

SENATE, No. 2028

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1997

By Senator INVERSO

1 AN ACT concerning commercial transactions, replacing chapter 5 of  
2 Title 12A of the New Jersey Statutes and revising various parts of  
3 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 5 of Title 12A of the New Jersey Statutes  
9 (N.J.S.12A:5-101 through 12A:5-117, including any amendments or  
10 supplements thereto) is repealed and replaced as follows:

11  
12 CHAPTER 5. LETTERS OF CREDIT

13  
14 PART 1

15 SHORT TITLE AND GENERAL MATTERS

16 12A:5-101. Short Title

17 This chapter may be cited as "Uniform Commercial Code--Letters  
18 of Credit."

19 12A:5-102. Definitions.

20 a. As used in this chapter:

21 (1) "Adviser" means a person who, at the request of the issuer, a  
22 confirmer, or another adviser, notifies or requests another adviser to  
23 notify the beneficiary that a letter of credit has been issued, confirmed,  
24 or amended.

25 (2) "Applicant" means a person at whose request or for whose  
26 account a letter of credit is issued. The term includes a person who  
27 requests an issuer to issue a letter of credit on behalf of another if the  
28 person making the request undertakes an obligation to reimburse the  
29 issuer.

30 (3) "Beneficiary" means a person who under the terms of a letter  
31 of credit is entitled to have its complying presentation honored. The  
32 term includes a person to whom drawing rights have been transferred  
33 under a transferable letter of credit.

34 (4) "Confirmer" means a nominated person who undertakes, at the

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

**Matter underlined thus is new matter.**

1 request or with the consent of the issuer, to honor a presentation  
2 under a letter of credit issued by another.

3 (5) "Dishonor" of a letter of credit means failure timely to honor  
4 or to take an interim action, such as acceptance of a draft, that may be  
5 required by the letter of credit.

6 (6) "Document" means a draft or other demand, document of title,  
7 investment security, certificate, invoice, or other record, statement, or  
8 representation of fact, law, right, or opinion (a) which is presented in  
9 a written or other medium permitted by the letter of credit or, unless  
10 prohibited by the letter of credit, by the standard practice referred to  
11 in subsection e. of 12A:5-108; and (b) which is capable of being  
12 examined for compliance with the terms and conditions of the letter of  
13 credit. A document may not be oral.

14 (7) "Good faith" means honesty in fact in the conduct or  
15 transaction concerned.

16 (8) "Honor" of a letter of credit means performance of the issuer's  
17 undertaking in the letter of credit to pay or deliver an item of value.  
18 Unless the letter of credit otherwise provides, "honor" occurs:

19 (a) upon payment;

20 (b) if the letter of credit provides for acceptance, upon acceptance  
21 of a draft and, at maturity, its payment; or

22 (c) if the letter of credit provides for incurring a deferred  
23 obligation, upon incurring the obligation and, at maturity, its  
24 performance.

25 (9) "Issuer" means a bank or other person that issues a letter of  
26 credit, but does not include an individual who makes an engagement  
27 for personal, family, or household purposes.

28 (10) "Letter of credit" means a definite undertaking that satisfies  
29 the requirements of 12A:5-104 by an issuer to a beneficiary at the  
30 request or for the account of an applicant or, in the case of a financial  
31 institution, to itself or for its own account, to honor a documentary  
32 presentation by payment or delivery of an item of value.

33 (11) "Nominated person" means a person whom the issuer (a)  
34 designates or authorizes to pay, accept, negotiate, or otherwise give  
35 value under a letter of credit and (b) undertakes by agreement or  
36 custom and practice to reimburse.

37 (12) "Presentation" means delivery of a document to an issuer or  
38 nominated person for honor or giving of value under a letter of credit.

39 (13) "Presenter" means a person making a presentation as or on  
40 behalf of a beneficiary or nominated person.

41 (14) "Record" means information that is inscribed on a tangible  
42 medium, or that is stored in an electronic or other medium and is  
43 retrievable in perceivable form.

44 (15) "Successor of a beneficiary" means a person who succeeds to  
45 substantially all of the rights of a beneficiary by operation of law,  
46 including a corporation with or into which the beneficiary has been

1 merged or consolidated, an administrator, executor, personal  
2 representative, trustee in bankruptcy, debtor in possession, liquidator,  
3 and receiver.

4 b. Definitions in other chapters applying to this chapter and the  
5 sections in which they appear are:

6 "Acceptance" 12A:3-409

7 "Value" 12A:3-303, 12A:4-211

8 c. N.J.S.12A:1-101 et seq. contains certain additional general  
9 definitions and principles of construction and interpretation applicable  
10 throughout this chapter.

11 12A:5-103. Scope.

12 a. This chapter applies to letters of credit and to certain rights and  
13 obligations arising out of transactions involving letters of credit.

14 b. The statement of a rule in this chapter does not by itself require,  
15 imply, or negate application of the same or a different rule to a  
16 situation not provided for, or to a person not specified, in this chapter.

17 c. With the exception of this subsection and subsections a. and d.  
18 of this section, paragraphs (9) and (10) of subsection a. of 12A:5-102,  
19 subsection d. of 12A:5-106 and subsection d. of 12A:5-114, and  
20 except to the extent prohibited in subsection (3) of 12A:1-102 and  
21 subsection d. of 12A:5-117, the effect of this chapter may be varied by  
22 agreement or by a provision stated or incorporated by reference in an  
23 undertaking. A term in an agreement or undertaking generally  
24 excusing liability or generally limiting remedies for failure to perform  
25 obligations is not sufficient to vary obligations prescribed by this  
26 chapter.

27 d. Rights and obligations of an issuer to a beneficiary or a  
28 nominated person under a letter of credit are independent of the  
29 existence, performance, or nonperformance of a contract or  
30 arrangement out of which the letter of credit arises or which underlies  
31 it, including contracts or arrangements between the issuer and the  
32 applicant and between the applicant and the beneficiary.

33 12A:5-104. Formal Requirements. A letter of credit, confirmation,  
34 advice, transfer, amendment, or cancellation may be issued in any form  
35 that is a record and is authenticated (a) by a signature; or (b) in  
36 accordance with the agreement of the parties or the standard practice  
37 referred to in subsection e. of 12A:5-108.

38 12A:5-105. Consideration. Consideration is not required to issue,  
39 amend, transfer, or cancel a letter of credit, advice, or confirmation.

40 12A:5-106. Issuance, Amendment, Cancellation, and Duration.

41 a. A letter of credit is issued and becomes enforceable according  
42 to its terms against the issuer when the issuer sends or otherwise  
43 transmits it to the person requested to advise or to the beneficiary. A  
44 letter of credit is revocable only if it so provides.

45 b. After a letter of credit is issued, rights and obligations of a  
46 beneficiary, applicant, confirmer, and issuer are not affected by an

1 amendment or cancellation to which that person has not consented  
2 except to the extent the letter of credit provides that it is revocable or  
3 that the issuer may amend or cancel the letter of credit without that  
4 consent.

5 c. If there is no stated expiration date or other provision that  
6 determines its duration, a letter of credit expires one year after its  
7 stated date of issuance or, if none is stated, after the date on which it  
8 is issued.

9 d. A letter of credit that states that it is perpetual expires five years  
10 after its stated date of issuance, or if none is stated, after the date on  
11 which it is issued.

12 12A:5-107. Confirmer, Nominated Person, and Adviser.

13 a. A confirmer is directly obligated on a letter of credit and has the  
14 rights and obligations of an issuer to the extent of its confirmation.  
15 The confirmer also has rights against and obligations to the issuer as  
16 if the issuer were an applicant and the confirmer had issued the letter  
17 of credit at the request and for the account of the issuer.

18 b. A nominated person who is not a confirmer is not obligated to  
19 honor or otherwise give value for a presentation.

20 c. A person requested to advise may decline to act as an adviser.  
21 An adviser that is not a confirmer is not obligated to honor or give  
22 value for a presentation. An adviser undertakes to the issuer and to  
23 the beneficiary accurately to advise the terms of the letter of credit,  
24 confirmation, amendment, or advice received by that person and  
25 undertakes to the beneficiary to check the apparent authenticity of the  
26 request to advise. Even if the advice is inaccurate, the letter of credit,  
27 confirmation, or amendment is enforceable as issued.

28 d. A person who notifies a transferee beneficiary of the terms of a  
29 letter of credit, confirmation, amendment, or advice has the rights and  
30 obligations of an adviser under subsection c. of this section. The  
31 terms in the notice to the transferee beneficiary may differ from the  
32 terms in any notice to the transferor beneficiary to the extent permitted  
33 by the letter of credit, confirmation, amendment, or advice received by  
34 the person who so notifies.

35 12A:5-108. Issuer's Rights and Obligations.

36 a. Except as otherwise provided in 12A:5-109, an issuer shall  
37 honor a presentation that, as determined by the standard practice  
38 referred to in subsection e. of this section, appears on its face strictly  
39 to comply with the terms and conditions of the letter of credit. Except  
40 as otherwise provided in 12A:5-113 and unless otherwise agreed with  
41 the applicant, an issuer shall dishonor a presentation that does not  
42 appear so to comply.

43 b. An issuer has a reasonable time after presentation, but not  
44 beyond the end of the seventh business day of the issuer after the day  
45 of its receipt of documents:

46 (1) to honor;

- 1 (2) if the letter of credit provides for honor to be completed more  
2 than seven business days after presentation, to accept a draft or incur  
3 a deferred obligation; or
- 4 (3) to give notice to the presenter of discrepancies in the  
5 presentation.
- 6 c. Except as otherwise provided in subsection d. of this section, an  
7 issuer is precluded from asserting as a basis for dishonor any  
8 discrepancy if timely notice is not given, or any discrepancy not stated  
9 in the notice if timely notice is given.
- 10 d. Failure to give the notice specified in subsection b. of this  
11 section or to mention fraud, forgery, or expiration in the notice does  
12 not preclude the issuer from asserting as a basis for dishonor fraud or  
13 forgery as described in subsection a. of 12A:5-109 or expiration of the  
14 letter of credit before presentation.
- 15 e. An issuer shall observe standard practice of financial institutions  
16 that regularly issue letters of credit. Determination of the standard  
17 practice is a matter of interpretation for the court. The court shall  
18 offer the parties a reasonable opportunity to present evidence of the  
19 standard practice.
- 20 f. An issuer is not responsible for:
- 21 (1) the performance or nonperformance of the underlying contract,  
22 arrangement, or transaction;
- 23 (2) an act or omission of others; or
- 24 (3) observance or knowledge of the usage of a particular trade  
25 other than the standard practice referred to in subsection e. of this  
26 section.
- 27 g. If an undertaking constituting a letter of credit under paragraph  
28 (10) of subsection a. of 12A:5-102 contains nondocumentary  
29 conditions, an issuer shall disregard the nondocumentary conditions  
30 and treat them as if they were not stated.
- 31 h. An issuer that has dishonored a presentation shall return the  
32 documents or hold them at the disposal of, and send advice to that  
33 effect to, the presenter.
- 34 i. An issuer that has honored a presentation as permitted or  
35 required by this chapter:
- 36 (1) is entitled to be reimbursed by the applicant in immediately  
37 available funds not later than the date of its payment of funds;
- 38 (2) takes the documents free of claims of the beneficiary or  
39 presenter;
- 40 (3) is precluded from asserting a right of recourse on a draft under  
41 12A:3-414 and 12A:3-415;
- 42 (4) except as otherwise provided in 12A:5-110 and 12A:5-117, is  
43 precluded from restitution of money paid or other value given by  
44 mistake to the extent the mistake concerns discrepancies in the  
45 documents or tender which are apparent on the face of the  
46 presentation; and

1 (5) is discharged to the extent of its performance under the letter  
2 of credit unless the issuer honored a presentation in which a required  
3 signature of a beneficiary was forged.

4 12A:5-109. Fraud and Forgery.

5 a. If a presentation is made that appears on its face strictly to  
6 comply with the terms and conditions of the letter of credit, but a  
7 required document is forged or materially fraudulent, or honor of the  
8 presentation would facilitate a material fraud by the beneficiary on the  
9 issuer or applicant:

10 (1) the issuer shall honor the presentation, if honor is demanded by  
11 (a) a nominated person who has given value in good faith and without  
12 notice of forgery or material fraud, (b) a confirmer who has honored  
13 its confirmation in good faith, (c) a holder in due course of a draft  
14 drawn under the letter of credit which was taken after acceptance by  
15 the issuer or nominated person, or (d) an assignee of the issuer's or  
16 nominated person's deferred obligation that was taken for value and  
17 without notice of forgery or material fraud after the obligation was  
18 incurred by the issuer or nominated person; and

19 (2) the issuer, acting in good faith, may honor or dishonor the  
20 presentation in any other case.

21 b. If an applicant claims that a required document is forged or  
22 materially fraudulent or that honor of the presentation would facilitate  
23 a material fraud by the beneficiary on the issuer or applicant, a court  
24 of competent jurisdiction may temporarily or permanently enjoin the  
25 issuer from honoring a presentation or grant similar relief against the  
26 issuer or other persons only if the court finds that:

27 (1) the relief is not prohibited under the law applicable to an  
28 accepted draft or deferred obligation incurred by the issuer;

29 (2) a beneficiary, issuer, or nominated person who may be  
30 adversely affected is adequately protected against loss that it may  
31 suffer because the relief is granted;

32 (3) all of the conditions to entitle a person to the relief under the  
33 law of this State have been met; and

34 (4) on the basis of the information submitted to the court, the  
35 applicant is more likely than not to succeed under its claim of forgery  
36 or material fraud and the person demanding honor does not qualify for  
37 protection under paragraph (1) of subsection a. of this section.

38 12A:5-110. Warranties.

39 a. If its presentation is honored, the beneficiary warrants:

40 (1) to the issuer, any other person to whom presentation is made,  
41 and the applicant that there is no fraud or forgery of the kind described  
42 in subsection a. of 12A:5-109; and

43 (2) to the applicant that the drawing does not violate any  
44 agreement between the applicant and beneficiary or any other  
45 agreement intended by them to be augmented by the letter of credit.

46 b. The warranties in subsection a. of this section are in addition to

1 warranties arising under 12A:3-101 et seq., 12A:4-101 et seq., 12A:7-  
2 101 et seq. and 12A:8-101 et seq. because of the presentation or  
3 transfer of documents covered by any of those chapters.

4 12A:5-111. Remedies.

5 a. If an issuer wrongfully dishonors or repudiates its obligation to  
6 pay money under a letter of credit before presentation, the beneficiary,  
7 successor, or nominated person presenting on its own behalf may  
8 recover from the issuer the amount that is the subject of the dishonor  
9 or repudiation. If the issuer's obligation under the letter of credit is  
10 not for the payment of money, the claimant may obtain specific  
11 performance or, at the claimant's election, recover an amount equal to  
12 the value of performance from the issuer. In either case, the claimant  
13 may also recover incidental but not consequential damages. The  
14 claimant is not obligated to take action to avoid damages that might  
15 be due from the issuer under this subsection. If, although not  
16 obligated to do so, the claimant avoids damages, the claimant's  
17 recovery from the issuer must be reduced by the amount of damages  
18 avoided. The issuer has the burden of proving the amount of damages  
19 avoided. In the case of repudiation, the claimant need not present any  
20 document.

21 b. If an issuer wrongfully dishonors a draft or demand presented  
22 under a letter of credit or honors a draft or demand in breach of its  
23 obligation to the applicant, the applicant may recover damages  
24 resulting from the breach, including incidental but not consequential  
25 damages, less any amount saved as a result of the breach.

26 c. If an adviser or nominated person other than a confirmer  
27 breaches an obligation under this chapter or an issuer breaches an  
28 obligation not covered in subsection a. or b. of this section, a person  
29 to whom the obligation is owed may recover damages resulting from  
30 the breach, including incidental but not consequential damages, less  
31 any amount saved as a result of the breach. To the extent of the  
32 confirmation, a confirmer has the liability of an issuer specified in this  
33 subsection and subsections a. and b. of this section.

34 d. An issuer, nominated person, or adviser who is found liable  
35 under subsection a., b., or c. of this section shall pay interest on the  
36 amount owed thereunder from the date of wrongful dishonor or other  
37 appropriate date.

38 e. Reasonable attorney's fees and other expenses of litigation may  
39 be awarded to the prevailing party in an action in which a remedy is  
40 sought under this chapter.

41 f. Damages that would otherwise be payable by a party for breach  
42 of an obligation under this chapter may be liquidated by agreement or  
43 undertaking, but only in an amount or by a formula that is reasonable  
44 in light of the harm anticipated.

45 12A:5-112. Transfer of Letter of Credit.

46 a. Except as otherwise provided in 12A:5-113, unless a letter of

1 credit provides that it is transferable, the right of a beneficiary to draw  
2 or otherwise demand performance under a letter of credit may not be  
3 transferred.

4 b. Even if a letter of credit provides that it is transferable, the  
5 issuer may refuse to recognize or carry out a transfer if:

6 (1) the transfer would violate applicable law; or

7 (2) the transferor or transferee has failed to comply with any  
8 requirement stated in the letter of credit or any other requirement  
9 relating to transfer imposed by the issuer which is within the standard  
10 practice referred to in subsection e. of 12A:5-108 or is otherwise  
11 reasonable under the circumstances.

12 12A:5-113. Transfer by Operation of Law.

13 a. A successor of a beneficiary may consent to amendments, sign  
14 and present documents, and receive payment or other items of value  
15 in the name of the beneficiary without disclosing its status as a  
16 successor.

17 b. A successor of a beneficiary may consent to amendments, sign  
18 and present documents, and receive payment or other items of value  
19 in its own name as the disclosed successor of the beneficiary. Except  
20 as otherwise provided in subsection e. of this section, an issuer shall  
21 recognize a disclosed successor of a beneficiary as beneficiary in full  
22 substitution for its predecessor upon compliance with the requirements  
23 for recognition by the issuer of a transfer of drawing rights by  
24 operation of law under the standard practice referred to in subsection  
25 e. of 12A:5-108 or, in the absence of such a practice, compliance with  
26 other reasonable procedures sufficient to protect the issuer.

27 c. An issuer is not obliged to determine whether a purported  
28 successor is a successor of a beneficiary or whether the signature of a  
29 purported successor is genuine or authorized.

30 d. Honor of a purported successor's apparently complying  
31 presentation under subsection a. or b. of this section has the  
32 consequences specified in subsection i. of 12A:5-108 even if the  
33 purported successor is not the successor of a beneficiary. Documents  
34 signed in the name of the beneficiary or of a disclosed successor by a  
35 person who is neither the beneficiary nor the successor of the  
36 beneficiary are forged documents for the purposes of 12A:5-109.

37 e. An issuer whose rights of reimbursement are not covered by  
38 subsection d. of this section or substantially similar law and any  
39 confirmer or nominated person may decline to recognize a presentation  
40 under subsection b. of this section.

41 f. A beneficiary whose name is changed after the issuance of a  
42 letter of credit has the same rights and obligations as a successor of a  
43 beneficiary under this section.

44 12A:5-114. Assignment of Proceeds.

45 a. In this section, "proceeds of a letter of credit" means the cash,  
46 check, accepted draft, or other item of value paid or delivered upon



1 honor or giving of value by the issuer or any nominated person under  
2 the letter of credit. The term does not include a beneficiary's drawing  
3 rights or documents presented by the beneficiary.

4 b. A beneficiary may assign its right to part or all of the proceeds  
5 of a letter of credit. The beneficiary may do so before presentation as  
6 a present assignment of its right to receive proceeds contingent upon  
7 its compliance with the terms and conditions of the letter of credit.

8 c. An issuer or nominated person need not recognize an assignment  
9 of proceeds of a letter of credit until it consents to the assignment.

10 d. An issuer or nominated person has no obligation to give or  
11 withhold its consent to an assignment of proceeds of a letter of credit,  
12 but consent may not be unreasonably withheld if the assignee  
13 possesses and exhibits the letter of credit and presentation of the letter  
14 of credit is a condition to honor.

15 e. Rights of a transferee beneficiary or nominated person are  
16 independent of the beneficiary's assignment of the proceeds of a letter  
17 of credit and are superior to the assignee's right to the proceeds.

18 f. Neither the rights recognized by this section between an assignee  
19 and an issuer, transferee beneficiary, or nominated person, nor the  
20 issuer's or nominated person's payment of proceeds to an assignee or  
21 a third person, affect the rights between the assignee and any person  
22 other than the issuer, transferee beneficiary, or nominated person. The  
23 mode of creating and perfecting a security interest in or granting an  
24 assignment of a beneficiary's rights to proceeds is governed by 12A:9-  
25 101 et seq. or other law. Against persons other than the issuer,  
26 transferee beneficiary, or nominated person, the rights and obligations  
27 arising upon the creation of a security interest or other assignment of  
28 a beneficiary's right to proceeds and its perfection are governed by  
29 12A:9-101 et seq. or other law.

30 12A:5-115. Statute of Limitations. An action to enforce a right or  
31 obligation arising under this chapter must be commenced within one  
32 year after the expiration date of the relevant letter of credit or one year  
33 after the cause of action accrues, whichever occurs later. A cause of  
34 action accrues when the breach occurs, regardless of the aggrieved  
35 party's lack of knowledge of the breach.

36 12A:5-116. Choice of Law and Forum.

37 a. The liability of an issuer, nominated person, or adviser for action  
38 or omission is governed by the law of the jurisdiction chosen by an  
39 agreement in the form of a record signed or otherwise authenticated  
40 by the affected parties in the manner provided in 12A:5-104 or by a  
41 provision in the person's letter of credit, confirmation, or other  
42 undertaking. The jurisdiction whose law is chosen need not bear any  
43 relation to the transaction.

44 b. Unless subsection a. of this section applies, the liability of an  
45 issuer, nominated person, or adviser for action or omission is governed  
46 by the law of the jurisdiction in which the person is located. The

1 person is considered to be located at the address indicated in the  
2 person's undertaking. If more than one address is indicated, the  
3 person is considered to be located at the address from which the  
4 person's undertaking was issued. For the purpose of jurisdiction,  
5 choice of law, and recognition of interbranch letters of credit, but not  
6 enforcement of a judgment, all branches of a bank are considered  
7 separate juridical entities and a bank is considered to be located at the  
8 place where its relevant branch is considered to be located under this  
9 subsection.

10 c. Except as otherwise provided in this subsection, the liability of  
11 an issuer, nominated person, or adviser is governed by any rules of  
12 custom or practice, such as the Uniform Customs and Practice for  
13 Documentary Credits, to which the letter of credit, confirmation, or  
14 other undertaking is expressly made subject. If (i) this chapter would  
15 govern the liability of an issuer, nominated person, or adviser under  
16 subsection a. or b. of this section, (ii) the relevant undertaking  
17 incorporates rules of custom or practice, and (iii) there is conflict  
18 between this chapter and those rules as applied to that undertaking,  
19 those rules govern except to the extent of any conflict with the  
20 nonvariable provisions specified in subsection c. of 12A:5-103.

21 d. If there is conflict between this chapter, 12A:5-101 et seq., and  
22 12A:3-101 et seq., 12A:4-101 et seq., 12A:4A-101 et seq., or 12A:9-  
23 101 et seq., this chapter governs.

24 e. The forum for settling disputes arising out of an undertaking  
25 within this chapter may be chosen in the manner and with the binding  
26 effect that governing law may be chosen in accordance with subsection  
27 a. of this section.

28 12A:5-117. Subrogation of Issuer, Applicant, and Nominated  
29 Person.

30 a. An issuer that honors a beneficiary's presentation is subrogated  
31 to the rights of the beneficiary to the same extent as if the issuer were  
32 a secondary obligor of the underlying obligation owed to the  
33 beneficiary; and of the applicant, to the same extent as if the issuer  
34 were the secondary obligor of the underlying obligation owed to the  
35 applicant.

36 b. An applicant that reimburses an issuer is subrogated to the rights  
37 of the issuer against any beneficiary, presenter, or nominated person  
38 to the same extent as if the applicant were the secondary obligor of the  
39 obligations owed to the issuer and has the rights of subrogation of the  
40 issuer to the rights of the beneficiary stated in subsection a. of this  
41 section.

42 c. A nominated person who pays or gives value against a draft or  
43 demand presented under a letter of credit is subrogated to the rights  
44 of:

45 (1) the issuer against the applicant to the same extent as if the  
46 nominated person were a secondary obligor of the obligation owed to

1 the issuer by the applicant;

2 (2) the beneficiary to the same extent as if the nominated person  
3 were a secondary obligor of the underlying obligation owed to the  
4 beneficiary; and

5 (3) the applicant to the same extent as if the nominated person  
6 were a secondary obligor of the underlying obligation owed to the  
7 applicant.

8 d. Notwithstanding any agreement or term to the contrary, the  
9 rights of subrogation stated in subsections a. and b. of this section do  
10 not arise until the issuer honors the letter of credit or otherwise pays  
11 and the rights in subsection c. of this section do not arise until the  
12 nominated person pays or otherwise gives value. Until then, the  
13 issuer, nominated person, and the applicant do not derive under this  
14 section present or prospective rights forming the basis of a claim,  
15 defense, or excuse.

16

17 2. N.J.S.12A:1-105 is amended to read as follows:

18 12A:1-105. Territorial application of the act; parties' power to  
19 choose applicable law.

20 (1) Except as provided hereafter in this section, when a transaction  
21 bears a reasonable relation to this State and also to another state or  
22 nation the parties may agree that the law either of this State or of such  
23 other state or nation shall govern their rights and duties. Failing such  
24 agreement this act applies to transactions bearing an appropriate  
25 relation to this State.

26 (2) Where one of the following provisions of this act specifies the  
27 applicable law, that provision governs and a contrary agreement is  
28 effective only to the extent permitted by the law (including the conflict  
29 of laws rules) so specified:

30 Rights of creditors against sold goods. 12A:2-402.

31 Applicability of the Chapter on Leases. 12A:2A-105 and  
32 12A:2A-106.

33 Applicability of the Chapter on Bank Deposits and Collections.  
34 12A:4-102.

35 Governing law in the Chapter on Funds Transfers. 12A:4A-507.

36 Letters of Credit. 12A:5-116.

37 Applicability of the Chapter on Investment Securities. 12A:8-106.

38 Perfection provisions of the Chapter on Secured Transactions.  
39 12A:9-103.

40 (cf: P.L1994, c.114, s.3)

41

42 3. N.J.S.12A:2-512 is amended to read as follows:

43 12A:2-512. (1) Where the contract requires payment before  
44 inspection, non-conformity of the goods does not excuse the buyer  
45 from so making payment unless

46 (a) the non-conformity appears without inspection; or

1 (b) despite tender of the required documents the circumstances  
2 would justify injunction against honor under the provisions of [this Act  
3 (12A:5-114] 12A:5-109(b).

4 (2) Payment pursuant to subsection (1) does not constitute an  
5 acceptance of goods or impair the buyer's right to inspect or any of  
6 his remedies.

7 (cf: N.J.S.12A:2-512)

8

9 4. N.J.S.12A:9-103 is amended to read as follows:

10 12A:9-103. Perfection of Security Interests in Multiple State  
11 Transactions.

12 (1) Documents, instruments, letters of credit, and ordinary goods.

13 (a) This subsection applies to documents [and] instruments,  
14 rights to proceeds of written letters of credit, and [to] goods other  
15 than those covered by a certificate of title described in subsection (2),  
16 mobile goods described in subsection (3), and minerals described in  
17 subsection (5).

18 (b) Except as otherwise provided in this subsection, perfection and  
19 the effect of perfection or nonperfection of a security interest in  
20 collateral are governed by the law of the jurisdiction where the  
21 collateral is when the last event occurs on which is based the assertion  
22 that the security interest is perfected or unperfected.

23 (c) If the parties to a transaction creating a purchase money  
24 security interest in goods in one jurisdiction understand at the time  
25 that the security interest attaches that the goods will be kept in another  
26 jurisdiction, then the law of the other jurisdiction governs the  
27 perfection and the effect of perfection or nonperfection of the security  
28 interest from the time it attaches until 30 days after the debtor receives  
29 possession of the goods and thereafter if the goods are taken to the  
30 other jurisdiction before the end of the 30-day period.

31 (d) When collateral is brought into and kept in this State while  
32 subject to a security interest perfected under the law of the jurisdiction  
33 from which the collateral was removed, the security interest remains  
34 perfected, but if action is required by subchapter 3 of this chapter to  
35 perfect the security interest,

36 (i) if the action is not taken before the expiration of the period of  
37 perfection in the other jurisdiction or the end of four months after the  
38 collateral is brought into this State, whichever period first expires, the  
39 security interest becomes unperfected at the end of that period and is  
40 thereafter deemed to have been unperfected as against a person who  
41 became a purchaser after removal;

42 (ii) if the action is taken before the expiration of the period  
43 specified in subparagraph (i), the security interest continues perfected  
44 thereafter;

45 (iii) for the purpose of priority over a buyer of consumer goods  
46 (subsection (2) of 12A:9-307), the period of the effectiveness of a

1 filing in the jurisdiction from which the collateral is removed is  
2 governed by the rules with respect to perfection in subparagraphs (i)  
3 and (ii).

4 (2) Certificate of title.

5 (a) This subsection applies to goods covered by a certificate of title  
6 issued under a statute of this State or of another jurisdiction under the  
7 law of which indication of a security interest on the certificate is  
8 required as a condition of perfection.

9 (b) Except as otherwise provided in this subsection, perfection and  
10 the effect of perfection or nonperfection of the security interest are  
11 governed by the law (including the conflict of laws rules) of the  
12 jurisdiction issuing the certificate until four months after the goods are  
13 removed from that jurisdiction and thereafter until the goods are  
14 registered in another jurisdiction, but in any event not beyond  
15 surrender of the certificate. After the expiration of that period, the  
16 goods are not covered by the certificate of title within the meaning of  
17 this section.

18 (c) Except with respect to the rights of a buyer described in the  
19 next paragraph, a security interest, perfected in another jurisdiction  
20 otherwise than by notation on a certificate of title, in goods brought  
21 into this State and thereafter covered by a certificate of title issued by  
22 this State is subject to the rules stated in paragraph (d) of subsection  
23 (1).

24 (d) If goods are brought into this State while a security interest  
25 therein is perfected in any manner under the law of the jurisdiction  
26 from which the goods are removed and a certificate of title is issued  
27 by this State and the certificate does not show that the goods are  
28 subject to the security interest or that they may be subject to security  
29 interests not shown on the certificate, the security interest is  
30 subordinate to the rights of a buyer of the goods who is not in the  
31 business of selling goods of that kind to the extent that he gives value  
32 and receives delivery of the goods after issuance of the certificate and  
33 without the knowledge of the security interest.

34 (3) Accounts, general intangibles and mobile goods.

35 (a) This subsection applies to accounts (other than an account  
36 described in subsection (5) on minerals) and general intangibles (other  
37 than uncertificated securities) and to goods which are mobile and  
38 which are of a type normally used in more than one jurisdiction, such  
39 as motor vehicles, trailers, rolling stock, airplanes, shipping containers,  
40 road building and construction machinery and commercial harvesting  
41 machinery and the like, if the goods are equipment or are inventory  
42 leased or held for lease by the debtor to others, and are not covered by  
43 a certificate of title described in subsection (2).

44 (b) The law (including the conflict of laws rules) of the jurisdiction  
45 in which the debtor is located governs the perfection and the effect of  
46 perfection or nonperfection of the security interest.

1 (c) If, however, the debtor is located in a jurisdiction which is not  
2 a part of the United States, and which does not provide for perfection  
3 of the security interest by filing or recording in that jurisdiction, the  
4 law of the jurisdiction in the United States in which the debtor has its  
5 major executive office in the United States governs the perfection and  
6 the effect of perfection or nonperfection of the security interest  
7 through filing. In the alternative, if the debtor is located in a  
8 jurisdiction which is not a part of the United States or Canada and the  
9 collateral is accounts or general intangibles for money due or to  
10 become due, the security interest may be perfected by notification to  
11 the account debtor. As used in this paragraph, "United States" includes  
12 its territories and possessions and the Commonwealth of Puerto Rico.

13 (d) A debtor shall be deemed located at his place of business if he  
14 has one, at his chief executive office if he has more than one place of  
15 business, otherwise at his residence. If, however, the debtor is a  
16 foreign air carrier under the Federal Aviation Act of 1958, as  
17 amended, it shall be deemed located at the designated office of the  
18 agent upon whom service of process may be made on behalf of the  
19 foreign air carrier.

20 (e) A security interest perfected under the law of the jurisdiction  
21 of the location of the debtor is perfected until the expiration of four  
22 months after a change of the debtor's location to another jurisdiction,  
23 or until perfection would have ceased by the law of the first  
24 jurisdiction, whichever period first expires. Unless perfected in the  
25 new jurisdiction before the end of that period, it becomes unperfected  
26 thereafter and is deemed to have been unperfected as against a person  
27 who became a purchaser after the change.

28 (4) Chattel paper.

29 The rules stated for goods in subsection (1) apply to a possessory  
30 security interest in chattel paper. The rules stated for accounts in  
31 subsection (3) apply to a nonpossessory security interest in chattel  
32 paper, but the security interest may not be perfected by notification to  
33 the account debtor.

34 (5) Minerals.

35 Perfection and the effect of perfection or nonperfection of a  
36 security interest which is created by a debtor who has an interest in  
37 minerals or the like (including oil and gas) before extraction and which  
38 attaches thereto as extracted, or which attaches to an account resulting  
39 from the sale thereof at the wellhead or minehead are governed by the  
40 law (including the conflict of laws rules) of the jurisdiction wherein the  
41 wellhead or minehead is located.

42 (6) Uncertificated securities.

43 The law (including the conflict of laws rules) of the jurisdiction of  
44 organization of the issuer governs the perfection and the effect of  
45 perfection or nonperfection of a security interest in uncertificated

1 securities.

2 (cf: P.L.1989, c.348, s.48)

3

4 5. N.J.S.12A:9-104 is amended to read as follows:

5 12A:9-104. This chapter does not apply

6 (a) To a security interest subject to any statute of the United States  
7 such as the Ship Mortgage Act, 1920, to the extent that such statute  
8 governs the rights of parties to and third parties affected by  
9 transactions in particular types of property; or

10 (b) To a landlord's lien; or

11 (c) To a lien given by statute or other rule of law for services or  
12 materials except as provided in 12A:9-310 on priority of such liens;  
13 or

14 (d) To a transfer of a claim for wages, salary or other  
15 compensation of an employee; or

16 (e) To a transfer by a government or governmental subdivision or  
17 agency; or

18 (f) To a sale of accounts or chattel paper as part of a sale of the  
19 business out of which they arose, or an assignment of accounts or  
20 chattel paper which is for the purpose of collection only, or a transfer  
21 of a right to payment under a contract to an assignee who is also to  
22 do the performance under the contract or a transfer of a single  
23 account to an assignee in whole or partial satisfaction of a preexisting  
24 indebtedness; or

25 (g) To a transfer of an interest in or claim in or under any policy of  
26 insurance, except as provided with respect to proceeds (12A:9-306)  
27 and priorities in proceeds (12A:9-312); or

28 (h) To a right represented by a judgment (other than a judgment  
29 taken on a right to payment which was collateral); or

30 (i) To any right of set-off; or

31 (j) Except to the extent that provision is made for fixtures in  
32 12A:9-313, to the creation or transfer of an interest in or lien on real  
33 estate, including a lease or rents thereunder; or

34 (k) To a transfer in whole or in part of any claim arising out of  
35 tort; or

36 (l) To a transfer of an interest in any deposit account (subsection  
37 (1) of 12A:9-105), except as provided with respect to proceeds  
38 (12A:9-306) and priorities in proceeds (12A:9-312); or

39 (m) To a chattel mortgage of the character described in [section]  
40 R.S. 46:28-14 [of the Revised Statutes] ; or

41 (n) to a transfer of an interest in a letter of credit other than the  
42 rights to proceeds of a written letter of credit.

43 (cf: P.L.1981, c.138, s.8)

44

45 6. N.J.S.12A:9-105 is amended to read as follows:

46 12A:9-105. Definitions and Index of Definitions.

- 1 (1) In this chapter unless the context otherwise requires:
- 2 (a) "Account debtor" means the person who is obligated on an  
3 account, chattel paper or general intangible;
- 4 (b) "Chattel paper" means a writing or writings which evidence  
5 both a monetary obligation and a security interest in or a lease of  
6 specific goods, but a charter or other contract involving the use or hire  
7 of a vessel is not chattel paper. When a transaction is evidenced both  
8 by such a security agreement or a lease and by an instrument or a  
9 series of instruments, the group of writings taken together constitutes  
10 chattel paper;
- 11 (c) "Collateral" means the property subject to a security interest,  
12 and includes accounts and chattel paper which have been sold;
- 13 (d) "Debtor" means the person who owes payment or other  
14 performance of the obligation secured, whether or not he owns or has  
15 rights in the collateral, and includes the seller of accounts or chattel  
16 paper. Where the debtor and the owner of the collateral are not the  
17 same person, the term "debtor" means the owner of the collateral in  
18 any provision of the chapter dealing with the collateral, the obligor in  
19 any provision dealing with the obligation, and may include both where  
20 the context so requires;
- 21 (e) "Deposit account" means a demand, time, savings, passbook or  
22 like account maintained with a bank, savings and loan association,  
23 credit union or like organization, other than an account evidenced by  
24 a certificate of deposit;
- 25 (f) "Document" means document of title as defined in the general  
26 definitions of chapter 1 (12A:1-201) , and a receipt of the kind  
27 described in subsection (2) of 12A:7-201;
- 28 (g) "Encumbrance" includes real estate mortgages and other liens  
29 on real estate and all other rights in real estate that are not ownership  
30 interests;
- 31 (h) "Goods" includes all things which are movable at the time the  
32 security interest attaches or which are fixtures (12A:9-313), but does  
33 not include money, documents, instruments, accounts, chattel paper,  
34 general intangibles, or minerals or the like (including oil and gas)  
35 before extraction. "Goods" also includes standing timber which is to  
36 be cut and removed under a conveyance or contract for sale, the  
37 unborn young of animals, and growing crops;
- 38 (i) "Instrument" means a negotiable instrument (defined in  
39 12A:3-104), or a certificated security (defined in 12A:8-102) or any  
40 other writing which evidences a right to the payment of money and is  
41 not itself a security agreement or lease and is of a type which is in  
42 ordinary course of business transferred by delivery with any necessary  
43 indorsement or assignment;
- 44 (j) "Mortgage" means a consensual interest created by a real estate  
45 mortgage, a trust deed on real estate, or the like;
- 46 (k) An advance is made "pursuant to commitment" if the secured



1 party has bound himself to make it, whether or not a subsequent event  
2 of default or other event not within his control has relieved or may  
3 relieve him from his obligation;

4 (l) "Security agreement" means an agreement which creates or  
5 provides for a security interest;

6 (m) "Secured party" means a lender, seller or other person in  
7 whose favor there is a security interest, including a person to whom  
8 accounts or chattel paper have been sold. When the holders of  
9 obligations issued under an indenture of trust, equipment trust  
10 agreement or the like are represented by a trustee or other person, the  
11 representative is the secured party.

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

14 "Account." 12A:9-106.

15 "Attach." 12A:9-203.

16 "Construction mortgage." 12A:9-313 (1).

17 "Consumer goods." 12A:9-109 (1).

18 "Equipment." 12A:9-109 (2).

19 "Farm products." 12A:9-109 (3).

20 "Fixture." 12A:9-313.

21 "Fixture filing." 12A:9-313.

22 "General intangibles." 12A:9-106.

23 "Inventory." 12A:9-109 (4).

24 "Lien creditor." 12A:9-301 (3).

25 "Proceeds." 12A:9-306 (1).

26 "Purchase money security interest." 12A:9-107.

27 "United States." 12A:9-103 (3).

28 (3) The following definitions in other chapters apply to this  
29 chapter:

30 "Check." 12A:3-104.

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

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

33 "Letter of Credit." 12A:5-102.

34 "Note." 12A:3-104.

35 "Proceeds of a letter of credit." 12A:5-114.

36 "Sale." 12A:2-106.

37 (4) In addition chapter 1 contains general definitions and principles  
38 of construction and interpretation applicable throughout this chapter.  
39 (cf: P.L.1989, c.348, s.49)

40

41 7. N.J.S.12A:9-106 is amended to read as follows"

42 12A:9-106. Definitions: "account"; "general intangibles"

43 "Account" means any right to payment for goods sold or leased or  
44 for services rendered which is not evidenced by an instrument or  
45 chattel paper, whether or not it has been earned by performance. All  
46 rights to payment earned or unearned under a charter or other contract

1 involving the use or hire of a vessel and all rights incident to the  
2 charter or contract are accounts. "General intangibles" means any  
3 personal property (including things in action) other than goods,  
4 accounts, chattel paper, documents, instruments, rights to proceeds of  
5 written letters of credit, and money.  
6 (cf: P.L.1981, c.138, s.10)

7

8 8. N.J.S.12A:9-304 is amended to read as follows:

9 12A:9-304. Perfection of Security Interest In Instruments,  
10 Documents, Proceeds of a Written Letter of Credit, and Goods  
11 Covered by Documents; Perfection by Permissive Filing; Temporary  
12 Perfection Without Filing or Transfer of Possession.

13 (1) A security interest in chattel paper or negotiable documents  
14 may be perfected by filing. A security interest in the rights to proceeds  
15 of a written letter of credit can be perfected only by the secured party's  
16 taking possession of the letter of credit. A security interest in money  
17 or instruments (other than certificated securities or instruments which  
18 constitute part of chattel paper) can be perfected only by the secured  
19 party's taking possession, except as provided in subsections (4) and (5)  
20 of this section and subsections (2) and (3) of 12A:9-306 on proceeds.

21 (2) During the period that goods are in the possession of the issuer  
22 of a negotiable document therefor, a security interest in the goods is  
23 perfected by perfecting a security interest in the document, and any  
24 security interest in the goods otherwise perfected during such period  
25 is subject thereto.

26 (3) A security interest in goods in the possession of a bailee other  
27 than one who has issued a negotiable document therefor is perfected  
28 by issuance of a document in the name of the secured party or by the  
29 bailee's receipt of notification of the secured party's interest or by  
30 filing as to the goods.

31 (4) A security interest in instruments (other than certificated  
32 securities) or negotiable documents is perfected without filing or the  
33 taking of possession for a period of 21 days from the time it attaches  
34 to the extent that it arises for new value given under a written security  
35 agreement.

36 (5) A security interest remains perfected for a period of 21 days  
37 without filing where a secured party having a perfected security  
38 interest in an instrument (other than a certificated security), a  
39 negotiable document or goods in possession of a bailee other than one  
40 who has issued a negotiable document therefor:

41 (a) Makes available to the debtor the goods or documents  
42 representing the goods for the purpose of ultimate sale or exchange or  
43 for the purpose of loading, unloading, storing, shipping, transshipping,  
44 manufacturing, processing or otherwise dealing with them in a manner  
45 preliminary to their sale or exchange, but priority between conflicting  
46 security interests in the goods is subject to subsection (3) of

1 12A:9-312; or

2 (b) Delivers the instrument to the debtor for the purpose of  
3 ultimate sale or exchange or of presentation, collection, renewal, or  
4 registration of transfer.

5 (6) After the 21-day period in subsections (4) and (5) perfection  
6 depends upon compliance with applicable provisions of this chapter.  
7 (cf: P.L.1989, c.348, s.52)

8

9 9. N.J.S.12A:9-305 is amended to read as follows:

10 12A:9-305. When Possession by Secured Party Perfects Security  
11 Interest Without Filing.

12 A security interest in [letters of credit and advices of credit  
13 (subsection (2) (a) of 12A:5-116),] goods, instruments (other than  
14 certificated securities), money, negotiable documents or chattel paper  
15 may be perfected by the secured party's taking possession of the  
16 collateral. A security interest in the right to proceeds of a written  
17 letter of credit may be perfected by the secured party's taking  
18 possession of the letter of credit. If such collateral other than goods  
19 covered by a negotiable document is held by a bailee, the secured party  
20 is deemed to have possession from the time the bailee receives  
21 notification of the secured party's interest. A security interest is  
22 perfected by possession from the time possession is taken without  
23 relation back and continues only so long as possession is retained,  
24 unless otherwise specified in this chapter. The security interest may  
25 be otherwise perfected as provided in this chapter before or after the  
26 period of possession by the secured party.

27 (cf: P.L.1989, c.348, s.53)

28

29 10. Section 25 of P.L.1948, c.67 (C.17:9A-25) is amended to read  
30 as follows:

31 25. Additional powers of banks.

32 In addition to the powers specified in section 24, every bank shall,  
33 subject to the provisions of this act, have the following powers,  
34 whether or not such powers are specifically set forth in its certificate  
35 of incorporation:

36 (1) To discount, buy, invest in, hold, assign, transfer, sell, and  
37 negotiate promissory notes, drafts, bills of exchange, mortgages, trade  
38 acceptances, bankers' acceptances, bonds, debentures, bonds or notes  
39 secured by mortgages, installment obligations, balances due on  
40 conditional sales, and other evidences of debt for its own account, or  
41 for the account of customers;

42 (2) To accept for payment at future dates drafts drawn upon it by  
43 its customers;

44 (3) To issue letters of credit [authorizing holders thereof to draw  
45 drafts upon it or upon its correspondents at sight or on time;] to  
46 guarantee the payment by its customers of amounts due or to become

- 1 due upon the purchase by such customers of real or personal property;
- 2 (4) To receive interest and noninterest bearing demand and time  
3 deposits, to be repaid on such terms as may be agreed upon between  
4 the depositors and the bank, and to furnish security for such deposits  
5 when required by the laws of this State or of the United States, or by  
6 rules or orders of any court of this State or of the United States or by  
7 the regulations of an officer or agency of this State or of the United  
8 States, made pursuant to such law; provided that no bank shall be  
9 required to give security for deposits made by this State, or any  
10 political subdivision thereof, or any other body politic existing under  
11 the laws of this State, to the extent that such deposits are insured  
12 under any federal legislation providing for the insurance of bank  
13 deposits;
- 14 (5) To maintain savings departments for the receipt of interest and  
15 noninterest bearing deposits, to be repaid on such terms as may be  
16 agreed upon between the depositors and the bank, and to commingle  
17 such deposits with deposits otherwise received;
- 18 (6) During hours other than the bank's usual hours for receipt of  
19 deposits, to provide the equipment for receiving, and to receive,  
20 containers purporting to contain moneys or instruments for the  
21 payment of money;
- 22 (7) To make loans, secured or unsecured, including loans to its  
23 stockholders;
- 24 (8) To extend credit by honoring overdrafts upon deposit accounts,  
25 but no credit shall be so extended except pursuant to written  
26 agreement made in advance;
- 27 (9) To buy and sell gold and silver bullion, foreign coin, and  
28 exchange;
- 29 (10) To purchase and sell debt and equity securities of other  
30 corporations, without recourse, solely upon order and for the account  
31 of customers. This paragraph shall not limit the power of a bank to  
32 take securities of other corporations as collateral security for loans,  
33 discounts, or other extensions of credit, or to acquire those securities  
34 when their acquisition is necessary to prevent or minimize loss upon  
35 debts previously contracted in good faith. Equity securities acquired  
36 pursuant to this paragraph shall be sold within five years after their  
37 acquisition, except that the commissioner may, by order, extend the  
38 time within which sales of equity securities described in such order  
39 shall be made; but this paragraph shall not invalidate the holding of any  
40 equity securities lawfully acquired on or before the effective date of  
41 this act. This paragraph shall not apply to any case in which, pursuant  
42 to any other provision of this act, or pursuant to any other act, a bank  
43 is expressly authorized to subscribe for, purchase or otherwise acquire  
44 or hold securities;
- 45 (11) To receive any tangible personal property for safekeeping and  
46 storage on the terms provided by chapter 7 of Title 12A of the New

1 Jersey Statutes, and to keep, maintain, and rent out for hire, space for  
2 the storage and safekeeping of personal property of such kind and  
3 description, or represented by the depositor thereof to be of such kind  
4 and description, as the commissioner may by regulation from time to  
5 time prescribe; but nothing herein contained shall limit the power of a  
6 bank to let space for the storage and safekeeping of personal property  
7 to which the bank has security title or in which it has a lien interest;

8 (12) To avail itself of the provisions of any federal legislation  
9 providing for the extension of any lawful banking activity in the  
10 making of loans or the extension of credit to individuals, or for the  
11 financing of business enterprises, or in such other banking activity as  
12 may be specified in such legislation and made available for  
13 participation by banks; except that the power by this paragraph  
14 conferred shall not be exercised unless the commissioner shall make a  
15 general order authorizing such participation upon such terms and  
16 conditions as may in such order be prescribed;

17 (13) To act as the fiscal agent of the United States, and of any  
18 corporation, and of any State, county, municipality, board, commission  
19 or other body politic, and to perform all duties as such fiscal agent as  
20 may lawfully be required of it;

21 (14) To assist customers or act for customers in the preparation,  
22 handling and disbursement of payrolls and payroll deductions and in  
23 the preparation, maintenance and furnishing of records and statistical  
24 information in connection therewith.

25 (cf: P.L.1985, c.528, s.3)

26

27 11. Section 213.1 of P.L.1948, c.67 (C.17:9A-213.1) is amended  
28 to read as follows:

29 213.1. Except as in this act or otherwise by law provided, and  
30 except for letters of credit issued pursuant to N.J.S.12A:5-101 et seq.,  
31 no bank or savings bank shall have power to guarantee the obligations  
32 of others; or to insure or indemnify against the acts, omissions,  
33 undertakings, liabilities or losses of others.

34 (cf: P.L.1948, c.67, s.213.1)

35

36 12. This act shall take effect immediately.

37

38

39

#### STATEMENT

40

41 This bill repeals existing Uniform Commercial Code Chapter 5  
42 Letters of Credit and replaces it with Uniform Commercial Code  
43 Revised Chapter 5. The revision is a product of the National  
44 Conference of Commissioners on Uniform State Laws and has been  
45 adopted in 14 states. The New Jersey Law Revision Commission has  
46 reviewed Revised Chapter 5 to determine its suitability for New

1 Jersey, and has reported that it would improve our commercial law.

2 Revised Chapter 5 updates existing law to accomodate changes in  
3 technology in the banking industry. It also settles several ambiguities  
4 in current law and conforms domestic law as applied through this  
5 chapter of the U.C.C. to the international standards and practices  
6 governing letters of credit.

7 This bill contains two provisions which deviate from the Official  
8 Text of Revised Chapter 5 recommended by the New Jersey Law  
9 Revision Commission. First, subsection e. of 12A:5-111 makes the  
10 award of attorney's fees and expenses of litigation discretionary with  
11 the court rather than mandatory. This deviation reflects well-  
12 established New Jersey principles on allocation of legal costs. Each  
13 party bears its own attorney's fees and expenses of litigation. Second,  
14 subsection e. of 12A:5-108 clarifies that the court determines standard  
15 banking practices regarding letters of credit but does not decide  
16 disputed questions of fact when the case is tried to a jury. This  
17 deviation is not a change in meaning of the Official Text but corrects  
18 an ambiguity of language in that text.

19 Letters of credit are an important payment instrument for business  
20 firms both in domestic and international transactions. Revised Chapter  
21 5 modernizes relevant New Jersey law and creates an efficient legal  
22 environment for the letter of credit industry.

23

24

25

26

27 Revises law on letters of credit.