspection and is:

27 (A) a record consisting of the record initially filed with or issued  
28 by a state or the United States to form or organize an organization  
29 and any record filed with or issued by the state or the United States  
30 which amends or restates the initial record;

31 (B) an organic record of a business trust consisting of the record  
32 initially filed with a state and any record filed with the state which  
33 amends or restates the initial record, if a statute of the state  
34 governing business trusts requires that the record be filed with the  
35 state; or

36 (C) a record consisting of legislation enacted by the legislature  
37 of a state or the Congress of the United States which forms or  
38 organizes an organization, any record amending the legislation, and  
39 any record filed with or issued by the state or the United States  
40 which amends or restates the name of the organization.

41 (68) "Pursuant to commitment", with respect to an advance made  
42 or other value given by a secured party, means pursuant to the  
43 secured party's obligation, whether or not a subsequent event of  
44 default or other event not within the secured party's control has  
45 relieved or may relieve the secured party from its obligation.

46 (69) "Record", except as used in "for record", "of record",  
47 "record or legal title", and "record owner", means information that

1 is inscribed on a tangible medium or which is stored in an electronic  
2 or other medium and is retrievable in perceivable form.

3 (70) "Registered organization" means an organization formed or  
4 organized solely under the law of a single state or the United States  
5 【and as to which the state or the United States must maintain a  
6 public record showing the organization to have been organized】 by  
7 the filing of a public organic record with, the issuance of a public  
8 organic record by, or the enactment of legislation by the state or the  
9 United States. The term includes a business trust that is formed or  
10 organized under the law of a single state if a statute of the state  
11 governing business trusts requires that the business trust's organic  
12 record be filed with the state.

13 (71) "Secondary obligor" means an obligor to the extent that:

14 (A) the obligor's obligation is secondary; or

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

18 (72) "Secured party" means:

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

22 (B) a person that holds an agricultural lien;

23 (C) a consignor;

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

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

29 (F) a person that holds a security interest arising under 12A:2-  
30 401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), 12A:4-210, or  
31 12A:5-118.

32 (73) "Security agreement" means an agreement that creates or  
33 provides for a security interest.

34 (74) "Send", in connection with a record or notification, means:

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

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

42 (75) "Software" means a computer program and any supporting  
43 information provided in connection with a transaction relating to  
44 the program. The term does not include a computer program that is  
45 included in the definition of goods.

46 (76) "State" means a state of the United States, the District of  
47 Columbia, Puerto Rico, the United States Virgin Islands, or any



1 territory or insular possession subject to the jurisdiction of the  
2 United States.

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

7 (78) "Tangible chattel paper" means chattel paper evidenced by a  
8 record or records consisting of information that is inscribed on a  
9 tangible medium.

10 (79) "Termination statement" means an amendment of a  
11 financing statement which:

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

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

16 (80) "Transmitting utility" means a person primarily engaged in  
17 the business of:

18 (A) operating a railroad, subway, street railway, or trolley bus;

19 (B) transmitting communications electrically, electromagnetic-  
20 ally, or by light;

21 (C) transmitting goods by pipeline or sewer; or

22 (D) transmitting or producing and transmitting electricity, steam,  
23 gas, or water.

24 (b) Definitions in other chapters. The following definitions in  
25 other chapters apply to this chapter:

26 "Applicant" 12A:5-102.

27 "Beneficiary" 12A:5-102.

28 "Broker" 12A:8-102.

29 "Certificated security" 12A:8-102.

30 "Check" 12A:3-104.

31 "Clearing corporation" 12A:8-102.

32 "Contract for sale" 12A:2-106.

33 "Control" 12A:7-106.

34 "Customer" 12A:4-104.

35 "Entitlement holder" 12A:8-102.

36 "Financial asset" 12A:8-102.

37 "Holder in due course" 12A:3-302.

38 "Issuer" (with respect to a letter of  
39 credit or letter-of-credit right) 12A:5-102.

40 "Issuer" (with respect to a security) 12A:8-201.

41 "Issuer" (with respect to documents  
42 of title) 12A:7-102.

43 "Lease" 12A:2A-103.

44 "Lease agreement" 12A:2A-103.

45 "Lease contract" 12A:2A-103.

46 "Leasehold interest" 12A:2A-103.

47 "Lessee" 12A:2A-103.

48 "Lessee in ordinary course of

|    |                                                                                    |             |
|----|------------------------------------------------------------------------------------|-------------|
| 1  | business"                                                                          | 12A:2A-103. |
| 2  | "Lessor"                                                                           | 12A:2A-103. |
| 3  | "Lessor's residual interest"                                                       | 12A:2A-103. |
| 4  | "Letter of credit"                                                                 | 12A:5-102.  |
| 5  | "Merchant"                                                                         | 12A:2-104.  |
| 6  | "Negotiable instrument"                                                            | 12A:3-104.  |
| 7  | "Nominated person"                                                                 | 12A:5-102.  |
| 8  | "Note"                                                                             | 12A:3-104.  |
| 9  | "Proceeds of a letter of credit"                                                   | 12A:5-114.  |
| 10 | "Prove"                                                                            | 12A:3-103.  |
| 11 | "Sale"                                                                             | 12A:2-106.  |
| 12 | "Securities account"                                                               | 12A:8-501.  |
| 13 | "Securities intermediary"                                                          | 12A:8-102.  |
| 14 | "Security"                                                                         | 12A:8-102.  |
| 15 | "Security certificate"                                                             | 12A:8-102.  |
| 16 | "Security entitlement"                                                             | 12A:8-102.  |
| 17 | "Uncertificated security"                                                          | 12A:8-102.  |
| 18 | (c) Chapter 1 definitions and principles. Chapter 1 contains                       |             |
| 19 | general definitions and principles of construction and interpretation              |             |
| 20 | applicable throughout this chapter.                                                |             |
| 21 | (cf: P.L.2001, c.386, s.1)                                                         |             |
| 22 |                                                                                    |             |
| 23 | 4. N.J.S.12A:9-105 is amended to read as follows:                                  |             |
| 24 | 12A:9-105 Control of Electronic Chattel Paper.                                     |             |
| 25 | <u>(a) A secured party has control of electronic chattel paper if a</u>            |             |
| 26 | <u>system employed for evidencing the transfer of interests in the</u>             |             |
| 27 | <u>chattel paper reliably establishes the secured party as the person to</u>       |             |
| 28 | <u>which the chattel paper was assigned.</u>                                       |             |
| 29 | <u>(b) A system satisfies subsection (a) if the record or records</u>              |             |
| 30 | <u>comprising the chattel paper are created, stored, and assigned in</u>           |             |
| 31 | <u>such a manner that:</u>                                                         |             |
| 32 | (1) a single authoritative copy of the record or records exists                    |             |
| 33 | which is unique, identifiable and, except as otherwise provided in                 |             |
| 34 | paragraphs (4), (5), and (6), unalterable;                                         |             |
| 35 | (2) the authoritative copy identifies the secured party as the                     |             |
| 36 | assignee of the record or records;                                                 |             |
| 37 | (3) the authoritative copy is communicated to and maintained by                    |             |
| 38 | the secured party or its designated custodian;                                     |             |
| 39 | (4) copies or <b>[revisions]</b> <u>amendments</u> that add or change an           |             |
| 40 | identified assignee of the authoritative copy can be made only with                |             |
| 41 | the <b>[participation]</b> <u>consent</u> of the secured party;                    |             |
| 42 | (5) each copy of the authoritative copy and any copy of a copy                     |             |
| 43 | is readily identifiable as a copy that is not the authoritative copy;              |             |
| 44 | and                                                                                |             |
| 45 | (6) any <b>[revision]</b> <u>amendment</u> of the authoritative copy is            |             |
| 46 | readily identifiable as <b>[an]</b> authorized or unauthorized <b>[revision]</b> . |             |
| 47 | (cf: P.L.2001, c.386, s.4)                                                         |             |

1       5. N.J.S.12A:9-203 is amended to read as follows:

2       12A:9-203. Attachment and Enforceability of Security Interest;  
3       Proceeds; Supporting Obligations; Formal Requisites.

4       (a) Attachment. A security interest attaches to collateral when it  
5       becomes enforceable against the debtor with respect to the  
6       collateral, unless an agreement expressly postpones the time of  
7       attachment.

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

11      (1) value has been given;

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

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

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

18      (B) the collateral is not a certificated security and is in the  
19      possession of the secured party under 12A:9-313 pursuant to the  
20      debtor's security agreement;

21      (C) the collateral is a certificated security in registered form and  
22      the security certificate has been delivered to the secured party under  
23      12A:8-301 pursuant to the debtor's security agreement; or

24      (D) the collateral is deposit accounts, electronic chattel paper,  
25      investment property, **[or]** letter-of-credit rights, or electronic  
26      documents, and the secured party has control under 12A:7-106,  
27      12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107 pursuant to the  
28      debtor's security agreement.

29      (c) Other Uniform Commercial Code provisions. Subsection (b)  
30      is subject to 12A:4-210 on the security interest of a collecting bank,  
31      12A:5-118 on the security interest of a letter-of-credit issuer or  
32      nominated person, 12A:9-110 on a security interest arising under  
33      Chapter 2 or 2A, and 12A:9-206 on security interests in investment  
34      property.

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

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

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

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

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

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

6 (f) Proceeds and supporting obligations. The attachment of a  
7 security interest in collateral gives the secured party the rights to  
8 proceeds provided by 12A:9-315 and is also attachment of a  
9 security interest in a supporting obligation for the collateral.

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

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

18 (i) Commodity contracts carried in commodity account. The  
19 attachment of a security interest in a commodity account is also  
20 attachment of a security interest in the commodity contracts carried  
21 in the commodity account.

22 (j) Bondable transition property. Bondable transition property is  
23 presently existing property for all purposes, including for purposes  
24 of subsection (b) (2), whether or not the revenues and proceeds  
25 arising under the property have accrued and notwithstanding that  
26 the value of the property may depend upon customer use of  
27 electricity or performance of service by electric public utilities, or  
28 both.

29 (cf: P.L.2001, c.386, s.9)

30

31 6. N.J.S.12A:9-207 is amended to read as follows:

32 12A:9-207. Rights and Duties of Secured Party Having  
33 Possession or Control of Collateral.

34 (a) Duty of care when secured party in possession. Except as  
35 otherwise provided in subsection (d), a secured party shall use  
36 reasonable care in the custody and preservation of collateral in the  
37 secured party's possession. In the case of chattel paper or an  
38 instrument, reasonable care includes taking necessary steps to  
39 preserve rights against prior parties unless otherwise agreed.

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

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

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

- 1 (3) the secured party shall keep the collateral identifiable, but  
2 fungible collateral may be commingled; and  
3 (4) the secured party may use or operate the collateral:  
4 (A) for the purpose of preserving the collateral or its value;  
5 (B) as permitted by an order of a court having competent  
6 jurisdiction; or  
7 (C) except in the case of consumer goods, in the manner and to  
8 the extent agreed by the debtor.  
9 (c) Duties and rights when secured party in possession or  
10 control. Except as otherwise provided in subsection (d), a secured  
11 party having possession of collateral or control of collateral under  
12 12A:7-106, 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:  
13 (1) may hold as additional security any proceeds, except money  
14 or funds, received from the collateral;  
15 (2) shall apply money or funds received from the collateral to  
16 reduce the secured obligation, unless remitted to the debtor; and  
17 (3) may create a security interest in the collateral.  
18 (d) Buyer of certain rights to payment. If the secured party is a  
19 buyer of accounts, chattel paper, payment intangibles, or  
20 promissory notes or a consignor:  
21 (1) subsection (a) does not apply unless the secured party is  
22 entitled under an agreement:  
23 (A) to charge back uncollected collateral; or  
24 (B) otherwise to full or limited recourse against the debtor or a  
25 secondary obligor based on the nonpayment or other default of an  
26 account debtor or other obligor on the collateral; and  
27 (2) subsections (b) and (c) do not apply.  
28 (cf: P.L.2001, c.386, ss.13,14)  
29  
30 7. N.J.S.12A:9-208 is amended to read as follows:  
31 12A:9-208. Additional Duties of Secured Party Having Control  
32 of Collateral.  
33 (a) Applicability of section. This section applies to cases in  
34 which there is no outstanding secured obligation and the secured  
35 party is not committed to make advances, incur obligations, or  
36 otherwise give value.  
37 (b) Duties of secured party after receiving demand from debtor.  
38 Within 10 days after receiving an authenticated demand by the  
39 debtor:  
40 (1) a secured party having control of a deposit account under  
41 12A:9-104 (a) (2) shall send to the bank with which the deposit  
42 account is maintained an authenticated statement that releases the  
43 bank from any further obligation to comply with instructions  
44 originated by the secured party;  
45 (2) a secured party having control of a deposit account under  
46 12A:9-104 (a) (3) shall:  
47 (A) pay the debtor the balance on deposit in the deposit account;  
48 or

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

3 (3) a secured party, other than a buyer, having control of  
4 electronic chattel paper under 12A:9-105 shall:

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

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

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

18 (4) a secured party having control of investment property under  
19 12A:8-106 d. (2) or 12A:9-106 (b) shall send to the securities  
20 intermediary or commodity intermediary with which the security  
21 entitlement or commodity contract is maintained an authenticated  
22 record that releases the securities intermediary or commodity  
23 intermediary from any further obligation to comply with entitlement  
24 orders or directions originated by the secured party; **[and]**

25 (5) a secured party having control of a letter-of-credit right  
26 under 12A:9-107 shall send to each person having an unfulfilled  
27 obligation to pay or deliver proceeds of the letter of credit to the  
28 secured party an authenticated release from any further obligation to  
29 pay or deliver proceeds of the letter of credit to the secured party;  
30 and

31 (6) a secured party having control of an electronic document  
32 shall;

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

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

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

46 (cf: P.L.2001, c.386, ss.14, 15)

47

48 8. N.J.S.12A:9-301 is amended to read as follows:

1       12A:9-301. Law Governing Perfection and Priority of Security  
2 Interests.

3       Except as otherwise provided in sections 12A:9-303 through  
4 12A:9-306, the following rules determine the law governing  
5 perfection, the effect of perfection or nonperfection, and the priority  
6 of a security interest in collateral:

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

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

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

19       (A) perfection of a security interest in the goods by filing a  
20 fixture filing;

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

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

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

28       (5) Notwithstanding paragraph (1), the local law of this State  
29 shall govern the perfection, the effect of perfection or  
30 nonperfection, and the priority of a security interest in bondable  
31 transition property.

32 (cf: P.L.2001, c.386, s.18)

33

34       9. N.J.S.12A:9-307 is amended to read as follows:

35       12A:9-307 Location of Debtor.

36       (a) "Place of business." In this section, "place of business"  
37 means a place where a debtor conducts its affairs.

38       (b) Debtor's location: general rules. Except as otherwise  
39 provided in this section, the following rules determine a debtor's  
40 location:

41       (1) A debtor who is an individual is located at the individual's  
42 principal residence.

43       (2) A debtor that is an organization and has only one place of  
44 business is located at its place of business.

45       (3) A debtor that is an organization and has more than one place  
46 of business is located at its chief executive office.

47       (c) Limitation of applicability of subsection (b). Subsection (b)  
48 applies only if a debtor's residence, place of business, or chief

1 executive office, as applicable, is located in a jurisdiction whose  
2 law generally requires information concerning the existence of a  
3 nonpossessory security interest to be made generally available in a  
4 filing, recording, or registration system as a condition or result of  
5 the security interest's obtaining priority over the rights of a lien  
6 creditor with respect to the collateral. If subsection (b) does not  
7 apply, the debtor is located in the District of Columbia.

8 (d) Continuation of location: cessation of existence, etc. A  
9 person that ceases to exist, have a residence, or have a place of  
10 business continues to be located in the jurisdiction specified by  
11 subsections (b) and (c).

12 (e) Location of registered organization organized under state  
13 law. A registered organization that is organized under the law of a  
14 state is located in that state.

15 (f) Location of registered organization organized under federal  
16 law; bank branches and agencies. Except as otherwise provided in  
17 subsection (i), a registered organization that is organized under the  
18 law of the United States and a branch or agency of a bank that is not  
19 organized under the law of the United States or a state are located:

20 (1) in the state that the law of the United States designates, if the  
21 law designates a state of location;

22 (2) in the state that the registered organization, branch, or  
23 agency designates, if the law of the United States authorizes the  
24 registered organization, branch, or agency to designate its state of  
25 location, including by designating its main office, home office, or  
26 other comparable office; or

27 (3) in the District of Columbia, if neither paragraph (1) nor  
28 paragraph (2) applies.

29 (g) Continuation of location: change in status of registered  
30 organization. A registered organization continues to be located in  
31 the jurisdiction specified by subsection (e) or (f) notwithstanding:

32 (1) the suspension, revocation, forfeiture, or lapse of the  
33 registered organization's status as such in its jurisdiction of  
34 organization; or

35 (2) the dissolution, winding up, or cancellation of the existence  
36 of the registered organization.

37 (h) Location of United States. The United States is located in  
38 the District of Columbia.

39 (i) Location of foreign bank branch or agency if licensed in  
40 only one state. A branch or agency of a bank that is not organized  
41 under the law of the United States or a state is located in the state in  
42 which the branch or agency is licensed, if all branches and agencies  
43 of the bank are licensed in only one state.

44 (j) Location of foreign air carrier. A foreign air carrier under  
45 the Federal Aviation Act of 1958, as amended (49 U.S.C. s.1301 et  
46 seq.), is located at the designated office of the agent upon which  
47 service of process may be made on behalf of the carrier.



1 (k) Section applies only to this part. This section applies only  
2 for purposes of this part.

3 (cf: P.L.2001, c.386, s.23)

4  
5 10. N.J.S.12A:9-310 is amended to read as follows:

6 12A:9-310. When Filing Required to Perfect Security Interest or  
7 Agricultural Lien; Security Interests and Agricultural Liens to  
8 Which Filing Provisions Do Not Apply.

9 (a) General rule: perfection by filing. Except as otherwise  
10 provided in subsection (b) and 12A:9-312 (b), a financing statement  
11 must be filed to perfect all security interests and agricultural liens.

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

14 (1) that is perfected under 12A:9-308 (d), (e), (f) or (g);

15 (2) that is perfected under 12A:9-309 when it attaches;

16 (3) in property subject to a statute, regulation, or treaty  
17 described in of 12A:9-311 (a);

18 (4) in goods in possession of a bailee which is perfected under  
19 12A:9-312 (d) (1) or (2);

20 (5) in certificated securities, documents, goods, or instruments  
21 which is perfected without filing, control, or possession under  
22 12A:9-312 (e), (f) or (g);

23 (6) in collateral in the secured party's possession under 12A:9-  
24 313;

25 (7) in a certificated security which is perfected by delivery of  
26 the security certificate to the secured party under 12A:9-313;

27 (8) in deposit accounts, electronic chattel paper, electronic  
28 documents, investment property, or letter-of-credit rights which is  
29 perfected by control under 12A:9-314;

30 (9) in proceeds which is perfected under 12A:9-315; or

31 (10) that is perfected under 12A:9-316.

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

37 (cf: P.L.2001, c.386, s.26)

38  
39 11. N.J.S.12A:9-311 is amended to read as follows:

40 12A:9-311 Perfection of Security Interests in Property Subject  
41 to Certain Statutes, Regulations, and Treaties.

42 (a) Security interest subject to other law. Except as otherwise  
43 provided in subsection (d), the filing of a financing statement is not  
44 necessary or effective to perfect a security interest in property  
45 subject to:

46 (1) a statute, regulation, or treaty of the United States whose  
47 requirements for a security interest's obtaining priority over the

1 rights of a lien creditor with respect to the property preempt 12A:9-  
2 310(a);

3 (2) the "motor vehicle certificate of ownership law," R.S.39:10-  
4 1 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152  
5 (C.12:7A-1 et seq.) or successor statutes or law or

6 (3) a **【certificate-of-title】** statute of another jurisdiction which  
7 provides for a security interest to be indicated on **【the】** a certificate  
8 of title as a condition or result of the security interest's obtaining  
9 priority over the rights of a lien creditor with respect to the  
10 property.

11 (b) Compliance with other law. Compliance with the  
12 requirements of a statute, regulation, or treaty described in  
13 subsection (a) for obtaining priority over the rights of a lien creditor  
14 is equivalent to the filing of a financing statement under this  
15 chapter. Except as otherwise provided in subsection (d), 12A:9-313  
16 and 12A:9-316(d) and (e) for goods covered by a certificate of title,  
17 a security interest in property subject to a statute, regulation, or  
18 treaty described in subsection (a) may be perfected only by  
19 compliance with those requirements, and a security interest so  
20 perfected remains perfected notwithstanding a change in the use or  
21 transfer of possession of the collateral.

22 (c) Duration and renewal of perfection. Except as otherwise  
23 provided in subsection (d) and 12A:9-316(d) and (e), duration and  
24 renewal of perfection of a security interest perfected by compliance  
25 with the requirements prescribed by a statute, regulation, or treaty  
26 described in subsection (a) are governed by the statute, regulation,  
27 or treaty. In other respects, the security interest is subject to this  
28 chapter.

29 (d) Inapplicability to certain inventory. During any period in  
30 which collateral subject to a statute specified in subsection (a) (2) is  
31 inventory held for sale or lease by a person or leased by that person  
32 as lessor and that person is in the business of selling goods of that  
33 kind, this section does not apply to a security interest in that  
34 collateral created by that person.

35 (cf: P.L.2001, c.386, s.27)

36

37 12. N.J.S.12A:9-312 is amended to read as follows:

38 12A:9-312. Perfection of Security Interests in Chattel Paper,  
39 Deposit Accounts, Documents, Goods Covered by Documents,  
40 Instruments, Investment Property, Letter-of-credit Rights, and  
41 Money; Perfection by Permissive Filing; Temporary Perfection  
42 Without Filing or Transfer of Possession.

43 (a) Perfection by filing permitted. A security interest in chattel  
44 paper, negotiable documents, instruments, or investment property  
45 may be perfected by filing.

46 (b) Control or possession of certain collateral. Except as  
47 otherwise provided in 12A:9-315 (c) and (d) for proceeds:

- 1 (1) a security interest in a deposit account may be perfected only  
2 by control under 12A:9-314;
- 3 (2) and except as otherwise provided in 12A:9-308 (d), a  
4 security interest in a letter-of-credit right may be perfected only by  
5 control under 12A:9-314; and
- 6 (3) a security interest in money may be perfected only by the  
7 secured party's taking possession under 12A:9-313.
- 8 (c) Goods covered by negotiable document. While goods are in  
9 the possession of a bailee that has issued a negotiable document  
10 covering the goods:
- 11 (1) a security interest in the goods may be perfected by  
12 perfecting a security interest in the document; and
- 13 (2) a security interest perfected in the document has priority  
14 over any security interest that becomes perfected in the goods by  
15 another method during that time.
- 16 (d) Goods covered by nonnegotiable document. While goods  
17 are in the possession of a bailee that has issued a nonnegotiable  
18 document covering the goods, a security interest in the goods may  
19 be perfected by:
- 20 (1) issuance of a document in the name of the secured party;
- 21 (2) the bailee's receipt of notification of the secured party's  
22 interest; or
- 23 (3) filing as to the goods.
- 24 (e) Temporary perfection: new value. A security interest in  
25 certificated securities, negotiable documents, or instruments is  
26 perfected without filing or the taking of possession or control for a  
27 period of 20 days from the time it attaches to the extent that it arises  
28 for new value given under an authenticated security agreement.
- 29 (f) Temporary perfection: goods or documents made available  
30 to debtor. A perfected security interest in a negotiable document or  
31 goods in possession of a bailee, other than one that has issued a  
32 negotiable document for the goods, remains perfected for 20 days  
33 without filing if the secured party makes available to the debtor the  
34 goods or documents representing the goods for the purpose of:
- 35 (1) ultimate sale or exchange; or
- 36 (2) loading, unloading, storing, shipping, transshipping,  
37 manufacturing, processing, or otherwise dealing with them in a  
38 manner preliminary to their sale or exchange.
- 39 (g) Temporary perfection: delivery of security certificate or  
40 instrument to debtor. A perfected security interest in a certificated  
41 security or instrument remains perfected for 20 days without filing  
42 if the secured party delivers the security certificate or instrument to  
43 the debtor for the purpose of:
- 44 (1) ultimate sale or exchange; or
- 45 (2) presentation, collection, enforcement, renewal, or  
46 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 chapter.  
(cf: P.L.2001, c.386, s.28)

13. N.J.S.12A:9-313 is amended to read as follows:

12A:9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.

(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 12A:8-301.

(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 12A:9-316 (d).

(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 12A:8-301 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 (1) the acknowledgment is effective under subsection (c) or  
2 12A:8-301 (a), even if the acknowledgment violates the rights of a  
3 debtor; and

4 (2) unless the person otherwise agrees or law other than this  
5 chapter otherwise provides, the person does not owe any duty to the  
6 secured party and is not required to confirm the acknowledgment to  
7 another person.

8 (h) Secured party's delivery to person other than debtor. A  
9 secured party having possession of collateral does not relinquish  
10 possession by delivering the collateral to a person other than the  
11 debtor or a lessee of the collateral from the debtor in the ordinary  
12 course of the debtor's business if the person was instructed before  
13 the delivery or is instructed contemporaneously with the delivery:

14 (1) to hold possession of the collateral for the secured party's  
15 benefit; or

16 (2) to redeliver the collateral to the secured party.

17 (i) Effect of delivery under subsection (h); no duties or  
18 confirmation. A secured party does not relinquish possession, even  
19 if a delivery under subsection (h) violates the rights of a debtor. A  
20 person to which collateral is delivered under subsection (h) does not  
21 owe any duty to the secured party and is not required to confirm the  
22 delivery to another person unless the person otherwise agrees or law  
23 other than this chapter otherwise provides.

24 (cf: P.L.2001, c.386, s.29)

25

26 14. N.J.S.12A:9-314 is amended to read as follows:

27 12A:9-314. Perfection by Control.

28 (a) Perfection by control. A security interest in investment  
29 property, deposit accounts, letter-of-credit rights, **[or]** electronic  
30 chattel paper, or electronic documents may be perfected by control  
31 of the collateral under 12A:7-106, 12A:9-104, 12A:9-105, 12A:9-  
32 106 or 12A:9-107.

33 (b) Specified collateral: time of perfection by control;  
34 continuation of perfection. A security interest in deposit accounts,  
35 electronic chattel paper, **[or]** letter-of-credit rights, or electronic  
36 documents is perfected by control under 12A:7-106, 12A:9-104,  
37 12A:9-105 or 12A:9-107 when the secured party obtains control and  
38 remains perfected by control only while the secured party retains  
39 control.

40 (c) Investment property: time of perfection by control;  
41 continuation of perfection. A security interest in investment  
42 property is perfected by control under 12A:9-106 from the time the  
43 secured party obtains control and remains perfected by control  
44 until:

45 (1) the secured party does not have control; and

46 (2) one of the following occurs:

47 (A) if the collateral is a certificated security, the debtor has or  
48 acquires possession of the security certificate;

1 (B) if the collateral is an uncertificated security, the issuer has  
2 registered or registers the debtor as the registered owner; or

3 (C) if the collateral is a security entitlement, the debtor is or  
4 becomes the entitlement holder.

5 (cf: P.L.2001, c.386, s.30)

6

7 15. N.J.S.12A:9-316 is amended to read as follows:

8 12A:9-316. **【Continued Perfection of Security Interest**  
9 **Following】** Effect of Change in Governing Law.

10 (a) General rule: effect on perfection of change in governing  
11 law. A security interest perfected pursuant to the law of the  
12 jurisdiction designated in 12A:9-301 (1) or 12A:9-305 (c) remains  
13 perfected until the earliest of:

14 (1) the time perfection would have ceased under the law of that  
15 jurisdiction;

16 (2) the expiration of four months after a change of the debtor's  
17 location to another jurisdiction; or

18 (3) the expiration of one year after a transfer of collateral to a  
19 person that thereby becomes a debtor and is located in another  
20 jurisdiction.

21 (b) Security interest perfected or unperfected under law of new  
22 jurisdiction. If a security interest described in subsection (a)  
23 becomes perfected under the law of the other jurisdiction before the  
24 earliest time or event described in that subsection, it remains  
25 perfected thereafter. If the security interest does not become  
26 perfected under the law of the other jurisdiction before the earliest  
27 time or event, it becomes unperfected and is deemed never to have  
28 been perfected as against a purchaser of the collateral for value.

29 (c) Possessory security interest in collateral moved to new  
30 jurisdiction. A possessory security interest in collateral, other than  
31 goods covered by a certificate of title and as-extracted collateral  
32 consisting of goods, remains continuously perfected if:

33 (1) the collateral is located in one jurisdiction and subject to a  
34 security interest perfected under the law of that jurisdiction;

35 (2) thereafter the collateral is brought into another jurisdiction;  
36 and

37 (3) upon entry into the other jurisdiction, the security interest is  
38 perfected under the law of the other jurisdiction.

39 (d) Goods covered by certificate of title from this State. Except  
40 as otherwise provided in subsection (e), a security interest in goods  
41 covered by a certificate of title which is perfected by any method  
42 under the law of another jurisdiction when the goods become  
43 covered by a certificate of title from this State remains perfected  
44 until the security interest would have become unperfected under the  
45 law of the other jurisdiction had the goods not become so covered.

46 (e) When subsection (d) security interest becomes unperfected  
47 against purchasers. A security interest described in subsection (d)  
48 becomes unperfected as against a purchaser of the goods for value

1 and is deemed never to have been perfected as against a purchaser  
2 of the goods for value if the applicable requirements for perfection  
3 under 12A:9-311 (b) or 12A:9-313 are not satisfied before the  
4 earlier of:

5 (1) the time the security interest would have become  
6 unperfected under the law of the other jurisdiction had the goods  
7 not become covered by a certificate of title from this State; or

8 (2) the expiration of four months after the goods had become so  
9 covered.

10 (f) Change in jurisdiction of bank, issuer, nominated person,  
11 securities intermediary, or commodity intermediary. A security  
12 interest in deposit accounts, letter-of-credit rights, or investment  
13 property which is perfected under the law of the bank's jurisdiction,  
14 the issuer's jurisdiction, a nominated person's jurisdiction, the  
15 securities intermediary's jurisdiction, or the commodity  
16 intermediary's jurisdiction, as applicable, remains perfected until  
17 the earlier of:

18 (1) the time the security interest would have become  
19 unperfected under the law of that jurisdiction; or

20 (2) the expiration of four months after a change of the  
21 applicable jurisdiction to another jurisdiction.

22 (g) Subsection (f) security interest perfected or unperfected  
23 under law of new jurisdiction. If a security interest described in  
24 subsection (f) becomes perfected under the law of the other  
25 jurisdiction before the earlier of the time or the end of the period  
26 described in that subsection, it remains perfected thereafter. If the  
27 security interest does not become perfected under the law of the  
28 other jurisdiction before the earlier of that time or the end of that  
29 period, it becomes unperfected and is deemed never to have been  
30 perfected as against a purchaser of the collateral for value.

31 (h) Effect on filed financing statement of change in governing  
32 law. The following rules apply to collateral to which a security  
33 interest attaches within four months after the debtor changes its  
34 location to another jurisdiction:

35 (1) A financing statement filed before the change pursuant to the  
36 law of the jurisdiction designated in 12A:9-301(1) or 12A:9-305(c)  
37 is effective to perfect a security interest in the collateral if the  
38 financing statement would have been effective to perfect a security  
39 interest in the collateral had the debtor not changed its location.

40 (2) If a security interest perfected by a financing statement that  
41 is effective under paragraph (1) becomes perfected under the law of  
42 the other jurisdiction before the earlier of the time the financing  
43 statement would have become ineffective under the law of the  
44 jurisdiction designated in 12A:9-301(1) or 12A:9-305(c) or the  
45 expiration of the four-month period, it remains perfected thereafter.  
46 If the security interest does not become perfected under the law of  
47 the other jurisdiction before the earlier time or event, it becomes

1 unperfected and is deemed never to have been perfected as against a  
 2 purchaser of the collateral for value.

3 (i) Effect of change in governing law on financing statement  
 4 filed against original debtor. If a financing statement naming an  
 5 original debtor is filed pursuant to the law of the jurisdiction  
 6 designated in 12A:9-301(1) or 12A:9-305(c) and the new debtor is  
 7 located in another jurisdiction, the following rules apply:

8 (1) The financing statement is effective to perfect a security  
 9 interest in collateral acquired by the new debtor before, and within  
 10 four months after, the new debtor becomes bound under 12A:9-  
 11 203(d), if the financing statement would have been effective to  
 12 perfect a security interest in the collateral had the collateral been  
 13 acquired by the original debtor.

14 (2) A security interest perfected by the financing statement and  
 15 which becomes perfected under the law of the other jurisdiction  
 16 before the earlier of the time the financing statement would have  
 17 become ineffective under the law of the jurisdiction designated in  
 18 12A:9-301(1) or 12A:9-305(c) or the expiration of the four-month  
 19 period remains perfected thereafter. A security interest that is  
 20 perfected by the financing statement but which does not become  
 21 perfected under the law of the other jurisdiction before the earlier  
 22 time or event becomes unperfected and is deemed never to have  
 23 been perfected as against a purchaser of the collateral for value.

24 (cf: P.L.2001, c.386, s.32)

25  
 26 16. N.J.S.12A:9-317 is amended to read as follows:

27 12A:9-317 Interests That Take Priority Over or Take Free of  
 28 Security Interest or Agricultural Lien.

29 (a) Conflicting security interests and rights of lien creditors. A  
 30 security interest or agricultural lien is subordinate to the rights of:

31 (1) a person entitled to priority under 12A:9-322; and

32 (2) except as otherwise provided in subsection (e), a person that  
 33 becomes a lien creditor before the earlier of the time:

34 (A) the security interest or agricultural lien is perfected; or

35 (B) one of the conditions specified in 12A:9-203 (b)(3) is met  
 36 and a financing statement covering the collateral is filed.

37 (b) Buyers that receive delivery. Except as otherwise provided  
 38 in subsection (e), a buyer, other than a secured party, of tangible  
 39 chattel paper, tangible documents, goods, instruments, or a  
 40 certificated security **[certificate]** takes free of a security interest or  
 41 agricultural lien if the buyer gives value and receives delivery of the  
 42 collateral without knowledge of the security interest or agricultural  
 43 lien and before it is perfected.

44 (c) Lessees that receive delivery. Except as otherwise provided  
 45 in subsection (e), a lessee of goods takes free of a security interest  
 46 or agricultural lien if the lessee gives value and receives delivery of  
 47 the collateral without knowledge of the security interest or  
 48 agricultural lien and before it is perfected.



1 (d) Licensees and buyers of certain collateral. A licensee of a  
2 general intangible or a buyer, other than a secured party, of  
3 accounts, electronic chattel paper, electronic documents, general  
4 intangibles, or investment property other than a certificated security  
5 takes free of a security interest if the licensee or buyer gives value  
6 without knowledge of the security interest and before it is perfected.

7 (e) Purchase-money security interest. Except as otherwise  
8 provided in 12A:9-320 and 12A:9-321, if a person files a financing  
9 statement with respect to a purchase-money security interest before  
10 or within 20 days after the debtor receives delivery of the collateral,  
11 the security interest takes priority over the rights of a buyer, lessee,  
12 or lien creditor which arise between the time the security interest  
13 attaches and the time of filing.

14 (cf: P.L.2001, c.386, s.33)

15  
16 17. N.J.S.12:9-326 is amended to read as follows:

17 12A:9-326. Priority of Security Interests Created by New Debtor.

18 (a) Subordination of security interest created by new debtor.  
19 Subject to subsection (b), a security interest that is created by a new  
20 debtor **【which is perfected by a filed financing statement that is**  
21 **effective solely under 12A:9-508】** in collateral in which **【a】** the  
22 new debtor has or acquires rights and is perfected solely by a filed  
23 financing statement that would be ineffective to perfect the security  
24 interest but for the application of 12A:9-316(i)(1) and 12A:9-508 is  
25 subordinate to a security interest in the same collateral which is  
26 perfected other than by such a filed financing statement **【that is**  
27 **effective solely under 12A:9-508】**.

28 (b) Priority under other provisions; multiple original debtors.  
29 The other provisions of this part determine the priority among  
30 conflicting security interests in the same collateral perfected by  
31 filed financing statements **【that are effective solely under 12A:9-**  
32 **508】** described in subsection (a). However, if the security  
33 agreements to which a new debtor became bound as debtor were not  
34 entered into by the same original debtor, the conflicting security  
35 interests rank according to priority in time of the new debtor's  
36 having become bound.

37 (cf: P.L.2001, c.386, s.42)

38  
39 18. N.J.S.12A:9-338 is amended to read as follows:

40 12A:9-338. Priority of Security Interest or Agricultural Lien  
41 Perfected by Filed Financing Statement Providing Certain Incorrect  
42 Information.

43 If a security interest or agricultural lien is perfected by a filed  
44 financing statement providing information described in 12A:9-516

45 (b) (5) which is incorrect at the time the financing statement is  
46 filed:

1 (1) the security interest or agricultural lien is subordinate to a  
2 conflicting perfected security interest in the collateral to the extent  
3 that the holder of the conflicting security interest gives value in  
4 reasonable reliance upon the incorrect information; and

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

11 (cf: P.L.2001, c.386, s.54)

12  
13 19. N.J.S.12A:9-406 is amended to read as follows:

14 12A:9-406 Discharge of Account Debtor; Notification of  
15 Assignment; Identification and Proof of Assignment; Restrictions  
16 on Assignment of Accounts, Chattel Paper, Payment Intangibles,  
17 and Promissory Notes Ineffective.

18 (a) Discharge of account debtor; effect of notification. Subject  
19 to subsections (b) through (i), an account debtor on an account,  
20 chattel paper, or a payment intangible may discharge its obligation  
21 by paying the assignor until, but not after, the account debtor  
22 receives a notification, authenticated by the assignor or the  
23 assignee, that the amount due or to become due has been assigned  
24 and that payment is to be made to the assignee. After receipt of the  
25 notification, the account debtor may discharge its obligation by  
26 paying the assignee and may not discharge the obligation by paying  
27 the assignor.

28 (b) When notification ineffective. Subject to subsection (h),  
29 notification is ineffective under subsection (a):

30 (1) if it does not reasonably identify the rights assigned;

31 (2) to the extent that an agreement between an account debtor  
32 and a seller of a payment intangible limits the account debtor's duty  
33 to pay a person other than the seller and the limitation is effective  
34 under law other than this chapter; or

35 (3) at the option of an account debtor, if the notification notifies  
36 the account debtor to make less than the full amount of any  
37 installment or other periodic payment to the assignee, even if:

38 (A) only a portion of the account, chattel paper, or payment  
39 intangible has been assigned to that assignee;

40 (B) a portion has been assigned to another assignee; or

41 (C) the account debtor knows that the assignment to that  
42 assignee is limited.

43 (c) Proof of assignment. Subject to subsection (h), if requested  
44 by the account debtor, an assignee shall seasonably furnish  
45 reasonable proof that the assignment has been made. Unless the  
46 assignee complies, the account debtor may discharge its obligation  
47 by paying the assignor, even if the account debtor has received a  
48 notification under subsection (a).

1 (d) Term restricting assignment generally ineffective. Except as  
2 otherwise provided in subsection (e), 12A:2A-303 and 12A:9-407,  
3 and subject to subsection (h), a term in an agreement between an  
4 account debtor and an assignor or in a promissory note is  
5 ineffective to the extent that it:

6 (1) prohibits, restricts, or requires the consent of the account  
7 debtor or person obligated on the promissory note to the assignment  
8 or transfer of, or the creation, attachment, perfection, or  
9 enforcement of a security interest in, the account, chattel paper,  
10 payment intangible, or promissory note; or

11 (2) provides that the assignment or transfer or the creation,  
12 attachment, perfection, or enforcement of the security interest may  
13 give rise to a default, breach, right of recoupment, claim, defense,  
14 termination, right of termination, or remedy under the account,  
15 chattel paper, payment intangible, or promissory note.

16 (e) Inapplicability of subsection (d) to certain sales. Subsection  
17 (d) does not apply to the sale of a payment intangible or promissory  
18 note, other than a sale pursuant to a disposition under 12A:9-610 or  
19 an acceptance of collateral under 12A:9-620.

20 (f) Legal restrictions on assignment generally ineffective.  
21 Except as otherwise provided in 12A:2A-303 and 12A:9-407 and  
22 subject to subsections (h), (i) and (j), a rule of law, statute, or  
23 regulation that prohibits, restricts, or requires the consent of a  
24 government, governmental body or official, or account debtor to the  
25 assignment or transfer of, or creation of a security interest in, an  
26 account or chattel paper is ineffective to the extent that the rule of  
27 law, statute, or regulation:

28 (1) prohibits, restricts, or requires the consent of the  
29 government, governmental body or official, or account debtor to the  
30 assignment or transfer of, or the creation, attachment, perfection, or  
31 enforcement of a security interest in the account or chattel paper; or

32 (2) provides that the assignment or transfer or the creation,  
33 attachment, perfection, or enforcement of the security interest may  
34 give rise to a default, breach, right of recoupment, claim, defense,  
35 termination, right of termination, or remedy under the account or  
36 chattel paper.

37 (g) Subsection (b) (3) not waivable. Subject to subsection (h), an  
38 account debtor may not waive or vary its option under subsection  
39 (b) (3).

40 (h) Rule for individual under other law. This section is subject  
41 to law other than this chapter which establishes a different rule for  
42 an account debtor who is an individual and who incurred the  
43 obligation primarily for personal, family, or household purposes.

44 (i) Inapplicability. This section does not apply to an assignment  
45 of a health-care-insurance receivable. Subsection (f) does not apply  
46 to an assignment or transfer of, or the creation, attachment,  
47 perfection or enforcement of a security interest in, a right the  
48 transfer of which is prohibited or restricted by any of the following

1 statutes to the extent that the statute is inconsistent with subsection  
2 (f): R.S.34:15-29 (workers' compensation claims); section 13 of  
3 P.L.1970, c.13 (C.5:9-13) (State lottery winnings); and P.L.2001,  
4 c.139 (C.2A:16-63 et seq.) (structured settlement agreements).

5 (j) Section prevails over specified inconsistent law. Except to  
6 the extent otherwise provided in subsection (i), this section prevails  
7 over any inconsistent provision of an existing or future statute, rule  
8 or regulation of this State, unless the provision is contained in a  
9 statute of this State, refers expressly to this section and states that  
10 the provision prevails over this section.

11 (cf: P.L.2001, c.386, s.62)

12  
13 20. N.J.S.12A:9-408 is amended to read as follows:

14 12A:9-408 Restrictions on Assignment of Promissory Notes,  
15 Health-care-insurance Receivables, and Certain General Intangibles  
16 Ineffective.

17 (a) Term restricting assignment generally ineffective. Except as  
18 otherwise provided in subsection (b), a term in a promissory note or  
19 in an agreement between an account debtor and a debtor which  
20 relates to a health-care-insurance receivable or a general intangible,  
21 including a contract, permit, license, or franchise, and which term  
22 prohibits, restricts, or requires the consent of the person obligated  
23 on the promissory note or the account debtor to, the assignment or  
24 transfer of, or creation, attachment, or perfection of a security  
25 interest in, the promissory note, health-care-insurance receivable, or  
26 general intangible, is ineffective to the extent that the term:

27 (1) would impair the creation, attachment, or perfection of a  
28 security interest; or

29 (2) provides that the assignment or transfer or the creation,  
30 attachment, or perfection of the security interest may give rise to a  
31 default, breach, right of recoupment, claim, defense, termination,  
32 right of termination, or remedy under the promissory note, health-  
33 care-insurance receivable, or general intangible.

34 (b) Applicability of subsection (a) to sales of certain rights to  
35 payment. Subsection (a) applies to a security interest in a payment  
36 intangible or promissory note only if the security interest arises out  
37 of a sale of the payment intangible or promissory note, other than a  
38 sale pursuant to a disposition under 12A:9-610 or an acceptance of  
39 collateral under 12A:9-620.

40 (c) Legal restrictions on assignment generally ineffective.  
41 Except as provided in subsection (e), a rule of law, statute, or  
42 regulation that prohibits, restricts, or requires the consent of a  
43 government, governmental body or official, person obligated on a  
44 promissory note, or account debtor to the assignment or transfer of,  
45 or creation of a security interest in, a promissory note, health-care-  
46 insurance receivable, or general intangible, including a contract,  
47 permit, license, or franchise between an account debtor and a

1 debtor, is ineffective to the extent that the rule of law, statute, or  
2 regulation:

3 (1) would impair the creation, attachment, or perfection of a  
4 security interest; or

5 (2) provides that the assignment or transfer or the creation,  
6 attachment, or perfection of the security interest may give rise to a  
7 default, breach, right of recoupment, claim, defense, termination,  
8 right of termination, or remedy under the promissory note, health-  
9 care-insurance receivable, or general intangible.

10 (d) Limitation on ineffectiveness under subsections (a) and (c).  
11 To the extent that a term in a promissory note or in an agreement  
12 between an account debtor and a debtor which relates to a health-  
13 care-insurance receivable or general intangible or a rule of law,  
14 statute, or regulation described in subsection (c) would be effective  
15 under law other than this chapter but is ineffective under subsection  
16 (a) or (c), the creation, attachment, or perfection of a security  
17 interest in the promissory note, health-care-insurance receivable, or  
18 general intangible:

19 (1) is not enforceable against the person obligated on the  
20 promissory note or the account debtor;

21 (2) does not impose a duty or obligation on the person obligated  
22 on the promissory note or the account debtor;

23 (3) does not require the person obligated on the promissory note  
24 or the account debtor to recognize the security interest, pay or  
25 render performance to the secured party, or accept payment or  
26 performance from the secured party;

27 (4) does not entitle the secured party to use or assign the  
28 debtor's rights under the promissory note, health-care-insurance  
29 receivable, or general intangible, including any related information  
30 or materials furnished to the debtor in the transaction giving rise to  
31 the promissory note, health-care-insurance receivable, or general  
32 intangible;

33 (5) does not entitle the secured party to use, assign, possess, or  
34 have access to any trade secrets or confidential information of the  
35 person obligated on the promissory note or the account debtor; and

36 (6) does not entitle the secured party to enforce the security  
37 interest in the promissory note, health-care-insurance receivable, or  
38 general intangible.

39 (e) Section prevails over specified inconsistent law. Except to  
40 the extent otherwise provided in subsection (f), this section prevails  
41 over any inconsistent provision of an existing or future statute, rule  
42 or regulation of this State, unless the provision is contained in a  
43 statute of this State, refers expressly to this section and states that  
44 the provision prevails over this section.

45 (f) Inapplicability. Subsection (c) does not apply to an  
46 assignment or transfer of, or the creation, attachment, perfection or  
47 enforcement of a security interest in, a right the transfer of which is  
48 prohibited or restricted by any of the following statutes to the extent

1 that the statute is inconsistent with subsection (c): R.S.34:15-29  
2 (workers' compensation claims); section 13 of P.L.1970, c.13  
3 (C.5:9-13) (State lottery winnings); and P.L.2001, c.139 (C.2A:16-  
4 63 et seq.) (structured settlement agreements).  
5 (cf: P.L.2001, c.386, s.64)

6  
7 21. N.J.S.12A:9-502 is amended to read as follows:

8 12A:9-502 Contents of Financing Statement; Record of  
9 Mortgage as Financing Statement; Time of Filing Financing  
10 Statement.

11 (a) Sufficiency of financing statement. Subject to subsection (b),  
12 a financing statement is sufficient only if it:

13 (1) provides the name of the debtor;

14 (2) provides the name of the secured party or a representative of  
15 the secured party; and

16 (3) indicates the collateral covered by the financing statement.

17 (b) Real-property-related financing statements. Except as  
18 otherwise provided in 12A:9-501(b), to be sufficient, a financing  
19 statement that covers as-extracted collateral or timber to be cut, or  
20 which is filed as a fixture filing and covers goods that are or are to  
21 become fixtures, must satisfy subsection (a) and also:

22 (1) indicate that it covers this type of collateral;

23 (2) indicate that it is to be filed in the real property records;

24 (3) provide a description of the real property to which the  
25 collateral is related [sufficient to give constructive notice of a  
26 mortgage under the law of this State if the description were  
27 contained in a record of the mortgage of the real property]; and

28 (4) if the debtor does not have an interest of record in the real  
29 property, provide the name of a record owner.

30 (c) Record of mortgage as financing statement. A record of a  
31 mortgage is effective, from the date of recording, as a financing  
32 statement filed as a fixture filing or as a financing statement  
33 covering as-extracted collateral or timber to be cut only if:

34 (1) the record indicates the goods or accounts that it covers;

35 (2) the goods are or are to become fixtures related to the real  
36 property described in the record or the collateral is related to the  
37 real property described in the record and is as-extracted collateral or  
38 timber to be cut;

39 (3) the record satisfies the requirements for a financing  
40 statement in this section [other than an indication] , but:

41 (A) the record need not indicate that it is to be filed in the real  
42 property records; and

43 (B) the record sufficiently provides the name of a debtor who is  
44 an individual if it provides the individual name of the debtor or the  
45 surname and first personal name of the debtor, even if the debtor is  
46 an individual to whom 12A:9-503(a) (4) applies; and

47 (4) the record is recorded.

(d) Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(cf: P.L.2001, c.386, s.67)

22. N.J.S.12A:9-503 is amended to read as follows:

12A:9-503 Name of Debtor and Secured Party.

(a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name [of the debtor indicated] that is stated to be the registered organization's name on the public organic record [of the debtor's] most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which [shows the debtor to have been organized] purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the [debtor is a decedent's estate] collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the [debtor is an estate] collateral is being administered by a personal representative;

(3) if the [debtor is a trust or a trustee acting with respect to property] collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) [provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors] provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) [indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust] in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A) (i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A) (ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

1       (4) subject to subsection (g), if the debtor is an individual to  
2 whom this State has issued a driver's license that has not expired,  
3 only if the financing statement provides the name of the individual  
4 which is indicated on the driver's license;

5       (5) if the debtor is an individual to whom paragraph (4) does not  
6 apply, only if the financing statement provides the individual name  
7 of the debtor or the surname and first personal name of the debtor;  
8 and

9       **[(4)]** (6) in other cases:

10       (A) if the debtor has a name, only if **[(it)]** the financing statement  
11 provides the [individual or] organizational name of the debtor; and

12       (B) if the debtor does not have a name, only if it provides the  
13 names of the partners, members, associates, or other persons  
14 comprising the debtor, in a manner that each name provided would  
15 be sufficient if the person named were the debtor.

16       (b) Additional debtor-related information. A financing statement  
17 that provides the name of the debtor in accordance with subsection  
18 (a) is not rendered ineffective by the absence of:

19       (1) a trade name or other name of the debtor; or

20       (2) unless required under subsection **[(a)(4)(B)]** (a)(6)(B),  
21 names of partners, members, associates, or other persons  
22 comprising the debtor.

23       (c) Debtor's trade name insufficient. A financing statement that  
24 provides only the debtor's trade name does not sufficiently provide  
25 the name of the debtor.

26       (d) Representative capacity. Failure to indicate the  
27 representative capacity of a secured party or representative of a  
28 secured party does not affect the sufficiency of a financing  
29 statement.

30       (e) Multiple debtors and secured parties. A financing statement  
31 may provide the name of more than one debtor and the name of  
32 more than one secured party.

33       (f) Name of decedent. The name of the decedent indicated on  
34 the order appointing the personal representative of the decedent  
35 issued by the court having jurisdiction over the collateral is  
36 sufficient as the "name of the decedent" under subsection (a)(2).

37       (g) Multiple driver's licenses. If this State has issued to an  
38 individual more than one driver's license of a kind described in  
39 subsection (a)(4), the one that was issued most recently is the one to  
40 which subsection (a)(4) refers.

41       (h) Definition. In this section, the "name of the settlor or  
42 testator" means:

43       (1) if the settlor is a registered organization, the name that is  
44 stated to be the settlor's name on the public organic record most  
45 recently filed with or issued or enacted by the settlor's jurisdiction  
46 of organization which purports to state, amend, or restate the  
47 settlor's name; or



1       (2) in other cases, the name of the settlor or testator indicated in  
2 the trust's organic record.

3 (cf: P.L.2001, c.386, s.68)

4  
5       23. 12A:9-507 is amended to read as follows:

6       12A:9-507. Effect of Certain Events on Effectiveness of  
7 Financing Statement.

8       (a) Disposition. A filed financing statement remains effective  
9 with respect to collateral that is sold, exchanged, leased, licensed,  
10 or otherwise disposed of and in which a security interest or  
11 agricultural lien continues, even if the secured party knows of or  
12 consents to the disposition.

13       (b) Information becoming seriously misleading. Except as  
14 otherwise provided in subsection (c) and 12A:9-508, a financing  
15 statement is not rendered ineffective if, after the financing  
16 statement is filed, the information provided in the financing  
17 statement becomes seriously misleading under 12A:9-506.

18       (c) Change in debtor's name. If **【a debtor so changes its】** the  
19 name that a filed financing statement provides for a debtor becomes  
20 insufficient as the name of the debtor under 12A:9-503 (a) so that  
21 the financing statement becomes seriously misleading under 12A:9-  
22 506:

23       (1) the financing statement is effective to perfect a security  
24 interest in collateral acquired by the debtor before, or within four  
25 months after, the **【change】** filed financing statement becomes  
26 seriously misleading; and

27       (2) the financing statement is not effective to perfect a security  
28 interest in collateral acquired by the debtor more than four months  
29 after the **【change】** filed financing statement becomes seriously  
30 misleading, unless an amendment to the financing statement which  
31 renders the financing statement not seriously misleading is filed  
32 within four months after the **【change】** filed financing statement  
33 becomes seriously misleading.

34 (cf: P.L.2001, c.386, s.72)

35  
36       24. N.J.S.12A:9-515 is amended to read as follows:

37       12A:9-515 Duration and Effectiveness of Financing Statement;  
38 Effect of Lapsed Financing Statement.

39       (a) Five-year effectiveness. Except as otherwise provided in  
40 subsections (b), (e), (f) and (g), a filed financing statement is  
41 effective for a period of five years after the date of filing.

42       (b) Public-finance or manufactured-home transaction. Except as  
43 otherwise provided in subsections (e), (f) and (g), an initial  
44 financing statement filed in connection with a public-finance  
45 transaction or manufactured-home transaction is effective for a  
46 period of 30 years after the date of filing if it indicates that it is  
47 filed in connection with a public-finance transaction or  
48 manufactured-home transaction.

1 (c) Lapse and continuation of financing statement. The  
2 effectiveness of a filed financing statement lapses on the expiration  
3 of the period of its effectiveness unless before the lapse a  
4 continuation statement is filed pursuant to subsection (d). Upon  
5 lapse, a financing statement ceases to be effective and any security  
6 interest or agricultural lien that was perfected by the financing  
7 statement becomes unperfected, unless the security interest is  
8 perfected otherwise. If the security interest or agricultural lien  
9 becomes unperfected upon lapse, it is deemed never to have been  
10 perfected as against a purchaser of the collateral for value.

11 (d) When continuation statement may be filed. A continuation  
12 statement may be filed only within six months before the expiration  
13 of the five-year period specified in subsection (a) or the 30-year  
14 period specified in subsection (b), whichever is applicable.

15 (e) Effect of filing continuation statement. Except as otherwise  
16 provided in 12A:9-510, upon timely filing of a continuation  
17 statement, the effectiveness of the initial financing statement  
18 continues for a period of five years commencing on the day on  
19 which the financing statement would have become ineffective in the  
20 absence of the filing. Upon the expiration of the five-year period,  
21 the financing statement lapses in the same manner as provided in  
22 subsection (c), unless, before the lapse, another continuation  
23 statement is filed pursuant to subsection (d). Succeeding  
24 continuation statements may be filed in the same manner to  
25 continue the effectiveness of the initial financing statement.

26 (f) Transmitting utility financing statement. If a debtor is a  
27 transmitting utility and a filed initial financing statement so  
28 indicates, the financing statement is effective until a termination  
29 statement is filed.

30 (g) Record of mortgage as financing statement. A record of  
31 mortgage that is effective as a financing statement filed as a fixture  
32 filing under 12A:9-502 (c) remains effective as a financing  
33 statement filed as a fixture filing until the mortgage is released or  
34 satisfied of record or its effectiveness otherwise terminates as to the  
35 real property.

36 (h) Bondable transition property. If a filed financing statement  
37 relates to a security interest in bondable transition property and the  
38 financing statement so states, it is effective until a termination  
39 statement is filed.

40 (cf: P.L.2001, c.386, s.80)

41  
42 25. Section 12A:9-516 is amended to read as follows:

43 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

44 (a) What constitutes filing. Except as otherwise provided in  
45 subsection (b), communication of a record to a filing office and  
46 tender of the filing fee or acceptance of the record by the filing  
47 office constitutes filing.

1 (b) Refusal to accept record; filing does not occur. Filing does  
2 not occur with respect to a record that a filing office refuses to  
3 accept because:

4 (1) the record is not communicated by a method or medium of  
5 communication authorized by the filing office;

6 (2) an amount equal to or greater than the applicable filing fee is  
7 not tendered;

8 (3) the filing office is unable to index the record because:

9 (A) in the case of an initial financing statement, the record does  
10 not provide a name for the debtor;

11 (B) in the case of an amendment or **[correction]** information  
12 statement, the record:

13 (i) does not identify the initial financing statement as required  
14 by 12A:9-512 or 12A:9-518, as applicable; or

15 (ii) identifies an initial financing statement whose effectiveness  
16 has lapsed under 12A:9-515;

17 (C) in the case of an initial financing statement that provides the  
18 name of a debtor identified as an individual or an amendment that  
19 provides a name of a debtor identified as an individual which was  
20 not previously provided in the financing statement to which the  
21 record relates, the record does not identify the debtor's **[last name]**  
22 surname; or

23 (D) in the case of a record filed or recorded in the filing office  
24 described in 12A:9-501 (a) (1), the record does not provide a  
25 sufficient description of the real property to which it relates;

26 (4) in the case of an initial financing statement or an amendment  
27 that adds a secured party of record, the record does not provide a  
28 name and mailing address for the secured party of record;

29 (5) in the case of an initial financing statement or an amendment  
30 that provides a name of a debtor which was not previously provided  
31 in the financing statement to which the amendment relates, the  
32 record does not:

33 (A) provide a mailing address for the debtor; or

34 (B) indicate whether the name provided as the name of the  
35 debtor is the name of an individual or an organization; **[or]**

36 (C) **[if the financing statement indicates that the debtor is an**  
37 organization, provide:

38 (i) a type of organization for the debtor;

39 (ii) a jurisdiction of organization for the debtor; or

40 (iii) an organizational identification number for the debtor or  
41 indicate that the debtor has none;] Deleted by amendment,  
42 P.L. c. .) (pending before the Legislature as this bill)

43 (6) in the case of an assignment reflected in an initial financing  
44 statement under 12A:9-514 (a) or an amendment filed under 12A:9-  
45 514 (b), the record does not provide a name and mailing address for  
46 the assignee; or

1 (7) in the case of a continuation statement, the record is not filed  
2 within the six-month period prescribed by 12A:9-515 (d).

3 (c) Rules applicable to subsection (b). For purposes of  
4 subsection (b):

5 (1) a record does not provide information if the filing office is  
6 unable to read or decipher the information; and

7 (2) a record that does not indicate that it is an amendment or  
8 identify an initial financing statement to which it relates, as required  
9 by 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing  
10 statement.

11 (d) Refusal to accept record; record effective as filed record. A  
12 record that is communicated to the filing office with tender of the  
13 filing fee, but which the filing office refuses to accept for a reason  
14 other than one set forth in subsection (b), is effective as a filed  
15 record except as against a purchaser of the collateral which gives  
16 value in reasonable reliance upon the absence of the record from the  
17 files.

18 (cf: P.L.2001, c.386, s.81)

19

20 26. N.J.S.12A:9-518 is amended to read as follows:

21 12A:9-518 Claim Concerning Inaccurate or Wrongfully Filed  
22 Record.

23 (a) **【Correction statement.】** Statement with respect to record  
24 indexed under person's name. A person may file in the filing office  
25 **【a correction】** an information statement with respect to a record  
26 indexed there under the person's name if the person believes that the  
27 record is inaccurate or was wrongfully filed.

28 (b) **【Sufficiency】** Contents of **【correction】** statement under  
29 subsection (a). **【A correction】** An information statement under  
30 subsection (a) must:

31 (1) identify the record to which it relates by the file number  
32 assigned to the initial financing statement to which the record  
33 relates;

34 (2) indicate that it is **【a correction】** an information statement;  
35 and

36 (3) provide the basis for the person's belief that the record is  
37 inaccurate and indicate the manner in which the person believes the  
38 record should be amended to cure any inaccuracy or provide the  
39 basis for the person's belief that the record was wrongfully filed.

40 (c) Statement by secured party of record. A person may file in  
41 the filing office an information statement with respect to a record  
42 filed there if the person is a secured party of record with respect to  
43 the financing statement to which the record relates and believes that  
44 the person that filed the record was not entitled to do so under  
45 12A:9-509(d).

46 (d) Contents of statement under subsection (c). An information  
47 statement under subsection (c) must:

1     (1) identify the record to which it relates by the file number  
2     assigned to the initial financing statement to which the record  
3     relates;

4     (2) indicate that it is an information statement; and

5     (3) provide the basis for the person's belief that the person that  
6     filed the record was not entitled to do so under 12A:9-509(d).

7     (e) Record not affected by **[correction]** information statement.  
8     The filing of **[a correction]** an information statement does not  
9     affect the effectiveness of an initial financing statement or other  
10    filed record.

11    (cf: P.L.2 c.386, s.82)

12  
13    27. N.J.S.12A:9-601 is amended to read as follows:

14    12A:9-601. Rights After Default; Judicial Enforcement;  
15    Consignor or Buyer of Accounts, Chattel Paper, Payment  
16    Intangibles, or Promissory Notes.

17    (a) Rights of secured party after default. After default, a  
18    secured party has the rights provided in this part and, except as  
19    otherwise provided in 12A:9-602, those provided by agreement of  
20    the parties. A secured party:

21    (1) may reduce a claim to judgment, foreclose, or otherwise  
22    enforce the claim, security interest, or agricultural lien by any  
23    available judicial procedure; and

24    (2) if the collateral is documents, may proceed either as to the  
25    documents or as to the goods they cover.

26    (b) Rights and duties of secured party in possession or control.  
27    A secured party in possession of collateral or control of collateral  
28    under 12A:7-106, 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107  
29    has the rights and duties provided in 12A:9-207.

30    (c) Rights cumulative; simultaneous exercise. The rights under  
31    subsections (a) and (b) are cumulative and may be exercised  
32    simultaneously.

33    (d) Rights of debtor and obligor. Except as otherwise provided  
34    in subsection (g) and 12A:9-605, after default, a debtor and an  
35    obligor have the rights provided in this part and by agreement of the  
36    parties.

37    (e) Lien of levy after judgment. If a secured party has reduced  
38    its claim to judgment, the lien of any levy that may be made upon  
39    the collateral by virtue of an execution based upon the judgment  
40    relates back to the earliest of:

41    (1) the date of perfection of the security interest or agricultural  
42    lien in the collateral;

43    (2) the date of filing a financing statement covering the  
44    collateral; or

45    (3) any date specified in a statute under which the agricultural  
46    lien was created.

47    (f) Execution sale. A sale pursuant to an execution is a  
48    foreclosure of the security interest or agricultural lien by judicial

1 procedure within the meaning of this section. A secured party may  
2 purchase at the sale and thereafter hold the collateral free of any  
3 other requirements of this chapter.

4 (g) Consignor or buyer of certain rights to payment. Except as  
5 otherwise provided in 12A:9-607 (c), this part imposes no duties  
6 upon a secured party that is a consignor or is a buyer of accounts,  
7 chattel paper, payment intangibles, or promissory notes.  
8 (cf: P.L.2001, c.386, s.91)  
9

10 28. N.J.S.12A:9-607 is amended to read as follows:

11 12A:9-607. Collection and Enforcement by Secured Party.

12 (a) Collection and enforcement generally. If so agreed, and in  
13 any event after default, a secured party:

14 (1) may notify an account debtor or other person obligated on  
15 collateral to make payment or otherwise render performance to or  
16 for the benefit of the secured party;

17 (2) may take any proceeds to which the secured party is entitled  
18 under 12A:9-315;

19 (3) may enforce the obligations of an account debtor or other  
20 person obligated on collateral and exercise the rights of the debtor  
21 with respect to the obligation of the account debtor or other person  
22 obligated on collateral to make payment or otherwise render  
23 performance to the debtor, and with respect to any property that  
24 secures the obligation of the account debtor or other person  
25 obligated on the collateral;

26 (4) if it holds a security interest in a deposit account perfected  
27 by control under 12A:9-104 (a) (1), may apply the balance of the  
28 deposit account to the obligation secured by the deposit account;  
29 and

30 (5) if it holds a security interest in a deposit account perfected  
31 by control under 12A:9-104 (a) (2) or (3), may instruct the bank to  
32 pay the balance of the deposit account to or for the benefit of the  
33 secured party.

34 (b) Nonjudicial enforcement of mortgage. If necessary to enable  
35 a secured party to exercise under subsection (a) (3) the right of a  
36 debtor to enforce a mortgage nonjudicially, the secured party may  
37 record in the office in which a record of the mortgage is recorded:

38 (1) a copy of the security agreement that creates or provides for  
39 a security interest in the obligation secured by the mortgage; and

40 (2) the secured party's sworn affidavit in recordable form stating  
41 that:

42 (A) a default has occurred with respect to the obligation secured  
43 by the mortgage; and

44 (B) the secured party is entitled to enforce the mortgage  
45 nonjudicially.

46 (c) Commercially reasonable collection and enforcement. A  
47 secured party shall proceed in a commercially reasonable manner if  
48 the secured party:

1 (1) undertakes to collect from or enforce an obligation of an  
2 account debtor or other person obligated on collateral; and

3 (2) is entitled to charge back uncollected collateral or otherwise  
4 to full or limited recourse against the debtor or a secondary obligor.

5 (d) Expenses of collection and enforcement. A secured party  
6 may deduct from the collections made pursuant to subsection (c),  
7 reasonable expenses of collection and enforcement, including  
8 reasonable attorney's fees and legal expenses incurred by the  
9 secured party.

10 (e) Duties to secured party not affected. This section does not  
11 determine whether an account debtor, bank, or other person  
12 obligated on collateral owes a duty to a secured party.

13 (cf: P.L.2001, c.386, s.96)

14

15 29. N.J.S.12A:9-625 is amended to read as follows:

16 12A:9-625. Remedies for Secured Party's Failure to Comply with  
17 Chapter.

18 (a) Judicial orders concerning noncompliance. If it is  
19 established that a secured party is not proceeding in accordance  
20 with this chapter, a court may order or restrain collection,  
21 enforcement, or disposition of collateral on appropriate terms and  
22 conditions.

23 (b) Damages for noncompliance. Subject to subsections (c), (d)  
24 and (f), a person is liable for damages in the amount of any loss  
25 caused by a failure to comply with this chapter. Loss caused by a  
26 failure to comply may include loss resulting from the debtor's  
27 inability to obtain, or increased costs of, alternative financing.

28 (c) Persons entitled to recover damages; statutory damages [in  
29 consumer-goods transaction] if collateral is consumer goods.  
30 Except as otherwise provided in 12A:9-628:

31 (1) a person that, at the time of the failure, was a debtor, was an  
32 obligor, or held a security interest in or other lien on the collateral  
33 may recover damages under subsection (b) for its loss; and

34 (2) if the collateral is consumer goods, a person that was a  
35 debtor or a secondary obligor at the time a secured party failed to  
36 comply with this part may recover for that failure in any event an  
37 amount not less than the credit service charge plus 10 percent of the  
38 principal amount of the obligation or the time-price differential plus  
39 10 percent of the cash price.

40 (d) Recovery when deficiency eliminated or reduced. A debtor  
41 whose deficiency is eliminated under 12A:9-626 may recover  
42 damages for the loss of any surplus. However, a debtor or  
43 secondary obligor whose deficiency is eliminated or reduced under  
44 12A:9-626 may not otherwise recover under subsection (b) for  
45 noncompliance with the provisions of this part relating to  
46 collection, enforcement, disposition, or acceptance.

47 (e) Statutory damages: noncompliance with specified  
48 provisions. In addition to any damages recoverable under

1 subsection (b), the debtor, consumer obligor, or person named as a  
2 debtor in a filed record, as applicable, may recover \$500 in each  
3 case from a person that:

4 (1) fails to comply with 12A:9-207;

5 (2) fails to comply with 12A:9-208;

6 (3) files a record that the person is not entitled to file under  
7 12A:9-509 (a);

8 (4) fails to cause the secured party of record to file or send a  
9 termination statement as required by 12A:9-513 (a) or (c);

10 (5) fails to comply with 12A:9-616 (b) (1) and whose failure is  
11 part of a pattern, or consistent with a practice, of noncompliance; or

12 (6) fails to comply with 12A:9-616 (b) (2).

13 (f) Statutory damages: noncompliance with 12A:9-210. A  
14 debtor or consumer obligor may recover damages under subsection  
15 (b) and, in addition, \$500 in each case from a person that, without  
16 reasonable cause, fails to comply with a request under 12A:9-210.  
17 A recipient of a request under 12A:9-210 which never claimed an  
18 interest in the collateral or obligations that are the subject of a  
19 request under that section has a reasonable excuse for failure to  
20 comply with the request within the meaning of this subsection.

21 (g) Limitation of security interest: noncompliance with 12A:9-  
22 210. If a secured party fails to comply with a request regarding a  
23 list of collateral or a statement of account under 12A:9-210, the  
24 secured party may claim a security interest only as shown in the list  
25 or statement included in the request as against a person that is  
26 reasonably misled by the failure.

27 (cf: P.L.2001, c.386, s.114)

28  
29 30. (New section) Title 12A, Chapter 9 is supplemented as  
30 follows:

#### 31 TRANSITION PROVISIONS

32  
33 12A:9-801. Effective Date.

34 This act (P.L. , c. , ), amends and supplements Chapter 9 of  
35 Title 12A of the New Jersey Statutes, and shall take effect on July  
36 1, 2013.

37  
38 12A:9-802. Savings Clause.

39 (a) Pre-effective date transactions or liens. Except as otherwise  
40 provided in this part, this act applies to a transaction or lien within  
41 its scope, even if the transaction or lien was entered into or created  
42 before this act takes effect.

43 (b) Pre-effective-date proceedings. This act does not affect an  
44 action, case, or proceeding commenced before this act takes effect.

45  
46 12A:9-803. Security Interest Perfected Before Effective Date.

47 (a) Continuing perfection: perfection requirements satisfied. A  
48 security interest that is a perfected security interest immediately



1 before this act takes effect is a perfected security interest under  
2 Chapter 9 as amended by this act if, when this act takes effect, the  
3 applicable requirements for attachment and perfection under  
4 Chapter 9 as amended by this act are satisfied without further  
5 action.

6 (b) Continuing perfection: perfection requirements not satisfied.  
7 Except as otherwise provided in 12A:9-805, if, immediately before  
8 this act takes effect, a security interest is a perfected security  
9 interest, but the applicable requirements for perfection under  
10 Chapter 9 as amended by this act are not satisfied when this act  
11 takes effect, the security interest remains perfected thereafter only if  
12 the applicable requirements for perfection under Chapter 9 as  
13 amended by this act are satisfied within one year after this act takes  
14 effect.

15

16 12A:9-804. Security Interest Unperfected Before Effective Date.

17 A security interest that is an unperfected security interest  
18 immediately before this act takes effect becomes a perfected  
19 security interest:

20 (1) without further action, when this act takes effect if the  
21 applicable requirements for perfection under Chapter 9 as amended  
22 by this act are satisfied before or at that time; or

23 (2) when the applicable requirements for perfection are satisfied  
24 if the requirements are satisfied after that time.

25

26 12A:9-805. Effectiveness of Action Taken Before Effective  
27 Date.

28 (a) Pre-effective-date filing effective. The filing of a financing  
29 statement before this act takes effect is effective to perfect a  
30 security interest to the extent the filing would satisfy the applicable  
31 requirements for perfection under Chapter 9 as amended by this act.

32 (b) When pre-effective-date filing becomes ineffective. This act  
33 does not render ineffective an effective financing statement that,  
34 before this act takes effect, is filed and satisfies the applicable  
35 requirements for perfection under the law of the jurisdiction  
36 governing perfection as provided in Chapter 9 as it existed before  
37 amendment. However, except as otherwise provided in subsections  
38 (c) and (d) and 12A:9-806, the financing statement ceases to be  
39 effective:

40 (1) if the financing statement is filed in this State, at the time the  
41 financing statement would have ceased to be effective had this act  
42 not taken effect; or

43 (2) if the financing statement is filed in another jurisdiction, at  
44 the earlier of:

45 (A) the time the financing statement would have ceased to be  
46 effective under the law of that jurisdiction; or

47 (B) June 30, 2018.

1 (c) Continuation statement. The filing of a continuation  
2 statement after this act takes effect does not continue the  
3 effectiveness of a financing statement filed before this act takes  
4 effect. However, upon the timely filing of a continuation statement  
5 after this act takes effect and in accordance with the law of the  
6 jurisdiction governing perfection as provided in Chapter 9 as  
7 amended by this act, the effectiveness of a financing statement filed  
8 in the same office in that jurisdiction before this act takes effect  
9 continues for the period provided by the law of that jurisdiction.

10 (d) Application of subsection (b)(2)(B) to transmitting utility  
11 financing statement. Subsection (b)(2)(B) applies to a financing  
12 statement that, before this act takes effect, is filed against a  
13 transmitting utility and satisfies the applicable requirements for  
14 perfection under the law of the jurisdiction governing perfection as  
15 provided in Chapter 9 as it existed before amendment, only to the  
16 extent that Chapter 9 as amended by this act provides that the law  
17 of a jurisdiction other than the jurisdiction in which the financing  
18 statement is filed governs perfection of a security interest in  
19 collateral covered by the financing statement.

20 (e) Application of Subchapter 5. A financing statement that  
21 includes a financing statement filed before this act takes effect and  
22 a continuation statement filed after this act takes effect is effective  
23 only to the extent that it satisfies the requirements of Subchapter 5  
24 as amended by this act for an initial financing statement. A  
25 financing statement that indicates that the debtor is a decedent's  
26 estate indicates that the collateral is being administered by a  
27 personal representative within the meaning of 12A:9-503(a)(2) as  
28 amended by this act. A financing statement that indicates that the  
29 debtor is a trust or is a trustee acting with respect to property held in  
30 trust indicates that the collateral is held in a trust within the  
31 meaning of 12A:9-503(a)(3) as amended by this act.

32

33 12A:9-806. When Initial Financing Statement Suffices to  
34 Continue Effectiveness of Financing Statement.

35 (a) Initial financing statement in lieu of continuation statement.  
36 The filing of an initial financing statement in the office specified in  
37 12A:9-501 continues the effectiveness of a financing statement filed  
38 before this act takes effect if:

39 (1) the filing of an initial financing statement in that office  
40 would be effective to perfect a security interest under Chapter 9 as  
41 amended by this act;

42 (2) the pre-effective-date financing statement was filed in an  
43 office in another state; and

44 (3) the initial financing statement satisfies subsection (c).

45 (b) Period of continued effectiveness. The filing of an initial  
46 financing statement under subsection (a) continues the effectiveness  
47 of the pre-effective-date financing statement:

1 (1) if the initial financing statement is filed before this act takes  
2 effect, for the period provided in unamended 12A:9-515 with  
3 respect to an initial financing statement; and

4 (2) if the initial financing statement is filed after this act takes  
5 effect, for the period provided in 12A:9-515 as amended by this act  
6 with respect to an initial financing statement.

7 (c) Requirements for initial financing statement under  
8 subsection (a). To be effective for purposes of subsection (a), an  
9 initial financing statement must:

10 (1) satisfy the requirements of Subchapter 5 as amended by this  
11 act for an initial financing statement;

12 (2) identify the pre-effective-date financing statement by  
13 indicating the office in which the financing statement was filed and  
14 providing the dates of filing and file numbers, if any, of the  
15 financing statement and of the most recent continuation statement  
16 filed with respect to the financing statement; and

17 (3) indicate that the pre-effective-date financing statement  
18 remains effective.

19  
20 12A:9-807. Amendment of Pre-Effective-Date Financing  
21 Statement.

22 (a) “Pre-effective-date financing statement.” In this section,  
23 “pre-effective-date financing statement” means a financing  
24 statement filed before this act takes effect.

25 (b) Applicable law. After this act takes effect, a person may add  
26 or delete collateral covered by, continue or terminate the  
27 effectiveness of, or otherwise amend the information provided in, a  
28 pre-effective-date financing statement only in accordance with the  
29 law of the jurisdiction governing perfection as provided in Chapter  
30 9 as amended by this act. However, the effectiveness of a pre-  
31 effective-date financing statement also may be terminated in  
32 accordance with the law of the jurisdiction in which the financing  
33 statement is filed.

34 (c) Method of amending: general rule. Except as otherwise  
35 provided in subsection (d), if the law of this State governs  
36 perfection of a security interest, the information in a pre-effective-  
37 date financing statement may be amended after this act takes effect  
38 only if:

39 (1) the pre-effective-date financing statement and an amendment  
40 are filed in the office specified in 12A:9-501;

41 (2) an amendment is filed in the office specified in 12A:9-501  
42 concurrently with, or after the filing in that office of, an initial  
43 financing statement that satisfies 12A:9-806 (c); or

44 (3) an initial financing statement that provides the information  
45 as amended and satisfies 12A:9-806 (c) is filed in the office  
46 specified in 12A:9-501.

47 (d) Method of amending: continuation. If the law of this State  
48 governs perfection of a security interest, the effectiveness of a pre-

1 effective-date financing statement may be continued only under  
2 12A:9-805 (c) and (e) or 12A:9-806.

3 (e) Method of amending: additional termination rule. Whether  
4 or not the law of this State governs perfection of a security interest,  
5 the effectiveness of a pre-effective-date financing statement filed in  
6 this State may be terminated after this act takes effect by filing a  
7 termination statement in the office in which the pre-effective-date  
8 financing statement is filed, unless an initial financing statement  
9 that satisfies 12A:9-806 (c) has been filed in the office specified by  
10 the law of the jurisdiction governing perfection as provided in  
11 Chapter 9 as amended by this act as the office in which to file a  
12 financing statement.

13

14 12A:9-808. Person Entitled to File Initial Financing Statement or  
15 Continuation Statement. A person may file an initial financing  
16 statement or a continuation statement under this part if:

17 (1) the secured party of record authorizes the filing; and

18 (2) the filing is necessary under this part:

19 (A) to continue the effectiveness of a financing statement filed  
20 before this act takes effect; or

21 (B) to perfect or continue the perfection of a security interest.

22

23 12A:9-809. Priority. This act determines the priority of  
24 conflicting claims to collateral. However, if the relative priorities  
25 of the claims were established before this act takes effect, Chapter 9  
26 as it existed before amendment determines priority.

27

28 31. N.J.S.12A:2-103 is amended to read as follows:

29 12A:2-103. Definitions and index of definitions

30 (1) In this chapter unless the context otherwise requires:

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

32 (b) "Good faith" in the case of a merchant means honesty in fact  
33 and the observance of reasonable commercial standards of fair  
34 dealing in the trade.

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

37 (d) "Seller" means a person who sells or contracts to sell goods.

38 (2) Other definitions applying to this Chapter or to specified  
39 Subchapters thereof, and the sections in which they appear are:

40 "Acceptance" 12A:2-606.

41 "Banker's credit" 12A:2-325.

42 "Between merchants" 12A:2-104.

43 "Cancellation" 12A:2-106(4).

44 "Commercial unit" 12A:2-105.

45 "Confirmed credit" 12A:2-325.

46 "Conforming to contract" 12A:2-106.

47 "Contract for sale" 12A:2-106.

48 "Cover" 12A:2-712.

|    |                                |            |
|----|--------------------------------|------------|
| 1  | "Entrusting"                   | 12A:2-403. |
| 2  | "Financing agency"             | 12A:2-104. |
| 3  | "Future goods"                 | 12A:2-105. |
| 4  | "Goods"                        | 12A:2-105. |
| 5  | "Identification"               | 12A:2-501. |
| 6  | "Installment contract"         | 12A:2-612. |
| 7  | "Letter of Credit"             | 12A:2-325. |
| 8  | "Lot"                          | 12A:2-105. |
| 9  | "Merchant"                     | 12A:2-104. |
| 10 | "Overseas"                     | 12A:2-323. |
| 11 | "Person in position of seller" | 12A:2-707. |
| 12 | "Present sale"                 | 12A:2-106. |
| 13 | "Sale"                         | 12A:2-106. |
| 14 | "Sale on approval"             | 12A:2-326. |
| 15 | "Sale or return"               | 12A:2-326. |
| 16 | "Termination"                  | 12A:2-106. |

17 (3) The following definitions in other Chapters apply to this  
18 Chapter:

|    |                  |                  |
|----|------------------|------------------|
| 19 | "Check"          | 12A:3-104.       |
| 20 | "Consignee"      | 12A:7-102.       |
| 21 | "Consignor"      | 12A:7-102.       |
| 22 | "Consumer goods" | 12A:9-102.       |
| 23 | <u>"Control"</u> | <u>12A:7-106</u> |
| 24 | "Dishonor"       | 12A:3-502.       |
| 25 | "Draft"          | 12A:3-104.       |

26 (4) In addition Chapter 1 contains general definitions and  
27 principles of construction and interpretation applicable throughout  
28 this Chapter.

29 (cf: P.L.2001, c.117, s.5)

30

31 32. N.J.S.12A:2-104 is amended to read as follows:

32 12A:2-104. Definitions: "merchant"; "between merchants";  
33 "financing agency"

34 (1) "Merchant" means a person who deals in goods of the kind  
35 or otherwise by his occupation holds himself out as having  
36 knowledge or skill peculiar to the practices or goods involved in the  
37 transaction or to whom such knowledge or skill may be attributed  
38 by his employment of an agent or broker or other intermediary who  
39 by his occupation holds himself out as having such knowledge or  
40 skill.

41 (2) "Financing agency" means a bank, finance company or other  
42 person who in the ordinary course of business makes advances  
43 against goods or documents of title or who by arrangement with  
44 either the seller or the buyer intervenes in ordinary course to make  
45 or collect payment due or claimed under the contract for sale, as by  
46 purchasing or paying the seller's draft or making advances against it  
47 or by merely taking it for collection whether or not documents of  
48 title accompany or are associated with the draft. "Financing agency"

1 includes also a bank or other person who similarly intervenes  
2 between persons who are in the position of seller and buyer in  
3 respect to the goods (12A:2-707).

4 (3) "Between merchants" means in any transaction with respect  
5 to which both parties are chargeable with the knowledge or skill of  
6 merchants.

7 (cf: N.J.S.12A:2-104)

8

9 33. N.J.S.12A:2-310 is amended to read

10 12A:2-310. Open time for payment or running of credit;  
11 authority to ship under reservation

12 Unless otherwise agreed

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

16 (b) if the seller is authorized to send the goods he may ship them  
17 under reservation, and may tender the documents of title, but the  
18 buyer may inspect the goods after their arrival before payment is  
19 due unless such inspection is inconsistent with the terms of the  
20 contract (12A:2-513); and

21 (c) if delivery is authorized and made by way of documents of  
22 title otherwise than by subsection (b) then payment is due  
23 regardless of where the goods are to be received: (i) at the time and  
24 place at which the buyer is to receive delivery of the tangible  
25 documents [regardless of where the goods are to be received]; or  
26 (ii) at the time the buyer is to receive delivery of the electronic  
27 documents and at the seller's place of business or if none, the  
28 seller's residence; and

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

33 (cf: N.J.S.12A:2-310)

34

35 34. N.J.S.12A:2-323 is amended to read as follows:

36 12A:2-323. Form of bill of lading required in overseas shipment;  
37 "overseas"

38 (1) Where the contract contemplates overseas shipment and  
39 contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless  
40 otherwise agreed must obtain a negotiable bill of lading stating that  
41 the goods have been loaded on board or, in the case of a term C.I.F.  
42 or C. & F., received for shipment.

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

1 (a) due tender of a single part is acceptable within the  
2 provisions of this Chapter on cure of improper delivery (subsection  
3 (1) of 12A:2-508); and

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

8 (3) A shipment by water or by air or a contract contemplating  
9 such shipment is "overseas" insofar as by usage of trade or  
10 agreement it is subject to the commercial, financing or shipping  
11 practices characteristic of international deep water commerce.  
12 (cf: N.J.S.12A:2-323)

13

14 35. N.J.S.12A:2-401 is amended to read as follows:

15 12A:2-401. Passing of title; reservation for security; limited  
16 application of this section

17 Each provision of this Chapter with regard to the rights,  
18 obligations and remedies of the seller, the buyer, purchasers or  
19 other third parties applies irrespective of title to the goods except  
20 where the provision refers to such title. Insofar as situations are not  
21 covered by the other provisions of this Chapter and matters  
22 concerning title become material the following rules apply:

23 (1) Title to goods cannot pass under a contract for sale prior to  
24 their identification to the contract (12A:2-501), and unless  
25 otherwise explicitly agreed the buyer acquires by their identification  
26 a special property as limited by this Act. Any retention or  
27 reservation by the seller of the title (property) in goods shipped or  
28 delivered to the buyer is limited in effect to a reservation of a  
29 security interest. Subject to these provisions and to the provisions of  
30 the Chapter on Secured Transactions (Chapter 9), title to goods  
31 passes from the seller to the buyer in any manner and on any  
32 conditions explicitly agreed on by the parties.

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

40 (a) if the contract requires or authorizes the seller to send the  
41 goods to the buyer but does not require him to deliver them at  
42 destination, title passes to the buyer at the time and place of  
43 shipment; but

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

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

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

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

8 (4) A rejection or other refusal by the buyer to receive or retain  
9 the goods, whether or not justified, or a justified revocation of  
10 acceptance revests title to the goods in the seller. Such revesting  
11 occurs by operation of law and is not a "sale".

12 (cf: N.J.S.12A:2-401)

13  
14 36. N.J.S.12A:2-503 is amended to read as follows:

15 12A:2-503. Manner of seller's tender of delivery

16 (1) Tender of delivery requires that the seller put and hold  
17 conforming goods at the buyer's disposition and give the buyer any  
18 notification reasonably necessary to enable him to take delivery.  
19 The manner, time and place for tender are determined by the  
20 agreement and this Chapter, and in particular

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

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

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

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

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

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

37 (b) tender to the buyer of a non-negotiable document of title or  
38 of a **【written direction to】** record directing the bailee to deliver is  
39 sufficient tender unless the buyer seasonably objects, and except as  
40 otherwise provided in Chapter 9 receipt by the bailee of notification  
41 of the buyer's rights fixes those rights as against the bailee and all  
42 third persons; but risk of loss of the goods and of any failure by the  
43 bailee to honor the non-negotiable document of title or to obey the  
44 direction remains on the seller until the buyer has had a reasonable  
45 time to present the document or direction, and a refusal by the  
46 bailee to honor the document or to obey the direction defeats the  
47 tender.

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



1 (a) he must tender all such documents in correct form, except as  
2 provided in this Chapter with respect to bills of lading in a set  
3 (subsection (2) of 12A:2-323); and

4 (b) tender through customary banking channels is sufficient and  
5 dishonor of a draft accompanying or associated with the documents  
6 constitutes non-acceptance or rejection.  
7 (cf: N.J.S.12A:2-503)

8  
9 37. N.J.S.12A:2-505 is amended to read as follows:

10 12A:2-505. Seller's shipment under reservation.

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

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

18 (b) a non-negotiable bill of lading to himself or his nominee  
19 reserves possession of the goods as security but except in a case of  
20 conditional delivery (subsection (2) of 12A:2-507) a non-negotiable  
21 bill of lading naming the buyer as consignee reserves no security  
22 interest even though the seller retains possession or control of the  
23 bill of lading.

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

30 (cf: N.J.S.12A:2-505)

31  
32 38. N.J.S.12A:2-506 is amended to read as follows:

33 12A:2-506. Rights of financing agency

34 (1) A financing agency by paying or purchasing for value a draft  
35 which relates to a shipment of goods acquires to the extent of the  
36 payment or purchase and in addition to its own rights under the  
37 draft and any document of title securing it any rights of the shipper  
38 in the goods including the right to stop delivery and the shipper's  
39 right to have the draft honored by the buyer.

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

45 (cf: N.J.S.12A:2-506)

46  
47 39. N.J.S.12A:2-509 is amended to read as follows:

48 12A:2-509. Risk of loss in the absence of breach

1 (1) Where the contract requires or authorizes the seller to ship  
2 the goods by carrier

3 (a) if it does not require him to deliver them at a particular  
4 destination, the risk of loss passes to the buyer when the goods are  
5 duly delivered to the carrier even though the shipment is under  
6 reservation (12A:2-505); but

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

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

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

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

18 (c) after his receipt of possession or control of a non-negotiable  
19 document of title or other **【written】** direction to deliver in a record,  
20 as provided in subsection (4)(b) of 12A:2-503.

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

25 (4) The provisions of this section are subject to contrary  
26 agreement of the parties and to the provisions of this Chapter on  
27 sale on approval (12A:2-327) and on effect of breach on risk of loss  
28 (12A:2-510).

29 (cf: N.J.S.12A:2-509)

30

31 40. N.J.S.12A:2-605 is amended to read as follows:

32 12A:2-605. Waiver of buyer's objections by failure to  
33 particularize

34 (1) The buyer's failure to state in connection with rejection a  
35 particular defect which is ascertainable by reasonable inspection  
36 precludes him from relying on the unstated defect to justify  
37 rejection or to establish breach

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

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

42 (2) Payment against documents made without reservation of  
43 rights precludes recovery of the payment for defects apparent **【on**  
44 **the face of】** in the documents.

45 (cf: N.J.S.12A:2-605)

46

47 41. N.J.S.12A:2-705 is amended to read as follows:

48 12A:2-705. Seller's stoppage of delivery in transit or otherwise

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (12A:2-702) 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 non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(cf: N.J.S.12A:2-705)

42. N.J.S.12A:2A-103 is amended to read as follows:

12A:2A-103. Definitions and index of definitions.

(1) In this chapter 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 the 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 pre-existing 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

1 machinery, or a quantity, as a gross or carload, or any other unit  
2 treated in use or in the relevant market as a single whole.

3 (d) "Conforming" goods or performance under a lease contract  
4 means goods or performance that are in accordance with the  
5 obligations under the lease contract.

6 (e) "Consumer lease" means a lease that a lessor regularly  
7 engaged in the business of leasing or selling makes to a lessee who  
8 is a natural person and who takes under the lease primarily for a  
9 personal, family, or household purpose.

10 (f) "Fault" means wrongful act, omission, breach, or default.

11 (g) "Finance lease" means a lease with respect to which:

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

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

15 (iii) one of the following occurs:

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

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

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

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

44 (h) "Goods" means all things that are movable at the time of  
45 identification to the lease contract, or are fixtures (12A:2A-309),  
46 but the term does not include money, documents, instruments,  
47 accounts, chattel paper, general intangibles, or minerals or the like,

1 including oil and gas, before extraction. The term also includes the  
2 unborn young of animals.

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

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

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

18 (l) "Lease contract" means the total legal obligation that results  
19 from the lease agreement as affected by this chapter and any other  
20 applicable rules of law. Unless the context clearly indicates  
21 otherwise, the term includes a sublease contract.

22 (m) "Leasehold interest" means the interest of the lessor or the  
23 lessee under a lease contract.

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

27 (o) "Lessee in ordinary course of business" means a person who  
28 in good faith and without knowledge that the lease to the person is  
29 in violation of the ownership rights or security interest or leasehold  
30 interest of a third party in the goods leases in ordinary course from  
31 a person in the business of selling or leasing goods of that kind but  
32 does not include a pawnbroker. "Leasing" may be for cash or by  
33 exchange of other property or on secured or unsecured credit and  
34 includes **[receiving]** acquiring goods or documents of title under a  
35 pre-existing lease contract but does not include a transfer in bulk or  
36 as security for or in total or partial satisfaction of a money debt.

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

40 (q) "Lessor's residual interest" means the lessor's interest in the  
41 goods after expiration, termination, or cancellation of the lease  
42 contract.

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

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

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

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

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

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

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

19 (y) "Supply contract" means a contract under which a lessor  
20 buys or leases goods to be leased.

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

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

26 "Accessions".....12A:2A-310(1).

27 "Construction mortgage".....12A:2A-309(1)(d).

28 "Encumbrance".....12A:2A-309(1)(e).

29 "Fixtures".....12A:2A-309(1)(a).

30 "Fixture filing".....12A:2A-309(1)(b).

31 "Purchase money lease".....12A:2A-309(1)(c).

32 (3) The following definitions in other Chapters apply to this  
33 Chapter:

34 "Account".....12A: 9-102(a)(2).

35 "Between merchants".....12A:2-104(3).

36 "Buyer".....12A:2-103(1)(a).

37 "Chattel paper".....**[12A:9-102(a)(12)]** 12A:9-102(a)(11).

38 "Consumer goods".....**[12A:9-102(a)(24)]** 12A:9-102(a)(23).

39 "Document"..... **[12A:9-102(a)(31)]** 12A:9-102(a)(30).

40 "Entrusting".....12A:2-403(3).

41 "General intangible".....12A:9-102(a)(42).

42 "Good faith".....2A:2-103(1)(b).

43 "Instrument".....12A:9-102(a)(47).

44 "Merchant".....12A:2-104(1).

45 "Mortgage".....12A:9-102(a)(55).

46 "Pursuant to commitment".....12A:9-102(a)(68).

47 "Receipt".....12A:2-103(1)(c).

48 "Sale".....12A:2-106(1).

1 "Sale on approval".....12A:2-326.

2 "Sale or return".....12A:2-326.

3 "Seller".....12A:2-103(1)(d).

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

7 (cf: P.L.2001, c.386, s.131)

8

9 43. N.J.S.12A:2A-514 is amended to read as follows:

10 12A:2A-514. Waiver of lessee's objections.

11 (1) In rejecting goods, a lessee's failure to state a particular  
12 defect that is ascertainable by reasonable inspection precludes the  
13 lessee from relying on the defect to justify rejection or to establish  
14 default:

15 (a) if, stated seasonably, the lessor or the supplier could have  
16 cured it (12A:2A-513); or

17 (b) between merchants if the lessor or the supplier after  
18 rejection has made a request in writing for a full and final written  
19 statement of all defects on which the lessee proposes to rely.

20 (2) A lessee's failure to reserve rights when paying rent or other  
21 consideration against documents precludes recovery of the payment  
22 for defects apparent **【on the face of】** in the documents.

23 (cf: N.J.S.12A:2A-514)

24

25 44. N.J.S.12A:2A-526 is amended to read as follows:

26 12A:2A-526 Lessor's stoppage of delivery in transit or otherwise.

27 (1) A lessor may stop delivery of goods in the possession of a  
28 carrier or other bailee if the lessor discovers the lessee to be  
29 insolvent and may stop delivery of carload, truckload, planeload, or  
30 larger shipments of express or freight if the lessee repudiates or  
31 fails to make a payment due before delivery, whether for rent,  
32 security or otherwise under the lease contract, or for any other  
33 reason the lessor has a right to withhold or take possession of the  
34 goods.

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

37 (a) receipt of the goods by the lessee;

38 (b) acknowledgment to the lessee by any bailee of the goods,  
39 except a carrier, that the bailee holds the goods for the lessee; or

40 (c) such an acknowledgment to the lessee by a carrier via  
41 reshipment or as **【warehouseman】** a warehouse.

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

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

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

4 (cf: N.J.S.12A:2A-526)

5  
6 45. N.J.S.12A:4-104 is amended to read as follows:

7 12A:4-104. Definitions and Index of Definitions.

8 a. In this chapter, unless the context otherwise requires:

9 (1) "Account" means any deposit or credit account with a bank,  
10 including a demand, time, savings, passbook, share draft, or like  
11 account, other than an account evidenced by a certificate of deposit;

12 (2) "Afternoon" means the period of a day between noon and  
13 midnight;

14 (3) "Banking day" means the part of a day on which a bank is  
15 open to the public for carrying on substantially all of its banking  
16 functions;

17 (4) "Clearing house" means an association of banks or other  
18 payors regularly clearing items;

19 (5) "Customer" means a person having an account with a bank  
20 or for whom a bank has agreed to collect items, including a bank  
21 that maintains an account at another bank;

22 (6) "Documentary draft" means a draft to be presented for  
23 acceptance or payment if specified documents, certificated  
24 securities (12A:8-102) or instructions for uncertificated securities  
25 (12A:8-102), or other certificates, statements, or the like are to be  
26 received by the drawee or other payor before acceptance or payment  
27 of the draft;

28 (7) "Draft" means a draft as defined in 12A:3-104 or an item,  
29 other than an instrument, that is an order [.];

30 (8) "Drawee" means a person ordered in a draft to make  
31 payment[.];

32 (9) "Item" means an instrument or a promise or order to pay  
33 money handled by a bank for collection or payment. The term does  
34 not include a payment order governed by chapter 4A or a credit or  
35 debit card slip;

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

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

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

47 b. Other definitions applying to this chapter and the sections in  
48 which they appear are:



- 1 "Agreement for electronic presentment" 12A:4-110.  
 2 "Bank" 12A:4-105.  
 3 "Collecting bank" 12A:4-105.  
 4 "【Depository】 Depository bank" 12A:4-105.  
 5 "Intermediary bank" 12A:4-105.  
 6 "Payor bank" 12A:4-105.  
 7 "Presenting bank" 12A:4-105.  
 8 "Presentment notice" 12A:4-110.  
 9 c. The following definitions in other chapters apply to this  
 10 chapter:  
 11 "Acceptance" 12A:3-409.  
 12 "Alteration" 12A:3-407.  
 13 "Cashier's check" 12A:3-104.  
 14 "Certificate of deposit" 12A:3-104.  
 15 "Certified check" 12A:3-409.  
 16 "Check" 12A:3-104.  
 17 "Control" 12A:7-106.  
 18 "Good faith" 12A:3-103.  
 19 "Holder in due course" 12A:3-302.  
 20 "Instrument" 12A:3-104.  
 21 "Notice of dishonor" 12A:3-503.  
 22 "Order" 12A:3-103.  
 23 "Ordinary care" 12A:3-103.  
 24 "Person entitled to enforce" 12A:3-301.  
 25 "Presentment" 12A:3-501.  
 26 "Promise" 12A:3-103.  
 27 "Prove" 12A:3-103.  
 28 "Teller's check" 12A:3-104.  
 29 "Unauthorized signature" 12A:3-403.  
 30 d. In addition chapter 1 contains general definitions and  
 31 principles of construction and interpretation applicable throughout  
 32 this chapter.  
 33 (cf: P.L.1997, c.252, s.18)  
 34  
 35 46. N.J.S.12A:4-210 is amended to read as follows:  
 36 12A:4-210. Security Interest of Collecting Bank in Items,  
 37 Accompanying Documents and Proceeds.  
 38 a. A collecting bank has a security interest in an item and any  
 39 accompanying documents or the proceeds of either:  
 40 (1) in case of an item deposited in an account, to the extent to  
 41 which credit given for the item has been withdrawn or applied;  
 42 (2) in case of an item for which it has given credit available for  
 43 withdrawal as of right, to the extent of the credit given, whether or  
 44 not the credit is drawn upon or there is a right of charge-back; or  
 45 (3) if it makes an advance on or against the item.  
 46 b. If credit given for several items received at one time or  
 47 pursuant to a single agreement is withdrawn or applied in part, the  
 48 security interest remains upon all the items, any accompanying

1 documents or the proceeds of either. For the purpose of this  
2 section, credits first given are first withdrawn.

3 c. Receipt by a collecting bank of a final settlement for an item  
4 is a realization on its security interest in the item, accompanying  
5 documents, and proceeds. As long as the bank does not receive  
6 final settlement for the item or give up possession of the item or  
7 possession or control of the accompanying documents for purposes  
8 other than collection, the security interest continues to that extent  
9 and is subject to chapter 9, but:

10 (1) no security agreement is necessary to make the security  
11 interest enforceable (12A:9-203(b)(3)(A));

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

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

16 (cf: P.L.2001, c.117, s.14)

17  
18 47. N.J.S.12A:8-103 is amended to read as follows:

19 12A:8-103. Rule for Determining whether Certain Obligations  
20 and Interests are Securities or Financial Assets.

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

23 b. An "investment company security" is a security.  
24 "Investment company security" means a share or similar equity  
25 interest issued by an entity that is registered as an investment  
26 company under the federal investment company laws, an interest in  
27 a unit investment trust that is so registered, or a face-amount  
28 certificate issued by a face-amount certificate company that is so  
29 registered. Investment company security does not include an  
30 insurance policy or endowment policy or annuity contract issued by  
31 an insurance company.

32 c. An interest in a partnership or limited liability company is  
33 not a security unless it is dealt in or traded on securities exchanges  
34 or in securities markets, its terms expressly provide that it is a  
35 security governed by this chapter, or it is an investment company  
36 security. However, an interest in a partnership or limited liability  
37 company is a financial asset if it is held in a securities account.

38 d. A writing that is a security certificate is governed by this  
39 chapter and not by chapter 3, even though it also meets the  
40 requirements of that chapter. However, a negotiable instrument  
41 governed by chapter 3 is a financial asset if it is held in a securities  
42 account.

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

46 f. A commodity contract, as defined in 12A:9-102 (a) (15), is  
47 not a security or a financial asset.

1       g. A document of title is not a financial asset unless 12A:8-  
2 102(a)(9)(c) applies.

3 (cf: P.L.2001, c.386, s.133)

4  
5       <sup>1</sup>48. N.J.S.12A:4A-108 is amended to read as follows:

6       12A:4A-108. **【Exclusion of consumer transactions governed by**  
7 **federal law.**

8       **This】 Relationship to Electronic Fund Transfer Act.**

9       a. Except as provided in subsection b. of this section, this  
10 chapter does not apply to a funds transfer any part of which is  
11 governed by the Electronic Fund Transfer Act 【of 1978】 (Title XX,  
12 Pub. Law 95-630, 92 Stat. 3728, 15U.S.C. s.1693 et seq.) as  
13 amended from time to time.

14       b. This chapter applies to a funds transfer that is a remittance  
15 transfer as defined in the Electronic Fund Transfer Act (15  
16 U.S.C.1693o-1) unless the remittance transfer is an electronic fund  
17 transfer as defined in the Electronic Fund Transfer Act (15  
18 U.S.C.1693a).

19       c. In a funds transfer to which this chapter applies, in the event  
20 of an inconsistency between an applicable provision of this chapter  
21 and an applicable provision of the Electronic Fund Transfer Act, the  
22 provision of the Electronic Fund Transfer Act governs to the extent  
23 of the inconsistency.<sup>1</sup>

24 (N.J.S.12A:4A-108)

25  
26       <sup>1</sup>【48.】 49.<sup>1</sup> This act shall take effect on July 1, 2013.