

[First Reprint]
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10 supplements thereto) is repealed and replaced as follows: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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSM committee amendments adopted June 12, 1997.

1 term includes a person to whom drawing rights have been transferred
2 under a transferable letter of credit.

3 (4) "Confirmer" means a nominated person who undertakes, at the
4 request or with the consent of the issuer, to honor a presentation
5 under a letter of credit issued by another.

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

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

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

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

22 (a) upon payment;

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

25 (c) if the letter of credit provides for incurring a deferred
26 obligation, upon incurring the obligation and, at maturity, its
27 performance.

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

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

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

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

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

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

1 (15) "Successor of a beneficiary" means a person who succeeds to
2 substantially all of the rights of a beneficiary by operation of law,
3 including a corporation with or into which the beneficiary has been
4 merged or consolidated, an administrator, executor, personal
5 representative, trustee in bankruptcy, debtor in possession, liquidator,
6 and receiver.

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

9 "Acceptance" 12A:3-409

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

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

14 12A:5-103. Scope.

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

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

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

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

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

41 12A:5-105. Consideration. Consideration is not required to issue,
42 amend, transfer, or cancel a letter of credit, advice, or confirmation.

43 12A:5-106. Issuance, Amendment, Cancellation, and Duration.

44 a. A letter of credit is issued and becomes enforceable according
45 to its terms against the issuer when the issuer sends or otherwise
46 transmits it to the person requested to advise or to the beneficiary. A

1 letter of credit is revocable only if it so provides.

2 b. After a letter of credit is issued, rights and obligations of a
3 beneficiary, applicant, confirmer, and issuer are not affected by an
4 amendment or cancellation to which that person has not consented
5 except to the extent the letter of credit provides that it is revocable or
6 that the issuer may amend or cancel the letter of credit without that
7 consent.

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

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

15 12A:5-107. Confirmer, Nominated Person, and Adviser.

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

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

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

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

38 12A:5-108. Issuer's Rights and Obligations.

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

46 b. An issuer has a reasonable time after presentation, but not

1 beyond the end of the seventh business day of the issuer after the day
2 of its receipt of documents:

- 3 (1) to honor;
- 4 (2) if the letter of credit provides for honor to be completed more
5 than seven business days after presentation, to accept a draft or incur
6 a deferred obligation; or
- 7 (3) to give notice to the presenter of discrepancies in the
8 presentation.

9 c. Except as otherwise provided in subsection d. of this section, an
10 issuer is precluded from asserting as a basis for dishonor any
11 discrepancy if timely notice is not given, or any discrepancy not stated
12 in the notice if timely notice is given.

13 d. Failure to give the notice specified in subsection b. of this
14 section or to mention fraud, forgery, or expiration in the notice does
15 not preclude the issuer from asserting as a basis for dishonor fraud or
16 forgery as described in subsection a. of 12A:5-109 or expiration of the
17 letter of credit before presentation.

18 e. An issuer shall observe standard practice of financial institutions
19 that regularly issue letters of credit. Determination of the standard
20 practice is a matter of interpretation for the court. The court shall
21 offer the parties a reasonable opportunity to present evidence of the
22 standard practice.

23 f. An issuer is not responsible for:

- 24 (1) the performance or nonperformance of the underlying contract,
25 arrangement, or transaction;
- 26 (2) an act or omission of others; or
- 27 (3) observance or knowledge of the usage of a particular trade
28 other than the standard practice referred to in subsection e. of this
29 section.

30 g. If an undertaking constituting a letter of credit under paragraph
31 (10) of subsection a. of 12A:5-102 contains nondocumentary
32 conditions, an issuer shall disregard the nondocumentary conditions
33 and treat them as if they were not stated.

34 h. An issuer that has dishonored a presentation shall return the
35 documents or hold them at the disposal of, and send advice to that
36 effect to, the presenter.

37 i. An issuer that has honored a presentation as permitted or
38 required by this chapter:

- 39 (1) is entitled to be reimbursed by the applicant in immediately
40 available funds not later than the date of its payment of funds;
- 41 (2) takes the documents free of claims of the beneficiary or
42 presenter;
- 43 (3) is precluded from asserting a right of recourse on a draft under
44 12A:3-414 and 12A:3-415;
- 45 (4) except as otherwise provided in 12A:5-110 and 12A:5-117, is
46 precluded from restitution of money paid or other value given by

1 mistake to the extent the mistake concerns discrepancies in the
2 documents or tender which are apparent on the face of the
3 presentation; and

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

7 12A:5-109. Fraud and Forgery.

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

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

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

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

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

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

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

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

41 12A:5-110. Warranties.

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

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

46 (2) to the applicant that the drawing does not violate any

1 agreement between the applicant and beneficiary or any other
2 agreement intended by them to be augmented by the letter of credit.

3 b. The warranties in subsection a. of this section are in addition to
4 warranties arising under 12A:3-101 et seq., 12A:4-101 et seq., 12A:7-
5 101 et seq. and 12A:8-101 et seq. because of the presentation or
6 transfer of documents covered by any of those chapters.

7 12A:5-111. Remedies.

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

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

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

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

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

44 f. Damages that would otherwise be payable by a party for breach
45 of an obligation under this chapter may be liquidated by agreement or
46 undertaking, but only in an amount or by a formula that is reasonable

1 in light of the harm anticipated.

2 12A:5-112. Transfer of Letter of Credit.

3 a. Except as otherwise provided in 12A:5-113, unless a letter of
4 credit provides that it is transferable, the right of a beneficiary to draw
5 or otherwise demand performance under a letter of credit may not be
6 transferred.

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

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

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

15 12A:5-113. Transfer by Operation of Law.

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

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

30 c. An issuer is not obliged to determine whether a purported
31 successor is a successor of a beneficiary or whether the signature of a
32 purported successor is genuine or authorized.

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

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

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

1 12A:5-114. Assignment of Proceeds.

2 a. In this section, "proceeds of a letter of credit" means the cash,
3 check, accepted draft, or other item of value paid or delivered upon
4 honor or giving of value by the issuer or any nominated person under
5 the letter of credit. The term does not include a beneficiary's drawing
6 rights or documents presented by the beneficiary.

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

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

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

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

21 f. Neither the rights recognized by this section between an assignee
22 and an issuer, transferee beneficiary, or nominated person, nor the
23 issuer's or nominated person's payment of proceeds to an assignee or
24 a third person, affect the rights between the assignee and any person
25 other than the issuer, transferee beneficiary, or nominated person. The
26 mode of creating and perfecting a security interest in or granting an
27 assignment of a beneficiary's rights to proceeds is governed by 12A:9-
28 101 et seq. or other law. Against persons other than the issuer,
29 transferee beneficiary, or nominated person, the rights and obligations
30 arising upon the creation of a security interest or other assignment of
31 a beneficiary's right to proceeds and its perfection are governed by
32 12A:9-101 et seq. or other law.

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

39 12A:5-116. Choice of Law and Forum.

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

1 b. Unless subsection a. of this section applies, the liability of an
2 issuer, nominated person, or adviser for action or omission is governed
3 by the law of the jurisdiction in which the person is located. The
4 person is considered to be located at the address indicated in the
5 person's undertaking. If more than one address is indicated, the
6 person is considered to be located at the address from which the
7 person's undertaking was issued. For the purpose of jurisdiction,
8 choice of law, and recognition of interbranch letters of credit, but not
9 enforcement of a judgment, all branches of a bank are considered
10 separate juridical entities and a bank is considered to be located at the
11 place where its relevant branch is considered to be located under this
12 subsection.

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

24 d. If there is conflict between this chapter, 12A:5-101 et seq., and
25 12A:3-101 et seq., 12A:4-101 et seq., 12A:4A-101 et seq., or 12A:9-
26 101 et seq., this chapter governs.

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

31 12A:5-117. Subrogation of Issuer, Applicant, and Nominated
32 Person.

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

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

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

1 of:

2 (1) the issuer against the applicant to the same extent as if the
3 nominated person were a secondary obligor of the obligation owed to
4 the issuer by the applicant;

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

8 (3) the applicant to the same extent as if the nominated person
9 were a secondary obligor of the underlying obligation owed to the
10 applicant.

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

19

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

21 12A:1-105. Territorial application of the act; parties' power to
22 choose applicable law.

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

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

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

34 Applicability of the Chapter on Leases. 12A:2A-105 and
35 12A:2A-106.

36 Applicability of the Chapter on Bank Deposits and Collections.
37 12A:4-102.

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

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

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

41 Perfection provisions of the Chapter on Secured Transactions.
42 12A:9-103.

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

44

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

46 12A:2-512. (1) Where the contract requires payment before

1 inspection, non-conformity of the goods does not excuse the buyer
2 from so making payment unless

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

4 (b) despite tender of the required documents the circumstances
5 would justify injunction against honor under the provisions of [this Act
6 (12A:5-114] ~~12A:5-109(b)~~.

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

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

11

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

13 12A:9-103. Perfection of Security Interests in Multiple State
14 Transactions.

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

16 (a) This subsection applies to documents [and] ~~instruments~~ rights to proceeds of written letters of credit, and [to] goods other
17 than those covered by a certificate of title described in subsection (2),
18 mobile goods described in subsection (3), and minerals described in
19 subsection (5).
20

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

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

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

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

45 (ii) if the action is taken before the expiration of the period
46 specified in subparagraph (i), the security interest continues perfected

1 thereafter;

2 (iii) for the purpose of priority over a buyer of consumer goods
3 (subsection (2) of 12A:9-307), the period of the effectiveness of a
4 filing in the jurisdiction from which the collateral is removed is
5 governed by the rules with respect to perfection in subparagraphs (i)
6 and (ii).

7 (2) Certificate of title.

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

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

21 (c) Except with respect to the rights of a buyer described in the
22 next paragraph, a security interest, perfected in another jurisdiction
23 otherwise than by notation on a certificate of title, in goods brought
24 into this State and thereafter covered by a certificate of title issued by
25 this State is subject to the rules stated in paragraph (d) of subsection
26 (1).

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

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

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

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

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

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

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

31 (4) Chattel paper.

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

37 (5) Minerals.

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

45 (6) Uncertificated securities.

46 The law (including the conflict of laws rules) of the jurisdiction of

1 organization of the issuer governs the perfection and the effect of
2 perfection or nonperfection of a security interest in uncertificated
3 securities.

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

5

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

7 12A:9-104. This chapter does not apply

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

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

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

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

18 (e) To a transfer by a government or governmental subdivision or
19 agency; or

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

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

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

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

33 (j) Except to the extent that provision is made for fixtures in
34 12A:9-313, to the creation or transfer of an interest in or lien on real
35 estate, including a lease or rents thereunder; or

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

38 (l) To a transfer of an interest in any deposit account (subsection
39 (1) of 12A:9-105), except as provided with respect to proceeds
40 (12A:9-306) and priorities in proceeds (12A:9-312); or

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

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

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

- 1 6. N.J.S.12A:9-105 is amended to read as follows:
2 12A:9-105. Definitions and Index of Definitions.
- 3 (1) In this chapter unless the context otherwise requires:
- 4 (a) "Account debtor" means the person who is obligated on an
5 account, chattel paper or general intangible;
- 6 (b) "Chattel paper" means a writing or writings which evidence
7 both a monetary obligation and a security interest in or a lease of
8 specific goods, but a charter or other contract involving the use or hire
9 of a vessel is not chattel paper. When a transaction is evidenced both
10 by such a security agreement or a lease and by an instrument or a
11 series of instruments, the group of writings taken together constitutes
12 chattel paper;
- 13 (c) "Collateral" means the property subject to a security interest,
14 and includes accounts and chattel paper which have been sold;
- 15 (d) "Debtor" means the person who owes payment or other
16 performance of the obligation secured, whether or not he owns or has
17 rights in the collateral, and includes the seller of accounts or chattel
18 paper. Where the debtor and the owner of the collateral are not the
19 same person, the term "debtor" means the owner of the collateral in
20 any provision of the chapter dealing with the collateral, the obligor in
21 any provision dealing with the obligation, and may include both where
22 the context so requires;
- 23 (e) "Deposit account" means a demand, time, savings, passbook or
24 like account maintained with a bank, savings and loan association,
25 credit union or like organization, other than an account evidenced by
26 a certificate of deposit;
- 27 (f) "Document" means document of title as defined in the general
28 definitions of chapter 1 (12A:1-201) , and a receipt of the kind
29 described in subsection (2) of 12A:7-201;
- 30 (g) "Encumbrance" includes real estate mortgages and other liens
31 on real estate and all other rights in real estate that are not ownership
32 interests;
- 33 (h) "Goods" includes all things which are movable at the time the
34 security interest attaches or which are fixtures (12A:9-313), but does
35 not include money, documents, instruments, accounts, chattel paper,
36 general intangibles, or minerals or the like (including oil and gas)
37 before extraction. "Goods" also includes standing timber which is to
38 be cut and removed under a conveyance or contract for sale, the
39 unborn young of animals, and growing crops;
- 40 (i) "Instrument" means a negotiable instrument (defined in
41 12A:3-104), or a certificated security (defined in 12A:8-102) or any
42 other writing which evidences a right to the payment of money and is
43 not itself a security agreement or lease and is of a type which is in
44 ordinary course of business transferred by delivery with any necessary
45 indorsement or assignment;
- 46 (j) "Mortgage" means a consensual interest created by a real estate

1 mortgage, a trust deed on real estate, or the like;

2 (k) An advance is made "pursuant to commitment" if the secured
3 party has bound himself to make it, whether or not a subsequent event
4 of default or other event not within his control has relieved or may
5 relieve him from his obligation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) The following definitions in other chapters apply to this
31 chapter:

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

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

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

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

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

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

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

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

42

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

44 12A:9-106. Definitions: "account"; "general intangibles"

45 "Account" means any right to payment for goods sold or leased or
46 for services rendered which is not evidenced by an instrument or

1 chattel paper, whether or not it has been earned by performance. All
2 rights to payment earned or unearned under a charter or other contract
3 involving the use or hire of a vessel and all rights incident to the
4 charter or contract are accounts. "General intangibles" means any
5 personal property (including things in action) other than goods,
6 accounts, chattel paper, documents, instruments, rights to proceeds of
7 written letters of credit, and money.

8 (cf: P.L.1981, c.138, s.10)

9

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

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

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

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

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

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

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

43 (a) Makes available to the debtor the goods or documents
44 representing the goods for the purpose of ultimate sale or exchange or
45 for the purpose of loading, unloading, storing, shipping, transshipping,
46 manufacturing, processing or otherwise dealing with them in a manner

1 preliminary to their sale or exchange, but priority between conflicting
2 security interests in the goods is subject to subsection (3) of
3 12A:9-312; or

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

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

10

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

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

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

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

30

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

33 25. Additional powers of banks.

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

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

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

46 (3) To issue letters of credit [authorizing holders thereof to draw

1 drafts upon it or upon its correspondents at sight or on time;] to
2 guarantee the payment by its customers of amounts due or to become
3 due upon the purchase by such customers of real or personal property;

4 (4) To receive interest and noninterest bearing demand and time
5 deposits, to be repaid on such terms as may be agreed upon between
6 the depositors and the bank, and to furnish security for such deposits
7 when required by the laws of this State or of the United States, or by
8 rules or orders of any court of this State or of the United States or by
9 the regulations of an officer or agency of this State or of the United
10 States, made pursuant to such law; provided that no bank shall be
11 required to give security for deposits made by this State, or any
12 political subdivision thereof, or any other body politic existing under
13 the laws of this State, to the extent that such deposits are insured
14 under any federal legislation providing for the insurance of bank
15 deposits;

16 (5) To maintain savings departments for the receipt of interest and
17 noninterest bearing deposits, to be repaid on such terms as may be
18 agreed upon between the depositors and the bank, and to commingle
19 such deposits with deposits otherwise received;

20 (6) During hours other than the bank's usual hours for receipt of
21 deposits, to provide the equipment for receiving, and to receive,
22 containers purporting to contain moneys or instruments for the
23 payment of money;

24 (7) To make loans, secured or unsecured, including loans to its
25 stockholders;

26 (8) To extend credit by honoring overdrafts upon deposit accounts,
27 but no credit shall be so extended except pursuant to written
28 agreement made in advance;

29 (9) To buy and sell gold and silver bullion, foreign coin, and
30 exchange;

31 (10) To purchase and sell debt and equity securities of other
32 corporations, without recourse, solely upon order and for the account
33 of customers. This paragraph shall not limit the power of a bank to
34 take securities of other corporations as collateral security for loans,
35 discounts, or other extensions of credit, or to acquire those securities
36 when their acquisition is necessary to prevent or minimize loss upon
37 debts previously contracted in good faith. Equity securities acquired
38 pursuant to this paragraph shall be sold within five years after their
39 acquisition, except that the commissioner may, by order, extend the
40 time within which sales of equity securities described in such order
41 shall be made; but this paragraph shall not invalidate the holding of any
42 equity securities lawfully acquired on or before the effective date of
43 this act. This paragraph shall not apply to any case in which, pursuant
44 to any other provision of this act, or pursuant to any other act, a bank
45 is expressly authorized to subscribe for, purchase or otherwise acquire
46 or hold securities;

1 (11) To receive any tangible personal property for safekeeping and
2 storage on the terms provided by chapter 7 of Title 12A of the New
3 Jersey Statutes, and to keep, maintain, and rent out for hire, space for
4 the storage and safekeeping of personal property of such kind and
5 description, or represented by the depositor thereof to be of such kind
6 and description, as the commissioner may by regulation from time to
7 time prescribe; but nothing herein contained shall limit the power of a
8 bank to let space for the storage and safekeeping of personal property
9 to which the bank has security title or in which it has a lien interest;

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

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

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

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

28

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

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

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

37

38 12. This act shall take effect immediately ¹and shall apply to all
39 letters of credit issued on and after the effective date¹.

40

41

42

43

44 Revises law on letters of credit.